Minutes
Development Applications Committee meeting
28 April 2015
PRESENT:  Lord Mayor, Councillor Nuatali Nelmes (Chair)
Councillor Declan Clausen
Councillor David Compton
Councillor Tim Crakanthorp
Councillor Therese Doyle
Councillor Jason Dunn
Councillor Brad Luke
Councillor Michael Osborne
Councillor Stephanie Posniak
Councillor Allan Robinson
Councillor Andrea Rufo
Councillor Lisa Tierney (arrived 5.40pm)
Councillor Sharon Waterhouse

IN ATTENDANCE:
General Manager       Ken Gouldthorp
Director Corporate Services Glen Cousins
Director Infrastructure Frank Cordingley
Manager Strategic Planning Jill Gaynor
Manager Development and Building Services Murray Blackburn-Smith
Manager Strategic Planning Jill Gaynor
Manager Development and Building Services Murray Blackburn-Smith
Manager Projects and Contracts Greg Sainsbury
Manager Commercial Property Paul Nelson
Manager Council and Legal Services Frank Giordano
Manager Council and Legal Services Frank Giordano
Acting Customer Service Manager Kate Baartz

MINUTES:
Meetings Secretary Kerry Sullivan

WEBCASTING:
Meetings Secretary Amy Leach

Chair, Lord Mayor Cr Nelmes
# MINUTES OF THE DEVELOPMENT APPLICATIONS COMMITTEE

**TUESDAY 28 APRIL 2015 AT 5.35PM**

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1 OPENING OF MEETING

1.1 The meeting was opened at 5.35pm.

2 MESSAGE OF ACKNOWLEDGEMENT

2.1 The Lord Mayor read the message of acknowledgment to the Awabakal and Worimi peoples.

3 PRAYER

3.1 The Lord Mayor read a prayer and a period of silence was observed in memory of those who served and died so that Council might meet in peace.

4 APOLOGIES

4.1 Nil.

5 DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

5.1 **Councillor Clausen**

Councillor Clausen declared a non-significant non-pecuniary interest in Item 2 - Development Application 2014/1169 - 61 Bruce Street, Cooks Hill indicating that he held friendships with a number of employees at the Cricketers Arms Hotel. He stated that he had neither approached nor had been approached by them to discuss the application and did not believe it impacted on his ability to make a decision.

5.2 **Councillor Clausen**

Councillor Clausen declared a significant non-pecuniary interest in Item 4 - Development Application 2014/1040 - 9 Hardes Avenue, Maryland in that he had been contacted by a number of objectors to the development including several work colleagues from two different organisations. Councillor Clausen advised that one of these colleagues regularly acted as his immediate supervisor. He indicated that to manage the conflict he would retire from the Chamber when the item was determined and would not vote on the matter.

6 CONFIRMATION OF PREVIOUS MINUTES

6.1 **MOTION:**

Moved by Cr Osborne, seconded by Cr Rufo

The draft minutes of the Adjourned Development Applications Committee of 2 December 2014 and Development Applications Committee of 17 February 2015 as circulated be taken as read and confirmed.

Carried
DEVELOPMENT APPLICATIONS

ITEM-2 DA 2014/1169 - 61 BRUCE STREET, COOKS HILL - ALTERATIONS AND ADDITIONS TO EXISTING HOTEL (CRICKETERS ARMS HOTEL)

APPLICANT: JOHN HAYES
OWNER: JOHN HAYES
REPORT BY: PLANNING AND REGULATORY
CONTACT: DIRECTOR PLANNING AND REGULATORY / MANAGER DEVELOPMENT AND BUILDING SERVICES

PART I

PURPOSE

An application has been received seeking consent to carry out alterations and additions to the Cricketers Arms Hotel at 61 Bruce Street, Cooks Hill. The proposal involves the expansion of the existing indoor bistro/dining area, a new office and bathroom facilities, new outdoor dining area, expansion of the existing alfresco poker machine room, new polycarbonate roof and modification to the existing car parking.

A copy of the amended plans for the proposed development is appended at Attachment A.

The proposal has been notified in accordance with Council’s Public Notification policy and five letters of objection have been received in response. The objectors' concerns include potential increase in noise, loss of character, traffic impacts, loss of amenity due to smoke, noise and anti-social behaviour.

Details of the submissions received are summarised at Section 3.0 of Part II of this report and the concerns raised are addressed as part of the Environmental Planning Assessment at Section 4.0.
Issues

- Whether the proposed development is acceptable in principle;
- Whether the proposed development will lead to unreasonable amenity impacts with regard to noise, air quality and anti-social behaviour;
- Whether the proposed development will have a significant impact on the existing road network;
- Whether the proposal is acceptable in terms of potential heritage impact.

Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under Section 79C(1) of the Environmental Planning & Assessment Act, 1979 (as amended) and is considered to be acceptable subject to compliance with appropriate conditions.

Accordingly, it is recommended that the application be approved on the basis of the amended plans, subject to the nominated conditions of consent.

RECOMMENDATION

The application to carry out alterations and additions to the existing hotel be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions appended at Attachment B.

Political Donation / Gift Declaration

Under Section 147 of the Environmental Planning and Assessment Act 1979, the applicant, and any person related to this Development Application must report any political donation and/or gift to a Councillor and/or any gift to a Councillor or Council employee with a two year period before the date of this application.

The applicant has answered NO to the following question on the application form: 

*Have you, or are you aware of any person having a financial interest in the application, made a ‘reportable political donation’ or ‘gift’ to a Councillor or Council employee with a two year period before the date of this application?*
PART II

1.0 THE SUBJECT SITE

The subject property comprises Lots 1 and 2, DP37667 and Lot 1, DP215611, forming a generally rectangular shaped allotment located on the south-eastern corner of the intersection of Bruce Street and Bull Street, Cooks Hill. The consolidated site has frontages of 25.91m and 40.02m, respectively, to Bruce Street and Bull Street and a total area of 922.75m². The site is devoid of vegetation and is occupied by an older style, brick and tile, two-storey hotel (Cricketers Arms Hotel). A parking area with associated garage structures is located to the eastern side of the hotel with access off Bull Street. The site is located within the Cooks Hill Heritage Conservation Area. However, the hotel itself is not a listed heritage item.

Existing development on adjoining sites comprises two-storey brick townhouse style units to the east and an older style, weatherboard detached dwelling to the south. The Oriental Hotel is located on the opposite corner to the west. The general form of development in the immediate area consists of typically older style detached dwellings and terrace housing ranging from single-storey to three-storey in scale.

2.0 THE PROPOSAL

The applicant seeks consent to carry out alterations to the existing hotel. The submitted Statement of Environmental Effects (SEE) provides the following outline of proposed alterations to the ground floor:

- ‘Expansion of the existing indoor bistro/dining area towards the rear (south-east) of the property. This expansion makes use of part of the existing steel roof that currently covers open car parking spaces in the rear car park.
- Addition of a new small office space and new bathroom facilities adjacent to the above, also within the area covered by the existing car park roof.
- Introduction of a new outdoor dining area and feature landscaped garden bed.
- Expansion of the existing alfresco poker machine room on the Bull St boundary, with new roof above.
- Addition of a new curved polycarbonate roof above part of the existing rear car park.
- Modifications to the existing car parking area at the rear of the property to facilitate all the above, including the removal of an existing covered garden bed, relocation of an existing storage shed, introduction of new security bollards and installation of a new sliding gate’.

The proposed extensions will effectively increase the lounge (bistro area) by 70 m² and reduce the on-site car parking supply by three spaces. The proposed changes affect the Bull Street frontage (north elevation) with no changes to the Bruce Street, frontage.
The main changes to the Bull Street frontage are the reduction in height of the existing fence and the inclusion of a fixed louvered screen to conceal the alfresco poker machine room from the street. The proposal also includes a new hipped roof over the alfresco poker machine room and the introduction of a new curved polycarbonate roof over the existing car park.

A copy of the amended plans is attached at Attachment A.

The various steps in the processing of the application to date are outlined in the Processing Chronology attached at Attachment C.

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with Council's Public Notification policy for a period of 14 days, with five submissions received in response.

The concerns raised by the objectors in respect of the proposed development are summarised as follows:

i. Character – The proposal is out of character with this quiet residential area (refer to Section 4.2.3 a).

ii. Parking - Inadequate car parking will result in on-street parking congestion (refer to Section 4.2.2 f).

iii. Social impacts – The proposed development increases the gaming area floor and will lead to an increase in social impacts for the local residents and the wider community (refer to Section 4.1 Clause 6.5, 4.2.2 b) and c).

iv. Heritage – The proposed modern curved polycarbonate roof is unsympathetic to the main building and to the Heritage Conservation area (refer to Section 4.1 Clause 5.10 and 4.2.2 d).

v. Polycarbonate Roof - The translucent roof will lead to increased light pollution for adjoining neighbours (refer to Section 4.2.2 c)).

vi. Land and Environment Court - The proposed development is not consistent with the Land and Environment Court decision which restricts the use of the outdoor area to a limited number of functions (refer to Section 4.2.6).

vii. Hours of operation – The applicant has not addressed the associated amenity impact due to existing hours or proposed hours of operation (refer to Section 4.2.2 c)).

viii. Emergency Access – The proposed outdoor dining will affect the egress in the event of a fire (refer to Section 4.2.6).

The objectors' concerns are addressed under the relevant matters for consideration in the following section of this report.

4.0 ENVIRONMENTAL PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 79C(1) of the Environmental Planning and Assessment Act 1979, as detailed hereunder.
4.1 Statutory Considerations [Section 79C(1)(a)(i) and (ii)]

The subject property is within a R3 Medium Residential Zone under the provisions of the Newcastle Local Environmental Plan, 2012. The development falls within the definition of a hotel under this plan. A ‘hotel’ is a prohibited land use within this zone. However, the hotel benefits from an 'existing use rights' under the Environmental Planning and Assessment Act 1979 and may be extended under this Act.

Clause 5.10 LEP 2012 - Although the subject property is located within the Cooks Hill Heritage Conservation Area (HCA), there are no heritage listed items on the subject site.

The application was supported by a Heritage Assessment Report given the site’s inclusion in the Cooks Hill HCA. A number of objections raised concerns about the potential impact of the proposed development on the Cooks Hill HCA. This issue was raised with the applicant’s architect who has provided the following comments:

‘The proposal included the use of the translucent polycarbonate as a roof cladding material in this area in order to afford natural lighting to the car park, proposed dining area extension and proposed outdoor dining area. The translucent sheeting material was also chosen on heritage grounds for its minimal and contemporary aesthetics, which helps satisfy article 22.2 of the Australia ICOMOS Burra Charter 2013 (the national best practice document for heritage conservation and works related to places of heritage significance), which says that “New work should be readily identifiable as such, but must respect and have minimal impact on the cultural significance of the place.” The proposed roof respects the heritage significance of the building in its location, being sited to the rear of the building, surrounded by other contemporary additions (the carpark roofs) and being well separated from the iconic street front facades of the main building’.

The inclusion of the polycarbonate roof on the Bull Street frontage is unlikely to have any negative impact on the existing building or the Heritage Conservation Area.

Clause 6.5 Public Safety – Licensed Premises
The proposal involves alterations and additions to the existing hotel. The application has been reviewed by Council’s Internal Licensed Reference Group and the NSW Police. The proposed alterations and additions to the existing hotel are deemed acceptable.

4.2 Merit Considerations

4.2.1 Relevant Strategic Policies

The proposed development is not inconsistent with the Newcastle Urban Strategy.

4.2.2 Newcastle Development Control Plan [Section 79C(1)(a)(iii)]

The proposed development complies with the aims and objectives of the sections of the relevant guidelines under Newcastle Development Control Plan 2012.
a) **Mine Subsidence - Section 4.03**

The site is within a Mine Subsidence District and conditional approval for the proposed development has been granted by the Mine Subsidence Board.

b) **Safety and Security - Section 4.04**

The proposal provides additional security features to the property which results in this development meeting the aim and objective of this section. Specifically, the proposal provides for the provision of a new sliding security gate at the existing car park entry which will be used to restrict access to the rear of the property after hours. The new alfresco gaming room features secure fixed aluminium louvres to prevent unwanted entry or vandalism. Lighting will be employed in the car park area to the applicable standards to ensure that pedestrians are clearly visible to vehicles moving within or entering the property.

Security bollards will be installed adjacent to the new works to maintain safety for patrons within the building, and to prevent damage to property. The extended indoor and new outdoor dining areas will encourage further casual surveillance of the rear car park of the property.

c) **Social Impact - Section 4.05**

The proposal expands the floor space of the existing hotel. The new floor space will likely result in additional patrons, as the capacity of the gaming room and bistro are to be enlarged. However, due to the inclusion of additional security upgrades and through design, social impacts are not expected to be increased as a result of these additions and alterations. A number of concerns have been raised during the public notification process. These concerns relate to potential impact on surrounding residents and include the following:

**Hours of operation**

The applicant has confirmed that there will be no changes to the existing trading hours.

**Lighting**

The translucent polycarbonate roof provides light to the hotel’s interior. The translucent nature of the material and location on the site will direct any light upward. The translucent material will filter any direct light source and it is not expected to result in any significant amenity impacts to neighbouring properties.

**Air Quality**

Concerns were raised from neighbouring properties submissions regarding the potential impact on nearby residents in terms of receiving second hand tobacco smoke.

The location of the outdoor gaming room is not expected to have any significant impact on nearby residents. The proposed outdoor area to be screened for smoking is located approximately 20 metres from the nearest residential property.
Concluding Comment

The proposed development is for the alteration and additions to an existing hotel. The applicant has confirmed that they are not seeking to increase the number of gaming machines, although it should be noted that licensing of gaming machines is under the control of NSW Government and not Newcastle City Council.

While the submissions raised some concerns about potential anti-social behaviour, the application has been assessed and supported by NSW Licensing Unit and by Council’s internal licence reference group. A number of conditions will be imposed on the consent to ensure that any potential impact is minimised.

d) Heritage Items - Section 5.05

The site is located within the Cooks Hill Heritage Conservation Area. The hotel itself is not a heritage item. As outlined in Section 4.1 of this report, the proposed changes to existing building are considered acceptable on heritage grounds.

e) Built-form – Section 7.01

The existing streetscape along Bull Street is the result of alterations and additions to the hotel over a number of years. The end result is a poor presentation to Bull Street with a large brick wall along most of the frontage. The proposed changes under this application will improve the streetscape with the inclusion of the louvre windows, which reduces the height of the brick wall, and a new hipped roof over the alfresco poker machine room facing Bull Street. The proposed changes to the built form are considered acceptable under the above section.

f) Traffic, Parking and Access – Section 7.03

The existing hotel has been operating for a number of years with ten car parking spaces provided on site. The area is best described by the applicant as:

‘These parking spaces are unmarked, and are interrupted by irregularly spaced columns from the roof structure. This results in an ad-hoc parking arrangement that does not make best use of the available space. While not exclusively noted as staff parking, the car park is less regularly used by public patrons of the facility as on-street parking is generally available and more convenient’.

The proposed alterations and additions will increase the demand for onsite car parking in accordance with the DCP. (The proposed extensions will increase the lounge (bistro area) by 70 m² and reduce the on-site car parking supply by three spaces). The applicant was requested to provide a parking survey within 250 metres of the site. The applicant’s Traffic Consultant has undertaken a parking and patron survey to establish two points:
‘That there is currently some availability of on-street car parking in the area that could cater for any increased parking demand; and

The travel patterns of the patrons are such that the parking demand generated by the development is likely to be less than the parking generation rates within the DCP’.

The information was reviewed by Council’s Senior Traffic Consultant who has provided the following comments:

‘Based on the evidence provided by the applicant’s traffic consultant I concur with the conclusions of (the report) in that the impact on on-street parking as a result of the development is minimal and that any increase in on-street parking would be small and could be accommodated on-street.

Overall I am satisfied the proposal can be supported from a traffic and parking perspective as it will not adversely impact on the local road network or the existing amenity of local residents.’

4.2.3 Impacts on the Natural and Built Environment [Section 79C(1)(b)]

The additions are relatively minor in the context of the greater urban environment and the proposed development is considered acceptable in relation to impacts upon the natural and built environment.

a) Noise

The proposal expands the existing building on the site and was supported by an acoustic assessment which reports that there will be no amplified music in the courtyard or alfresco gaming area and that the major source of noise will be from patrons and gaming machine. The report concludes that the ‘proposed development will not exceed the noise criteria for the relevant standard’. The application and the acoustic assessment were reviewed by Council’s Regulatory Services Unit (RSU). The RSU made the following conclusion:

‘The acoustic assessment prepared by Spectrum Acoustics dated March 2015 demonstrates that there will no significant acoustic impacts upon surrounding residential receivers’.

4.2.4 Social and Economic Impacts in the Locality [Section 79C(1)(b)]

While the existing use is attributed to some negative social impacts on the surrounding residents, the proposed additions and alteration of the existing hotel do not affect the existing structure. The additions to the existing hotel are unlikely to have any significant social impacts on the surrounding residents. There will be positive economic impacts in providing additional employment opportunities and in continuing to provide for an entertainment venue for the local community.
4.2.5 Suitability of the Site for the Development [Section 79C(1)(c)]

The site is within a Mine Subsidence District and conditional approval for the proposed development has been granted by the Mine Subsidence Board.

The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

4.2.6 Submissions made in accordance with the Act or Regulations [Section 79C(1)(d)]

Concerns were raised that the proposed development is not consistent with a court order of the Land and Environment Court. The court order relates to a previous approval (DA 1998/1458) that restricts the use of the outdoor area for car parking and special activities for Anzac Day and Melbourne Cup. The judgement was specific in allowing the outdoor area to be used for special activities for Anzac Day and Melbourne Cup for a period of two years. This two year period ended in 2003.

Another application was approved in 2003 (DA 2003/0146) for the use of the car park for special functions on Anzac Day and Melbourne Cup on an ongoing basis with a number of conditions, including restricting the hours (10.00 am to 8.00 pm).

The current application will reduce the area available for functions. Council is not restricted from approving the application given that a car park area will remain available for use.

A submission has suggested that the proposed outdoor dining area will affect egress in the event of fire.

The applicant confirms that the design of the proposed works within this development application is in compliance with part D1.4 Exit Travel Distances of the National Construction Code. As required, all compliance with relevant fire safety and egress controls will be ensured by a professional Certifying Authority during the construction certificate stage of the proposed works.

This report has addressed the various concerns raised in the submissions received in response to the Public Notification under the Act and Regulation.

4.2.7 Public Interest [Section 79C(1)(e)]

- **Sustainability**

The proposed development is considered to be satisfactory having regard to the principles of ecologically sustainable development.

- **General**

The proposed development does not raise any significant general public interest issues beyond matters already addressed in this report.
ATTACHMENTS

Attachment A: Plans and elevations of proposed development - 61 Bruce Street, Cooks Hill (DA 2014/1169)
Attachment B: Draft Schedule of Conditions - 61 Bruce Street, Cooks Hill (DA 2014/1169)
Attachment C: Processing Chronology - 61 Bruce Street, Cooks Hill (DA 2014/1169)
Attachment B

DRAFT SCHEDULE OF CONDITIONS
DA 2014/1169 – 61 BRUCE STREET, COOKS HILL

SCHEDULE 1

REASONS FOR CONDITIONS

1  The conditions of this consent have been imposed in accordance with Section 80A of the Environmental Planning and Assessment Act 1979 (NSW). The conditions relate to any matter referred to in Section 79C(1) of relevance to the development the subject of the consent and are imposed to ensure that the development is undertaken in an orderly manner, with acceptable impacts on the natural and built environment.

APPROVED DOCUMENTATION

2  The development is to be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

<table>
<thead>
<tr>
<th>Plan No./Supporting Document</th>
<th>Reference/Version</th>
<th>Prepared by</th>
<th>Dated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site and Roof Plan</td>
<td>A02 Rev A</td>
<td>EJE Architecture</td>
<td>4/06/14</td>
</tr>
<tr>
<td>Existing and Ground Floor Plan</td>
<td>A03 Rev A</td>
<td>EJE Architecture</td>
<td>4/06/14</td>
</tr>
<tr>
<td>Proposed Ground Floor Plan</td>
<td>A04 Rev B</td>
<td>EJE Architecture</td>
<td>4/06/14</td>
</tr>
<tr>
<td>Elevation Plan and Section Plan</td>
<td>A05 Rev A</td>
<td>EJE Architecture</td>
<td>24/06/14</td>
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<tr>
<td>Elevation Plan and Section Plan</td>
<td>A06 Rev B</td>
<td>EJE Architecture</td>
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<tr>
<td>Elevations</td>
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<td>08/09/14</td>
</tr>
<tr>
<td>Material and Finishes</td>
<td>A011 Rev A</td>
<td>EJE Architecture</td>
<td>08/09/14</td>
</tr>
</tbody>
</table>
Traffic Impact Assessment | P0371 EJE | SECA Solutions | 3/03/15
--- | --- | --- | ---
Acoustic Assessment Report | Ref 151017 | Spectrum Acoustic | March 2015

In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

3 The applicant is to comply with all requirements of the Hunter Water Corporation regarding the connection of water supply and sewerage services, including the payment of any required cash contribution towards necessary amplification of service mains in the locality as a result of the increased intensity of land use proposed. A copy of the Corporation’s compliance certificate (refer s50 Hunter Water Act 1991) is to be included in documentation for a Construction Certificate application.

4 A separate application must be lodged and consent obtained from Council for all works within the road reserve pursuant to Section 138 Roads Act 1993 (NSW), before the issue of any Construction Certificate.

5 The car park is to be designed to comply with AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking and AS/NZS 2890.6:2009 - Parking facilities - Off-street parking for people with disabilities. Full details are to be included in documentation for a Construction Certificate application.

6 Letterboxes, landscaping and any other obstructions to visibility are to be kept clear of or limited in height to 1.2m in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance in accordance with AS/NZS 2890.1:2004:Parking facilities – Off-street car parking. Full details are to be included in documentation for a Construction Certificate application.

7 Kerbing or dwarf walls having a minimum height of 100mm are to be constructed along the edge of all garden or lawn areas adjacent to driveways and parking bays sufficient to discourage the encroachment of vehicles thereon. Full details are to be included in documentation for a Construction Certificate application.

8 A total monetary contribution of $4,000 is to be paid to Council, pursuant to Section 94A of the Environmental Planning and Assessment Act 1979, such contribution to be payable prior to the issue of a Construction Certificate in respect of the proposed development.

Note: i) This condition is imposed in accordance with the provisions of the Newcastle City Council S94A Development Contributions Plan 2009 (updated version operational from 15 March 2011). A copy of the plan may be inspected at Council’s Customer Enquiry Centre, ground floor of the City Administration Centre, 282 King Street Newcastle 8.30 am to 5.00 pm, excluding public holidays.
ii) The amount of contribution payable under this condition has been calculated on the basis of the current rate as at the date of consent and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of Statistics (ABS). The CPI index rate is expected to rise at regular intervals and therefore the actual contribution payable is indexed and recalculated at the CPI rate applicable on the day of payment.

CPI quarterly figures are released by the ABS on a date after the indexation quarter and as a guide, these approximate dates are provided below. Indexation quarters from the ABS are as follows:

<table>
<thead>
<tr>
<th>Indexation quarters</th>
<th>Approx release date</th>
</tr>
</thead>
<tbody>
<tr>
<td>September</td>
<td>Late October</td>
</tr>
<tr>
<td>December</td>
<td>Late January</td>
</tr>
<tr>
<td>March</td>
<td>Late April</td>
</tr>
<tr>
<td>June</td>
<td>Late July</td>
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</tbody>
</table>

Any party intending to act on this consent should contact Council’s Customer Enquiry Centre for determination of the indexed amount of contribution on the date of payment.

CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK AND DURING THE CONSTRUCTION PHASE

9 Toilet facilities are to be available or provided at the work site before works begin and be maintained until the works are completed, at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site. Each toilet is to:

a) be a standard flushing toilet connected to a public sewer, or

b) have an on-site effluent disposal system approved under the Local Government Act 1993 (NSW), or

c) be a temporary chemical closet approved under the Local Government Act 1993 (NSW).

10 A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

a) showing the name, address and telephone number of the principal certifying authority for the work

b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours and
c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

11 All building work must be carried out in accordance with the provisions of the Building Code of Australia.

12 All building materials, plant and equipment is to be placed on the site of the development so as to ensure that pedestrian and vehicular access in public places is not restricted and to prevent damage to the road reserve. The storage of building materials on Council reserves including the road reserve is not permitted.

13 Construction/demolition work that generates noise that is audible at residential premises is to be restricted to the following times:

- Monday to Friday, 7:00 am to 6:00 pm and
- Saturday, 8:00 am to 1:00 pm.

No noise from construction/demolition work is to be generated on Sundays or public holidays.

14 Council’s ‘PREVENT POLLUTION’ sign is to be erected and maintained in a conspicuous location on or adjacent to the property boundary so it is clearly visible to the public or at other locations on the site as otherwise directed by Council for the duration of demolition and construction work.

Note: Council’s ‘PREVENT POLLUTION’ sign can be obtained by presenting your development application receipt at Council’s Customer Enquiry Counter at 282 King Street Newcastle.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE, A SUBDIVISION CERTIFICATE OR A STRATA CERTIFICATE

15 All public footways, footpaving, kerbs, gutters and road pavement damaged during the works are to be immediately repaired following the damage, to a satisfactory state that provides for safe use by pedestrians and vehicles. Full restoration of the damage is to be carried out to Council’s satisfaction prior to the completion of demolition work or prior to the issue of any occupation certificate in respect of development involving building work.
CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

16 The hours of operation remain unchanged by this consent and shall remain as approved under the previous DA for the site.

17 The use and occupation of the premises, including all plant and equipment installed thereon, is not to give rise to any offensive noise, as defined under the Protection of the Environment Operations Act 1997 (NSW).

Should Council consider offensive noise has emanated from the premises, the owner/occupier of the premises will be required to submit an acoustic assessment prepared by a suitably qualified acoustical consultant recommending appropriate acoustic measures necessary to ensure future compliance with this condition and will be required to implement such measures within a nominated period. Furthermore, written certification from the said consultant confirming the recommended acoustic measures have been satisfactorily implemented will be required to be submitted to Council prior to the expiration of the nominated period.

18 All vehicular movement to and from the site is to be in a forward direction.

19 All parking bays are to be permanently marked out on the pavement surface.

20 Proposed parking areas, vehicle bays, driveways and turning areas are to be maintained clear of obstruction and be used exclusively for purposes of car parking, loading and unloading, and vehicle access, respectively. Under no circumstances are such areas to be used for the storage of goods or waste materials.

21 The use and occupation of the premises is not to give rise to the emission of any ‘air impurity’ as defined under the Protection of the Environment Operations Act 1997 (NSW), that interferes unreasonably with the amenity of neighbouring premises and/or other sensitive receivers.

Should Council consider that unreasonable levels of air impurities have been emitted from the premises, the owner/occupier will be required to engage a suitably qualified consultant to recommend measures to control emissions of air impurities to an acceptable level and such measures being implemented within a nominated time period. Furthermore, written certification from the suitably qualified consultant will be required to be submitted to Council confirming that air impurity emissions from the premises do not interfere unreasonably with the amenity of neighbouring premises and/or other sensitive receptors before the expiration of the nominated period.

22 All sound from the gaming machines is to be controlled to a level which is not audible at the boundary of any residential premises at all times.

23 No music or amplified sound other than the gaming machines and emergency PA announcements are to be played through speakers in the alfresco gaming area.
ADVISORY MATTERS

24 Any proposed business identification sign or advertising sign should be designed in accordance with the provisions of Newcastle Development Control Plan 2012 and be the subject of a separate Development Application approved prior to erection or placement in position.

25 Any necessary alterations to public utility installations are to be at the developer/demolisher’s expense and to the requirements of both Council and any other relevant authorities. Council and other service authorities should be contacted for specific requirements prior to the commencement of any works.

26 Prior to commencing any construction works, the following provisions of the Environmental Planning and Assessment Act 1979 (NSW) (the ‘Act’) are to be complied with:
   a) a Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act
   b) a Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act and
   c) Council is to be given at least two days notice of the date intended for commencement of building works, in accordance with Section 81A(2)(c) of the Act.

27 A Construction Certificate application for this project is to include a list of fire safety measures proposed to be installed in the building and/or on the land and include a separate list of any fire safety measures that already exist at the premises. The lists must describe the extent, capability and basis of design of each of the measures.

28 Prior to the occupation or use of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the proposed development. An application for an Occupation Certificate must contain the information set out in Clause 149 of the Environmental Planning and Assessment Regulation 2000 (NSW).

29 A copy of the final Fire Safety Certificate (together with a copy of the current fire safety schedule) is to be given to the Commissioner of NSW Fire Brigades and a further copy of the Certificate (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.

30 An annual Fire Safety Statement in the form described in Clause 175 of the Environmental Planning and Assessment Regulation 2000 (NSW) is to be submitted to Council and a copy (together with a copy of the current fire safety schedule) is to be given to the Commissioner of New South Wales Fire Brigades. A further copy of the Statement (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.
31 It is an offence under the provisions of the *Protection of the Environment Operations Act 1997* (NSW) to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice (‘on-the-spot fine’) or prosecution.

32 Failure to comply with the conditions of consent constitutes a breach of the *Environmental Planning and Assessment Act 1979* (NSW), which may be subject to a penalty infringement notice (‘on-the-spot fine’) or prosecution.

**End of conditions**

**Fire Safety Schedule**

Nil
**Attachment C**

**PROCESSING CHRONOLOGY**
**DA 2014/1169 – 61 BRUCE STREET, COOKS HILL**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>10 October 2014</td>
<td>Development application lodged with Council.</td>
</tr>
<tr>
<td>20 October 2014</td>
<td>Public exhibition (14 days).</td>
</tr>
<tr>
<td>11 February 2015</td>
<td>Applicant advised of issues raised after technical assessment of the application and in public submissions.</td>
</tr>
<tr>
<td>20 February 2015</td>
<td>Response received from applicant.</td>
</tr>
<tr>
<td>16 March 2015</td>
<td>Applicant advised of issues raised after technical assessment of the additional information.</td>
</tr>
<tr>
<td>19 March 2015</td>
<td>Response received from applicant.</td>
</tr>
</tbody>
</table>

**MOTION**
Moved by Cr Luke, seconded by Cr Waterhouse

The application to carry out alterations and additions to the existing hotel be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions appended at Attachment B.

*For the Motion:* The Lord Mayor, Councillors Clausen, Compton, Crakanthorp, Dunn, Luke, Robinson, Rufo and Waterhouse.

*Against the Motion:* Councillors Doyle, Posniak and Osborne.  

Carried
Councillor Tierney arrived at the commencement of this item.

ITEM-3  DA 2014/1386 - 29 WARABROOK BOULEVARDE
WARABROOK - ERECTION OF AN INDUSTRIAL BUILDING
AND ASSOCIATED STORAGE BUILDING TO BE USED AS
A HIGH TECHNOLOGY INDUSTRY

APPLICANT: ATB MORTON PTY LTD
OWNER: ATB MORTON PTY LTD
REPORT BY: PLANNING & REGULATORY
CONTACT: DIRECTOR PLANNING & REGULATORY / MANAGER
DEVELOPMENT AND BUILDING SERVICES

PART I

PURPOSE

An application has been received seeking consent to erect an industrial building and a separate storage building. The application proposes to use these two new buildings for a high technology industry. The main street front building is proposed to include laboratories, warehouse and computer room on the ground floor with an upper mezzanine floor of a laboratory, office and meeting room. The smaller rear building is proposed to be used for storage.

Subject Land: Map 296 – A4 as Gregory’s Street Directory, 28th Edition.
A copy of the submitted plans for the proposed development is at Attachment A.

The application was publicly notified in accordance with Council's Public Notification policy for a period of 14 days and 29 submissions were received in response.

The concerns raised by the objectors in respect of the proposal include: land use, amenity impacts from the storage building, property devaluation, 24 hour operation and acoustic impacts.

Details of the submissions received are summarised at Section 3.0 of Part II of this report and the concerns raised are addressed as part of the Environmental Planning Assessment at Section 4.0.

The application has been referred to the Development Application Committee as the number of objections received exceeds the delegation of the Planning and Regulatory Group.

**Issues**

Whether the development is acceptable in relation to its likely impacts on adjoining properties in terms of adverse acoustic and environmental aspects.

**Conclusion**

The proposed development has been assessed having regard to the relevant heads of consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979 (as amended) NSW and is considered to be acceptable subject to compliance with appropriate conditions.

**RECOMMENDATION**

The application to erect an industrial building and a separate storage building for use for a high technology industry be approved subject to the draft conditions outlined in the schedule appended at Attachment B.

**Political Donation / Gift Declaration**

Under Section 147 of the Environmental Planning and Assessment Act 1979, the applicant, and any person related to this development application must report any political donation and/or gift to a Councillor and/or any gift to a Councillor or Council employee with a two year period before the date of this application.

The applicant has answered NO to the following question on the application form: Have you, or are you aware of any person having a financial interest in the application, made a 'reportable political donation' or 'gift' to a Councillor or Council employee with a two year period before the date of this application?
PART II

1.0 THE SUBJECT SITE

The subject property comprises Lot 2 DP854010, 29 Warabrook Boulevarde, Warabrook, and is an irregular shaped allotment on the northern side of the street, just west of the intersection of Rosegum Road and Warabrook Boulevard. The site has a frontage of 36.0m to Warabrook Boulevarde, and a total area of 2309m². The site is relatively flat with a slight fall towards Warabrook Boulevarde and the rear boundary. It is noted that the site was previously developed and used for industrial purposes by Pace Farms with the rear of the site already having a retaining wall and an acoustic fence.

The site is currently vacant, unsealed and predominately consists of a sparse grass covering.

Existing development to the east, west and south consists of the Warabrook industrial estate involving a combination of industrial and commercial buildings. Directly to the north/north-east of the site is residential development consisting predominately of single storey, dwelling houses.

2.0 THE PROPOSAL AND BACKGROUND

Background

A previous development application (DA 2012/1126) was approved by Council on 25 July 2013 on the subject site for two speculative light industrial buildings with a relatively comparable footprint, layout and areas. Similar to the current proposal, this application involved a two storey building sited towards the street front with a single storey warehouse building at the rear boundary.

Proposal

The applicant seeks consent to erect an industrial building and a separate storage building. The application also proposes to use the subject buildings to house a high technology industry involving laboratories, storage areas and ancillary offices.

The applicant, within the submitted Statement of Environmental Effects, describes the high technology industry use by the intended occupier 4tel as follows:

‘4tel’s core operations on site will involve research, design, development and management of network control and tracking management systems (software and hardware), primarily relating to the management of rail stock and associated movements as well as other heavy vehicle fleets.’

The main industrial building proposed will be located towards the Warabrook Boulevard street front and is 13.9m wide and 36m long, being rectangular in shape and has a proposed ridge height of 8.35m. This proposed building consists of two levels comprising:
• ground floor laboratories, computer room (ie ‘server’ room) and associated entry, staff room and associated office/amenities; and
• upper mezzanine floor containing a laboratory, meeting room, and associated office/amenities.

The storage warehouse is proposed to be located at the rear of the site and consists of a single level rectangular building 17.5m wide, 12.9m deep with a ridge height of 7.4m.

The proposal involves a driveway access along the eastern side of the site with truck access via the driveway and a maneuvering area directly south of the proposed warehouse building at the rear of the site.

The proposed development includes a total of 20 on site car parking spaces (ie including two disabled parking spaces). Three spaces are located at the street front entry to the proposed two storey building, four are located along the eastern side of the proposed two storey building, while the remaining 12 spaces are located between the proposed two storey building and warehouse building proposed at the rear of the site.

The rear of the site is burden by a drainage easement and the development is setback from the rear boundary so as to ensure there is not conflict.

A copy of the latest plans is appended at Attachment A.

The various steps in the processing of the application to date are outlined in the Processing Chronology (refer to Attachment C).

3.0 PUBLIC NOTIFICATION

The original application was publicly notified in accordance with Council's Public Notification policy for a period of 14 days and 29 submissions were received in response.

The concerns raised by the objectors in respect of the current proposal are summarised as follows:

• Acoustic Impacts/Hours of Operation – Concern that the development will have unreasonable noise impacts and that the existing acoustic barrier (ie timber lapped and capped fence) is not a sufficient acoustic barrier. ‘Objection to 24 hours, seven days a week this is unfair to operate with a residential area being extremely close and no other light industrial businesses operate 24/7 on Warabrook Boulevard.’
Comment: The site is proposed to operate on a 24/7 basis, however activities undertaken during the evening and night time area will be limited to monitoring of tracking systems and the like, and would only accommodate a maximum of five staff. Otter activities involving heavy vehicle movements and other potentially noise generating activities would only occur during the day time period (7am - 6pm). The proposal has been assessed by Council’s Protection Officer and is considered to be acceptable in terms of acoustic impacts (see Section 4.2.3 c below).

- **Land Use** – Concern regarding the nature of the high technology industry land use and the impacts it may generate.

Comment: The likely impacts of the proposal have been assessed and are considered to be acceptable (see Section 4.1a & 4.2.3 c below). It is determined that the proposed use readily fits within the definition of the permissible high technology industry land use and its likely adverse impacts such as noise, traffic and parking are acceptable having regard to the nature of the intended land use, the sites zoning and the established character of the area.

- **Storage Building/Amenity Impacts** – Concern regarding the likely impact of the storage building being located at the rear boundary adjacent residential properties, and the associated visual, privacy and noise impacts.

Comment: Both building will be constructed of precast concrete panel construction with colourbond sheet metal roofing. Paved areas will predominantly be concrete. Access to the road network will be via Warabrook Boulevard. The technical services area will primarily utilised for the research, design, testing of software and hardware programs. Some monitoring units will be assembled and tested in the technical services area. The storage space will be used for housing monitoring units and other equipment associated with the installation of monitoring units. The development is considered to be acceptable having regard to the proposal's visual appearance, setbacks, height, bulk and scale. There are no privacy significant impacts likely to be generated by the activities to be undertaken as part of the proposed use as a high technology industry.

- **Property Devaluation** – Concern that the development will devalue neighbouring properties.

Comment: This is not a valid planning consideration.

**4.0 ENVIRONMENTAL PLANNING ASSESSMENT**

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 79C(1) of the *Environmental Planning and Assessment Act 1979*, as detailed hereunder.
4.1 Statutory Considerations [Section 79C(1)(a)(i) and (ii)]

a) State Environmental Planning Policy 33 – Hazardous and Offensive Development (SEPP 33)

The application is for a high technology industry and the applicants have confirmed that the quantities of materials used on site are such that the proposal would not constitute hazardous or offensive development under SEPP 33.

b) State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)

The application has been assessed having regard to the provisions of SEPP 55 by Council’s Environment Officer and is considered to be acceptable subject to conditions of consent appended at Attachment B. A detailed discussion of the land contamination issues is contained within Section 4.2.3(c).

c) Newcastle Local Environmental Plan 2012

The subject property is included within the IN2 – Light Industrial zone under the provisions of the Newcastle Local Environmental Plan (LEP 2012) 2012, within which zone the proposed development is permissible with Council’s consent as a high technology industry as defined below (and being a subset of the permissible group term use light industry). The proposed development is also consistent with the zone objectives.

‘high technology industry’ means a building or place predominantly used to carry out an industrial activity that involves any of the following:

(a) electronic or micro-electronic systems, goods or components,
(b) information technology (such as computer software or hardware),
(c) instrumentation or instruments of a scientific, industrial, technological, medical or similar nature,
(d) biological, pharmaceutical, medical or paramedical systems, goods or components,
(e) film, television or multi-media technologies, including any post production systems, goods or components,
(f) telecommunications systems, goods or components,
(g) sustainable energy technologies,
(h) any other goods, systems or components intended for use in a science or technology related field, but does not include a building or place used to carry out an industrial activity that presents a hazard or potential hazard to the neighbourhood or that, because of the scale and nature of the processes involved, interferes with the amenity of the neighbourhood.’
Clause 4.5 – Height

The LEP 2012 does not prescribe a height limit for the subject site. The maximum height of buildings proposed on site is approximately 8.35m.

Overall is it considered that the height of the proposed development is acceptable. The height of the proposed buildings is in keeping with the scale and nature of other industrial buildings within the area. The proposed rear warehouse building is 7.4m in height with a rear setback of 4.0m which is considered to be acceptable. Additionally, the submitted landscape plan proposes the planting of six Corymbia maculata (ie Spotted Gums) along the rear boundary between the proposed warehouse building and neighbouring boundary which further reduces the visibility of the proposed rear warehouse building.

Clause 4.4 – Floor Space Ratio (FSR)

The Newcastle LEP 2012 does not prescribe a floor space ratio for the subject site. It is noted that the proposed development has an approximate FSR of 0.395:1 which is considered to be acceptable having regard to the industrial nature of the subject site and surrounding area.

Clause 5.10 – Heritage

There are no heritage items on the subject site and no heritage items or heritage conservation areas in vicinity of the subject site.

Clause 6.1 - Acid sulfate soil

The subject site is listed as Class 5 under the Acid Sulfate Soils Map and, as such, is unlikely to encounter any acid sulphate soils.

4.2 Merit Considerations

4.2.1 Relevant Strategic Policies

There are no specific strategic policies relevant to the current application.

4.2.2 Newcastle Development Control Plan (DCP) [Section 79C(1)(a)(iii)]

a) Industrial Development - Section 3.13

The proposal is satisfactory having regard to the provisions of the Section 3.13.

The DCP requires that a development have a five metre setback to the front boundary (although this can be varied for 50% of the frontage where it is offset by a greater landscape setback for the remaining of the frontage).
The main bulk of the proposed development has a setback of approximately 16.4m. Towards the south western corner of the building there is a small outdoor forecourt area, adjacent the lunch room, for use by staff. This area is provided with an awning for cover and partially enclosed on the western side by a fin wall, having a setback of 12.2m.

A landscaped area 4.8m wide across the frontage of the site is proposed with an additional grassed area, trees and car parking being proposed within the remainder of the 16.4m setback. It is considered that the development is suitable in regard to the front setback.

b) Flood Management - Section 4.01 and Stormwater - Section 7.06

The proposal has been assessed by Council’s Senior Development Engineer as discussed below.

Flooding

The subject property is not affected by flooding and there are no conditions required to be imposed in regard to flooding.

Stormwater

‘The Stormwater Plan provided shows the roofwater from the warehouse directed to a rainwater tank with site flow treated and stored in a 40.1m$^3$ underground retention tank designed to satisfy Council’s DCP requirements. An additional rainwater tank on the laboratory with internal reuse has been conditioned.’

Appropriate conditions of consent have been recommended at Attachment B.

c) Safety & Security - Section 4.04

The Statement of Environmental Effects (SEE) and submitted plans have demonstrated that the proposed development is adequate having regard to Crime Prevention Through Environmental Design (CPTED) principles.

d) Land Contamination - Section 5.02

The applicant has submitted land contamination reports including a Remedial Action Plan. The application has been assessed by Council's Environmental Protection Officer and is considered to be acceptable subject to conditions of consent. A detailed discussion of the land contamination is contained within Section 4.2.3(c).

Appropriate conditions of consent have been recommended at Attachment B.
e) Social Policy - Section 4.05

The application is for a high technology industry within an industrial zone. Notwithstanding that the site adjoins a residential zone to the north, the land has been used industrially for many decades before the adjoining residential properties existed (eg ‘Pace Farms’ egg processing and abattoir). Having regard to the nature of the proposed use and zoning, it is considered that the development will not have any unreasonable social impacts upon the surrounding natural and built environment.

f) Tree Management - Section 5.03

The previous approval (DA 2012/1126) on the subject site included consent to the removal of nine trees which are on or very near the boundary of the subject site. This was approved on the basis that suitable compensatory plantings were provided and this was addressed within that application’s landscape concept plan via the inclusion of five larger growing trees.

The current application proposes the planting of 12 larger growing trees (ie four Tuckeroo’s, six Spotted Gums and two Water Gums) within the landscape concept plan which is considered to be acceptable compensation for the trees which have already been approved to be removed. It is further noted that these existing trees were of relatively poor health and form, and not of high retention value.

It is considered that the overall outcome for the subject site and surrounding area in terms of tree management is acceptable.

Appropriate landscape conditions have been recommended within Attachment B.

g) Landscaping, Open Space and Visual Amenity - Section 7.02

The application has been supported by a landscape concept plan which is considered to be compatible with the landscape character of the area.

h) Traffic, Parking & Access - Section 7.03

The proposal has been assessed and it is considered to be sustainable in terms of the parking generation, traffic and access under the Newcastle DCP 2012 as discussed below.

Traffic

Driveway access to Warabrook Boulevard is considered to be acceptable for the heavy and passenger vehicles intended to utilise the site.

Access and Parking

The development provides 20 car parking spaces, one truck parking spaces within the warehouse and parking for five bicycles and is considered to be acceptable having regard to the DCP 2012 (ie 13 parking spaces are required under the DCP).
The development provides for sufficient on site vehicle access for car and trucks using the site including a medium delivery vehicle and turning area towards the rear of the site.

j) Waste Management - Section 7.08

The development has adequate space available for waste storage and street frontage for Council waste collection.

4.2.3 Impacts on the Natural and Built Environment [Section 79C(1)(b)]

a) Density, Character, Streetscape, External Appearance, Height, Bulk & Scale

The overall height, bulk and scale of the proposal is considered to be acceptable having regard to the industrial nature of the site and its surrounds. The larger proposed building is to be sited towards the Warabrook Boulevarde frontage of the site with a front setback of 12.2-16.4m and planting of four trees within this setback. The warehouse building proposed at the rear of the site is of a scale which, combined with its 4m rear setback and planting of, six Corymbia maculata (ie Spotted Gums), is considered to be reasonable.

It is considered that the proposed development is acceptable within the industrial nature of the area and will be acceptable in terms of streetscape, character and visual appearance.

b) Amenity Impacts (Overshadowing, Privacy and Views)

Overshadowing

An assessment of the application indicates that the orientation of the site and the proposed height of the development (ie maximum height of 8.35m) is such that the shadows generated will fall almost solely onto adjoining industrial sites, with the majority of the shadowing impact being onto Warabrook Boulevarde itself. It is further noted that any overshadowing onto the adjoining site to the south-east would only be impacting a large car parking area of the neighbouring high technology industrial use which is considered to be an acceptable impact.

Overall, it is considered that the likely shadowing impacts of the proposal are within Councils expectation and standards.

Privacy

The development does not result in any unreasonable privacy impacts. The northern, western and eastern elevations of the proposed development will have no windows or openings. There is an existing large acoustic fence which would negate any casual overlooking between the subject site and the adjoining residential properties. Furthermore, the proposal includes the planting of six Corymbia maculata (ie Spotted Gums) along the rear of the site. Finally, the proposed rear
warehouse building is 17.55m wide of the 24m wide allotment effectively blocking the majority of the rear boundary from any casual overlooking.

It is considered that the proposal is acceptable in terms of privacy and there is limited opportunity for any casual overlooking.

Views
The site, and majority of the surrounding land, is industrially zoned and as such, it considered that there is no unreasonable loss of any views or outlook as a result of the proposal. The residential properties to the north of the site are already considerably lower than the subject site due to an existing retaining wall and, in combination with the large acoustic fence, would have no views across the subject site.

c) Environmental Impacts (Acoustics and Land Contamination)

Acoustic Assessment
The development proposes to operate on a 24 hour, seven day a week basis but the evening/night time activities ‘will be limited to monitoring of tracking systems and the like, and would only accommodate a maximum of five staff. Other activities involving heavy vehicle movements and other potentially noise generating activities would only occur during the day time period (7am – 6pm)’. The applicant submitted an acoustic report by Spectrum Acoustics. This acoustic report was reviewed by Council’s Environment Protection Officer and the proposal is considered to be acceptable subject to conditions appended at Attachment B.

Land Contamination
The proposal submitted several land contamination reports (ie Coffey Environments Australia & Douglas Partners, plus a Remedial Action Plan by Robert Carr Associates) to address potential land contamination on the site. The historic land uses of the site could be potential generators of land contamination including a previous abattoir, rail siding, egg processing plant, transport activities, previous building demolition and imported fill.

Site testing was undertaken and, while spots of land contamination were found, the concentration levels are to be below the acceptable levels under the National Environment Protection (Assessment of the Site Contamination) Measure (NEPM) (ie sets national standards for acceptable land contamination levels).

The land contamination aspects of this development have been assessed by Council’s Environment Protection officer and is considered to be acceptable, subject to conditions appended at Attachment B.
4.2.4 Social and Economic Impacts in the Locality [Section 79C(1)(b)]

Overall, the proposed development is not likely to have any noticeable adverse social or economic impacts in the locality. However, it will have a short term positive economic impact during the construction period and could be expected to have a longer term favourable economic and social impact for the region.

4.2.5 Suitability of the Site for the Development [Section 79C(1)(c)]

The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

4.2.6 Submissions made in accordance with the Act or Regulations [Section 79C(1)(d)]

This report has addressed the various concerns raised in the submissions received in response to the public notification and referral procedures under the Act and Regulation.

4.2.7 Public Interest [Section 79C(1)(e)]

- Sustainability

The proposed development is considered to be satisfactory having regard to the principles of ecologically sustainable development.

The proposed development will not result in the disturbance of any endangered flora or fauna habitat or otherwise adversely impact on the natural environment.

- General

The proposed development does not raise any significant general public interest issues beyond matters already addressed in this report.

ATTACHMENTS

Attachment A: Copy of plans – 29 Warabrook Boulevarde, Warabrook (DA 2014/1386)
Attachment B: Draft Schedule of Conditions – DA 2014/1386
Attachment C: Processing Chronology - DA 2014/1386
Attachment B

DRAFT SCHEDULE OF CONDITIONS
DA 2014/1386 – 29 WARABROOK BOULEVARDE, WARABROOK

SCHEDULE 1

REASONS FOR CONDITIONS

1 The conditions of this consent have been imposed in accordance with Section 80A of the Environmental Planning and Assessment Act 1979 (NSW). The conditions relate to any matter referred to in Section 79C(1) of relevance to the development the subject of the consent and are imposed to ensure that the development is undertaken in an orderly manner, with acceptable impacts on the natural and built environment.

APPROVED DOCUMENTATION

2 The development is to be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

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<thead>
<tr>
<th>Plan No./Supporting Document</th>
<th>Reference/Version</th>
<th>Prepared by</th>
<th>Dated</th>
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<tr>
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<td>Proj No 1482 A02, A04, A07 Rev B</td>
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<td>Roof Plan</td>
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<td>Landscape Concept Plan</td>
<td>Job No SS 14-2933 Dwg No 000, 101, 102 Iss A</td>
<td>Site Image</td>
<td>20 Nov 2014</td>
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<tr>
<td>Statement of Environmental Effects</td>
<td>Proj No 1482</td>
<td>ATB Morton</td>
<td>November 2014</td>
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In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

3 A total monetary contribution of $11,000 is to be paid to Council, pursuant to Section 94A of the Environmental Planning and Assessment Act 1979, such contribution to be payable prior to the issue of a Construction Certificate in respect of the proposed development.

Note:

i) This condition is imposed in accordance with the provisions of the Newcastle City Council S94A Development Contributions Plan 2009 (updated version operational from 13 January 2014). A copy of the plan may be inspected at Council’s Customer Enquiry Centre, ground floor of the City Administration Centre, 282 King Street Newcastle 8.30 am to 5.00 pm, excluding public holidays.

ii) The Newcastle City Council S94A Development Contributions Plan 2009 permits deferred or periodic payment of levies in certain circumstances. A formal modification of this condition will be required to enter into a deferred or periodic payment arrangement. Refer to the S94A Development Contributions Plan 2009.

iii) The amount of contribution payable under this condition has been calculated on the basis of the current rate as at the date of consent and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of Statistics (ABS). The CPI index rate is expected to rise at regular intervals and therefore the actual contribution payable is indexed and recalculated at the CPI rate applicable on the day of payment.

CPI quarterly figures are released by the ABS on a date after the indexation quarter and as a guide, these approximate dates are provided below. Indexation quarters from the ABS are as follows:

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<th>Indexation quarters</th>
<th>Approx release date</th>
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</thead>
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<tr>
<td>September</td>
<td>Late October</td>
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<tr>
<td>December</td>
<td>Late January</td>
</tr>
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<td>March</td>
<td>Late April</td>
</tr>
<tr>
<td>June</td>
<td>Late July</td>
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</tbody>
</table>

Any party intending to act on this consent should contact Council’s Customer Enquiry Centre for determination of the indexed amount of contribution on the date of payment.
On-site parking accommodation is to be provided for a minimum of 20 vehicles and such be set out generally in accordance with the minimum parking layout standards indicated in Element 7.03 ‘Traffic, Parking and Access’ of Council’s adopted Newcastle Development Control Plan 2012. Full details are to be included in documentation for a Construction Certificate application.

The car park is to be designed to comply with AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking and AS/NZS 2890.6:2009 - Parking facilities - Off-street parking for people with disabilities. Full details are to be included in documentation for a Construction Certificate application.

All proposed driveways, parking bays, loading bays and vehicular turning areas are to be constructed with a basecourse of adequate depth to suit design traffic, being sealed with either bitumen seal, asphaltic concrete, concrete or interlocking pavers and being properly maintained. Full details are to be included in documentation for a Construction Certificate application.

Kerbing or dwarf walls having a minimum height of 100mm are to be constructed along the edge of all garden or lawn areas adjacent to driveways and parking bays sufficient to discourage the encroachment of vehicles thereon. Full details are to be included in documentation for a Construction Certificate application.

Letterboxes, landscaping and any other obstructions to visibility are to be kept clear of or limited in height to 1.2m in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance in accordance with AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. Full details are to be included in documentation for a Construction Certificate application.

Roof water from the new buildings is to be directed to rainwater tanks (minimum combined volume 10,000L) and being reticulated there from to any new toilet cisterns and cold water washing machine taps, with a mains water top up being installed to maintain between 10% and 15% of the tank capacity. Alternatively, an electronically activated mechanical valve device is to be installed to switch any new toilet cisterns and laundry taps to mains water when the tank falls below 10% capacity. The water tank and plumbing is to be installed in accordance with Australian Standard AS 3500, the relevant plumbing regulations and the requirements of the Hunter Water Corporation. Full details are to be provided with the Construction Certificate application.

All onsite stormwater detention or water quality treatment systems are to be individually identified and sign posted in accordance with Council’s Stormwater and Water Efficiency for Development Technical Manual (Updated 2013). Full details are to be included in documentation for a Construction Certificate application.

All stormwater runoff from the proposed development being managed in accordance with the requirements of Element 7.06 ‘Stormwater’ of Newcastle Development Control Plan 2012, the associated Technical Manual and the latest issue of AS 3500.3 as applicable, as indicated on the stormwater management concept plan prepared by D Hunt and Associates, Job No. 14-2031-01, Sheet No. SW1, Revision B, dated 28/10/14 and as amended by this approval. As part of the approved works, the existing surface inlet pit and pipe located centrally along the eastern boundary of the subject property is to be fully removed. The pipe is to
be terminated at the property boundary, blocked for future water flows and the pipe work made good. All works are to be limited to the subject allotment. Full details are to be included in documentation for a Construction Certificate application.

12 All new impervious surfaces, including driveways and paved areas are to be drained to the nominated discharge controls, full details are to be included in documentation for a Construction Certificate application.

13 All proposed planting and landscape elements indicated on the submitted landscape concept plan or otherwise required under the conditions of this consent are required to be detailed on a comprehensive landscape design plan and specification. The required comprehensive landscape design plan and specifications is to be in accordance with the provisions of Newcastle Development Control Plan 2012 and is to include details of the following:

   a) cross sections through the site where appropriate
   b) proposed contours or spot levels
   c) botanical names
   d) quantities and container size of all proposed trees
   e) shrubs and ground cover
   f) details of proposed soil preparation
   g) mulching and staking
   h) treatment of external surfaces and retaining walls where proposed
   i) drainage, location of taps and
   j) appropriate maintenance periods.

The plan is to be prepared by a qualified landscape designer and be included in documentation for a Construction Certificate application.

14 The applicant is to comply with all requirements of the Hunter Water Corporation regarding the connection of water supply and sewerage services, including the payment of any required cash contribution towards necessary amplification of service mains in the locality as a result of the increased intensity of land use proposed. A copy of the Corporation’s compliance certificate (refer s50 Hunter Water Act 1991) is to be included in documentation for a Construction Certificate application.

15 Adequate facilities are to be provided within the warehouse of the proposed street front building or within the proposed storage building at the rear of the site the storage of garbage, discarded or returnable packaging or other forms of trade wastes and arrangements being made for regular removal and disposal of same. The required garbage facility is to be suitable for the accommodation of Council approved wheel type bins or bulk waste containers. Full details are to be included in documentation for a Construction Certificate application.

16 A separate application must be lodged and consent obtained from Council for all works within the road reserve pursuant to Section 138 Roads Act 1993 (NSW), before the issue of any Construction Certificate.
CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK AND DURING THE CONSTRUCTION PHASE

17 Toilet facilities are to be available or provided at the work site before works begin and be maintained until the works are completed, at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site. Each toilet is to:

a) be a standard flushing toilet connected to a public sewer, or

b) have an on-site effluent disposal system approved under the Local Government Act 1993 (NSW), or

c) be a temporary chemical closet approved under the Local Government Act 1993 (NSW).

18 Waste management shall be implemented in accordance with the approved Waste Management Plan. At a minimum, the following measures shall be implemented during the construction phase:

a) a waste container of at least one cubic metre capacity shall be provided, maintained and regularly serviced from the commencement of operations until the completion of the building for the reception and storage of waste generated by the construction of the building and associated waste

b) the waste container is to be, at minimum, constructed with a 'star' picket (corners) and weed control mat (sides), or equivalent. The matting is to be securely tied to the pickets

c) appropriate provision is to be made to prevent wind blown rubbish leaving the site and

d) footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

Note: Fines may be issued for pollution/littering offences under the Protection of the Environment Operations Act 1997 (NSW).

19 The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

20 A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

a) showing the name, address and telephone number of the principal certifying authority for the work

d) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours and

e) stating that unauthorised entry to the work site is prohibited.
Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

21 All building work must be carried out in accordance with the provisions of the Building Code of Australia.

22 All excavations and backfilling are to be executed safely in accordance with appropriate professional standards and excavations are to be properly guarded and protected to prevent them from being dangerous to life and property.

23 All building materials, plant and equipment is to be placed on the site of the development so as to ensure that pedestrian and vehicular access in public places is not restricted and to prevent damage to the road reserve. The storage of building materials on Council reserves including the road reserve is not permitted.

24 An industrial type vehicular crossing 7.0m wide is to be constructed across the public footway at the proposed driveway entrance/exit at no cost to Council and in accordance with Council’s A1300 - Driveway Crossings Standard Design Details and such crossing being properly maintained.

Note: A separate approval from Council must be obtained for all works within the public road reserve pursuant to Section 138 of the Roads Act 1993 (NSW). For further information contact Council’s Works Depot on 4974 6000 to request a Road Opening Approval. A fee will be payable in this regard.

25 Any alteration to natural surface levels on the site is to be undertaken in such a manner as to ensure that there is no increase in surface water runoff to adjoining properties or that runoff is impounded on adjoining properties, as a result of the development.

26 All parking and loading bays are to be permanently marked out on the pavement surface, with loading bays and visitor parking facilities being clearly indicated by signs.

27 Construction/demolition work that generates noise that is audible at residential premises is to be restricted to the following times:

- Monday to Friday, 7:00 am to 6:00 pm and
- Saturday, 8:00 am to 1:00 pm.

No noise from construction/demolition work is to be generated on Sundays or public holidays.
28 Council’s ‘PREVENT POLLUTION’ sign is to be erected and maintained in a conspicuous location on or adjacent to the property boundary so it is clearly visible to the public or at other locations on the site as otherwise directed by Council for the duration of demolition and construction work.

Note: Council’s ‘PREVENT POLLUTION’ sign can be obtained by presenting your development application receipt at Council’s Customer Enquiry Counter at 282 King Street Newcastle.

29 Any excavated material to be removed from the site is to be assessed, classified, transported and disposed of in accordance with the NSW Environment Protection Authority (EPA) Waste Classification Guidelines Part 1: Classifying Waste.

30 Any fill material imported into the site is to be Virgin Excavated Natural Material or material subject to a Resource Recovery Exemption that is permitted to be used as a fill material, in accordance with the provisions of the Protection of the Environment Operations Act 1997 (NSW) and the Protection of the Environment (Waste) Regulation 2005 (NSW).

31 Any fill material subject to a Resource Recovery Exemption received at the site must be accompanied by documentation demonstrating that material’s compliance with the conditions of the exemption, and this documentation must be provided to Council officers or the Principal Certifying Authority on request.

32 Erosion and sediment control measures are to be implemented prior to the commencement of works and maintained during the period of demolition and/or construction in accordance with the requirements of Managing Urban Stormwater: Soils and Construction 4th Edition - Vol. 1 (the ‘Blue Book’) published by Landcom, 2004. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.

33 Prior to the commencement of work, a 3m wide all weather vehicle access is to be provided from the kerb and gutter to the building under construction, to reduce the potential for soil erosion. Sand shall not be stockpiled on the all weather vehicle access.

34 All necessary measures are to be undertaken to control dust pollution from the site. These measures must include, but not are limited to:

a) restricting topsoil removal

b) regularly and lightly watering dust prone areas (note: prevent excess watering as it can cause damage and erosion

c) alter or cease construction work during periods of high wind and

d) erect green or black shade-cloth mesh or similar products 1.8m high around the perimeter of the site and around every level of the building under construction.
35 Where the proposed development involves the destruction or disturbance of any existing survey monuments, those monuments affected are to be relocated at no cost to Council by a Surveyor registered under the Surveying and Spatial Information Act 2002 ( NSW).

36 All external items of air conditioning plant are to be screened or positioned in such a manner as to not detract from the visual presentation of the building.

37 All public trees that are required to be retained must be physically protected in accordance with the City of Newcastle Urban Forest Technical Manual ‘Section 8.0 Protection Measures’.

The tree protection fencing must remain in place and maintained until all works have been completed, with no waste materials, washouts, equipment or machinery to be stored within the fenced area.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE, A SUBDIVISION CERTIFICATE OR A STRATA CERTIFICATE

38 All public footways, footpaving, kerbs, gutters and road pavement damaged during the works are to be immediately repaired following the damage, to a satisfactory state that provides for safe use by pedestrians and vehicles. Full restoration of the damage is to be carried out to Council’s satisfaction prior to the completion of demolition work or prior to the issue of any occupation certificate in respect of development involving building work.

39 All works within the road reserve required by this consent are to be completed prior to the issue of a Final Occupation Certificate.

40 A copy of the stormwater drainage design plans approved with the Construction Certificate with ‘work as executed’ levels indicated, shall be submitted to the Principal Certifying Authority and to Newcastle City Council prior to the issue of an Occupation Certificate. The plans shall be prepared by a Practising Professional Engineer or Registered Surveyor experienced in the design of stormwater drainage systems.

41 A Landscape Practical Completion Report is to be submitted to the Principal Certifying Authority prior to the issue of the Final Occupation Certificate. The report is to verify that all landscape works have been carried out in accordance with the comprehensive landscape design plan and specifications that were required to be included in documentation for a Construction Certificate application and is to verify that an effective maintenance program has been commenced.

42 A Maintenance Manual for all water quality devices is be prepared in accordance with Council’s Stormwater and Water Efficiency for Development Technical Manual (Updated 2013). The Maintenance Manual is to address maintenance issues concerning the water quality devices including routine monitoring and regular maintenance and be kept on site at all times. Establishment and maintenance of the water quality devices in accordance with the Maintenance Manual prepared by the applicant is to be completed prior to occupation of this site for the intended use.
The premises are to be identified by the provision of house numbers on the building exterior and mailbox such that they are clearly visible from the road frontage.

The minimum numeral height shall be 75mm.

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

The hours of operation are 24 hours, seven days per week but all heavy vehicle/truck movements or activities which generate audible noise at residential premises are to be restricted to the following times:

- Monday to Friday, 7:00 am to 6:00 pm and
- Saturday, 8:00 am to 1:00 pm.

The use and occupation of the premises, including all plant and equipment installed thereon, is not to give rise to any offensive noise, as defined under the Protection of the Environment Operations Act 1997 (NSW).

Should Council consider offensive noise has emanated from the premises, the owner/occupier of the premises will be required to submit an acoustic assessment prepared by a suitably qualified acoustical consultant recommending appropriate acoustic measures necessary to ensure future compliance with this condition and will be required to implement such measures within a nominated period. Furthermore, written certification from the said consultant confirming the recommended acoustic measures have been satisfactorily implemented will be required to be submitted to Council prior to the expiration of the nominated period.

The use and occupation of the premises is not to give rise to the emission of any ‘air impurity’ as defined under the Protection of the Environment Operations Act 1997 (NSW), that interferes unreasonably with the amenity of neighbouring premises and/or other sensitive receivers.

Should Council consider that unreasonable levels of air impurities have been emitted from the premises, the owner/occupier will be required to engage a suitably qualified consultant to recommend measures to control emissions of air impurities to an acceptable level and such measures being implemented within a nominated time period. Furthermore, written certification from the suitably qualified consultant will be required to be submitted to Council confirming that air impurity emissions from the premises do not interfere unreasonably with the amenity of neighbouring premises and/or other sensitive receptors before the expiration of the nominated period.

The driveway crossing, parking areas and stormwater management system are to be properly maintained for the life of the development.

All vehicular movement to and from the site is to be in a forward direction.
49 Proposed parking areas, vehicle bays, driveways and turning areas are to be maintained clear of obstruction and be used exclusively for purposes of car parking, loading and unloading, and vehicle access, respectively. Under no circumstances are such areas to be used for the storage of goods or waste materials.

50 Any liquid wastes from the premises, other than stormwater are to be either discharged to the sewers of the Hunter Water Corporation in accordance with an approved Trade Waste Agreement or collected and disposed of by a licensed waste transport contractor in accordance with the Department of Environment and Climate Change ‘Waste Classification Guidelines Part 1: Classifying Waste’.

ADVISORY MATTERS

51 It is recommended that, prior to commencement of work, the free national community service ‘Dial before you Dig’ be contacted on 1100 or by fax on 1200 652 077 regarding the location of underground services in order to prevent injury, personal liability and even death. Inquiries should provide the property details and the nearest cross street/road.

52 Any necessary alterations to public utility installations are to be at the developer/demolisher’s expense and to the requirements of both Council and any other relevant authorities. Council and other service authorities should be contacted for specific requirements prior to the commencement of any works.

53 Prior to commencing any construction works, the following provisions of the Environmental Planning and Assessment Act 1979 (NSW) (the ‘Act’) are to be complied with:

   a) a Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act

   b) a Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act and

   c) Council is to be given at least two days notice of the date intended for commencement of building works, in accordance with Section 81A(2)(c) of the Act.

54 A Construction Certificate application for this project is to include a list of fire safety measures proposed to be installed in the building and/or on the land and include a separate list of any fire safety measures that already exist at the premises. The lists must describe the extent, capability and basis of design of each of the measures.

55 Prior to the occupation or use of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the proposed development. An application for an Occupation Certificate must contain the information set out in Clause 149 of the Environmental Planning and Assessment Regulation 2000 (NSW).
56 A copy of the final Fire Safety Certificate (together with a copy of the current fire safety schedule) is to be given to the Commissioner of NSW Fire Brigades and a further copy of the Certificate (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.

57 An annual Fire Safety Statement in the form described in Clause 175 of the Environmental Planning and Assessment Regulation 2000 (NSW) is to be submitted to Council and a copy (together with a copy of the current fire safety schedule) is to be given to the Commissioner of New South Wales Fire Brigades. A further copy of the Statement (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.

58 It is an offence under the provisions of the Protection of the Environment Operations Act 1997 (NSW) to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice (‘on-the-spot fine’) or prosecution.

59 Failure to comply with the conditions of consent constitutes a breach of the Environmental Planning and Assessment Act 1979 (NSW), which may be subject to a penalty infringement notice (‘on-the-spot fine’) or prosecution.

End of conditions

Fire Safety Schedule
Nil
Attachment C

PROCESSING CHRONOLOGY
DA 2014/1386 – 29 WARABROOK BOULEVARDE, WARABROOK

21 November 2014 - Application received.
30 January 2015 - Request for further information regarding land contamination.
30 January 2015 - Additional information regarding land contamination.

MOTION
Moved by Cr Luke, seconded by Cr Waterhouse

The application to erect an industrial building and a separate storage building for use for a high technology industry be approved subject to the draft conditions outlined in the schedule appended at Attachment B.

For the Motion: The Lord Mayor, Councillors Clausen, Compton, Crakanthorp, Dunn, Luke, Osborne, Posniak, Robinson, Rufo, Tierney and Waterhouse.

Against the Motion: Nil

Carried
Councillor Clausen retired from the Chamber for the duration of this item.

ITEM-4  DA 2014/1040 - 9 HARDES AVENUE, MARYLAND - CONSENT TO DEMOLISH EXISTING STRUCTURES AND ERECT TWENTY-ONE TWO STOREY, THREE BEDROOM DWELLINGS, ASSOCIATED RETAINING WALLS AND STRATA SUBDIVISION

APPLICANT: MURRAY JAMES
OWNER: MURDOCK FAMILY TRUST
REPORT BY: PLANNING AND REGULATORY
CONTACT: DIRECTOR PLANNING AND REGULATORY / MANAGER DEVELOPMENT AND BUILDING SERVICES

PART I

PURPOSE

An application has been received seeking consent to demolish existing structures and erect 21 – two storey, three bedroom dwellings, associated retaining walls and strata subdivision.

A copy of the latest amended plans for the proposed development is appended to this report (refer to Attachment A).

The application has been notified to neighbouring properties in accordance with Council's Public Notification Policy.

A total of twenty-eight submissions were received in response to the public notification, including one petition containing 103 signatures. The objectors' concerns include loss of character, traffic and parking, pedestrian safety, amenity impacts, infrastructure impacts, environmental impacts, loss of property values.

The key issues of the submissions received are summarised at Section 3.0 of Part II of this report and the concerns raised are addressed as part of the Environmental Planning Assessment at Section 4.0.

The application was reported to Public Voice. Following this meeting, the applicant attended mediation with the objectors. Amended plans have been received incorporating a number of modifications agreed too at mediation and address many of the objectors concerns and issues.
The amended application is reported to the Development Applications Committee due to the number of objections received.

Issues

- Whether the proposed development is acceptable in regard to the relevant provisions of the Newcastle Local Environmental Plan 2012 and Newcastle Development Control Plan 2012.
- Whether the proposed development represents an acceptable density and character in the context of the immediate area.
- Whether the development will unreasonably impact upon privacy and visual amenity to neighbouring properties.
- Whether the proposed development will have a significant impact on the existing road network for local traffic and emergency vehicles.
- Whether the proposed development will have a significant impact on the adjacent wetland.
- Whether the proposal will lead to increase in anti-social behaviour.

Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979 (as amended) NSW and is considered to be acceptable subject to compliance with appropriate conditions.

Accordingly, it is recommended that the application be approved on the basis of the latest amended plans, subject to the nominated conditions of consent (refer to Attachment B).

RECOMMENDATION

The application to erect 21 x two-storey dwellings, retaining walls, associated landscaping and strata subdivision at 9 Hardes Avenue, Maryland be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions (refer to Attachment B).

Political Donation / Gift Declaration

Under Section 147 of the Environmental Planning and Assessment Act 1979, the applicant, and any person related to this Development Application must report any political donation and/or gift to a Councillor and/or any gift to a Councillor or Council employee with a two year period before the date of this application.

The applicant has answered 'no' to the following question on the application form:
Have you, or are you aware of any person having a financial interest in the application, made a 'reportable political donation' or 'gift' to a Councillor or Council employee with a two year period before the date of this application?

PART II

1.0 THE SUBJECT SITE

The irregular shaped site has a frontage to Hardes Avenue of 60.9 metres and a depth of approximately 300m totaling an area of approximately 1.6 hectares. The northern portion of the site is zoned 'R2 Low Density Residential' (representing 40%). The remainder of the site is zoned 'E2 Environmental Conservation' under the Newcastle Local Environmental Plan 2012. The proposed residential development is to be located within the R2 zoned land on the site.

The site currently contains a single dwelling and a series of outbuildings which will be demolished under this proposal. The site is surrounded by a number of detached residential dwellings to the west and a detached residential dwelling to the east. A recently completed multi dwelling housing development is located to the north west of the site at 4 Hardes Avenue, Maryland.

2.0 THE PROPOSAL

The applicant seeks consent for the demolition of an existing dwelling and outbuildings and the construction of 21 x two-storey, three bedroom dwellings, with associated strata subdivision.

Five dwellings are oriented to face Hardes Avenue and the remaining 16 dwellings are located on either side of a central spine driveway. Each dwelling is provided with a double garage. Four visitor car parking spaces are provided on the whole development.

A copy of the latest amended plans is appended at Attachment A.

The various steps in the processing of the application to date are outlined in the Processing Chronology (refer to Attachment C).

3.0 PUBLIC NOTIFICATION

The application has been notified to neighbouring properties in accordance with Council's Public Notification Policy. Twenty-eight objections were received in response to the notification, including a petition containing 103 signatures. Council also received a request for Public Voice and mediation.

The concerns raised by the objectors in regard of the proposed development are summarised as follows:

i. Loss of Character / Overdevelopment - (refer to Sections 4.1, 4.2.3a, 4.2.4).

ii. Traffic and Parking impacts - (refer to Sections 4.2.2 h) and 4.2.3 b)).
iii. Waste management – (refer to Section 4.2.2 k)).
iv. Impacts to neighbouring amenity - (refer to Section 4.2.2 f, 4.2.3 h, 4.2.3 i))
v. Stormwater and flooding – (refer to Sections 4.2.2 i)).
vi. Bushfire – (refer to Sections 4.2.2 b)).
vii. Social impacts- (refer to Section 4.2.4)).
viii. Loss of value to properties – (refer to Section 4.2.3 c)).
ix. Services - (refer to Section 4.2.3 d)).
x. Potential Impact on wildlife and adjoining wetland – (refer to Section 4.2.3 e)).
xii. Proposal not consistent with Council's policies – (refer to Section 4.2.1, 4.2.2 g)).

The application was reported Council's to Public Voice meeting on 17 February 2015. The applicant attended mediation with the objectors on 24 March 2015. The proposal was modified to incorporate a number of concerns raised by objectors. These included:

- Changes to the first floor side windows of units 6-14 to highlight windows to address privacy concerns raised by adjoining neighbours during the notification process;
- Introduction of an acoustic fence along the western boundary to alleviate potential noise impacts on adjoining residents; and
- Confirmation that all waste will be collected by a private waste contractor.

These matters are discussed later in the report.

4.0 ENVIRONMENTAL PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 79C(1) of the Environmental Planning and Assessment Act 1979, as detailed hereunder.

4.1 Statutory Considerations [Section 79C(1)(a)(i) and (ii)]

State Environmental Planning Policy No 55 Remediation of Land

Preliminary investigations by the applicant have demonstrated that the site is unlikely to be affected by any land contamination and the application is considered to be acceptable in terms of SEPP 55.

A review of the site’s history did not identify any potential contaminated activities from the previous or current landuse. The information was reviewed by Council's Environmental Officer who confirmed the site is suitable for its intended use.
Newcastle Local Environmental Plan 2012

The subject property is zoned 'R2 Low Density Residential' and 'E2 Environmental Conservation' under the provisions of the Newcastle Local Environmental Plan, 2012. The multi dwelling housing proposal is located wholly within the R2 Low Density Residential Zone, within which the proposed development is permissible with Council's consent. The proposed development is also consistent with the zone objectives.

The principal development standards under the LEP are:

- **Height** – The maximum height limit for the site is 8.5m. All units comply with the 8.5 metre height limit.

- **Floor Space Ratio (FSR)** – The maximum FSR for the site is 0.6:1. The plans indicate an FSR of 0.43:1, and therefore comply.

- **Minimum Lot Size** - The application includes a two lot Torrens title subdivision and a Community title subdivision of the 21 units. Following Public Voice and Mediation, the applicant has amended the application to involve a 21 lot strata subdivision only. There are no minimum standards for strata subdivision.

4.2 Merit Considerations

4.2.1 Relevant Strategic Policies

Newcastle Urban Strategy

The proposal is considered to be consistent with the principles of the Newcastle Urban Strategy (NUS) in that it supports urban consolidation at appropriate densities.

The proposed development provides for a mix of residential accommodation which supports social mix and housing affordability. The proposed development complies with the objectives of the NUS by providing additional housing stock for the area.

The proposed development is also considered acceptable in relation to its impacts upon the natural and built environment.

4.2.2 Newcastle Development Control Plan [Section 79C(1)(a)(iii)]

a) **Attached dwellings and multiple-dwelling housing – Section 3.04**

The proposed development is considered to be consistent with the aims of this section, including:

- to encourage redevelopment that allows for more compact and sustainable urban form; and
- to support the efficient use of residential land and expand the variety of housing options.
There are no specific controls under this section. The section otherwise identifies relevant sections of the DCP that need to be addressed and are discussed below.

b) Bush Fire Protection – Section 4.02

The development was integrated development under Section 91 of the Environmental Planning and Assessment Act 1979, requiring the issue of a bushfire safety authority under Section 100B of the Rural Fires Act 1997 and was referred to the NSW Rural Fire Service (RFS) accordingly. The amended proposal removed the Torrens subdivision aspect from the application and the applicant confirmed that the proposal, in its current form, would not be integrated development. The proposal was assessed under Section 79BA of the Environmental Planning and Assessment Act 1979. This did not alter the advice received from the RFS. The RFS recommended a number of conditions be imposed on any consent that is issued. These form part of the draft schedule of conditions at Attachment B.

c) Safety and Security – Section 4.04

A number of submissions raised concerns that the proposed development will be used as a shortcut to the local shopping centre and attract additional security concerns for surrounding neighbours. The proposal enables casual surveillance over most of the common areas, and this is considered satisfactory in that communal and private areas are clearly delineated, and the proposal provides for good passive surveillance of the street. It is not anticipated that the development will have a negative security impact on the surrounding area.

d) Soil Management – Section 5.01

The design minimises cut and fill and is considered acceptable.

Soil testing undertaken by the applicant revealed that the soil is not affected by acid sulphate soils.

e) Tree Management – Section 5.03

The site has a scattering of small to medium sized trees. The applicant has not submitted an Arborist report. The applicant has discussed that due to the scattered nature of the trees throughout the site, an alternative design which allows for the retention of trees on site is unachievable as the maintenance of the appropriate distances between trees and any proposed dwelling structure would eliminate the majority of the site from being developed.

Following a site visit, it is acknowledged that the existing trees are not significant in size and stature to warrant special consideration for retention. These small trees do not offer a significant visual impact on the area and could not realistically be retained to develop the site for medium density housing in a co-ordinated manner. It is noted that virtually no remnant vegetation has been maintained on surrounding development lots within the immediate area so tree removal would remain consistent with the surrounding character.
The submitted landscaping plan provides for adequate compensatory planting, including size and species.

Street Trees – An existing street tree is located approximately 19.6 meters from the north east corner of the site on Hardes Avenue. The location of the proposed driveway will require the removal of the existing street tree. A number of conditions have been included in the draft schedule of conditions (Attachment B) requiring the removal of the tree and replacement plantings to compensate for its removal.

f) Building Design Criteria – Section 7.01

- Height – The DCP refers to the height controls under the Newcastle LEP 2012. The proposed development has a maximum height of 8.5m which complies with the 8.5m height limit.

- FSR – The DCP refers to the FSR controls under the Newcastle LEP 2012. The proposal has an FSR of 0.43:1, well under the maximum FSR of 0.6:1.

- Streetscape and front setbacks – The development proposes a 9m setback from the street. The buildings appropriately address the street, with windows overlooking the public domain. The design is considered acceptable from a streetscape perspective and is compatible with the character of the area. It is noted that the Private Open Space for these front facing units are located in the front setback to access the northern sun.

- Open space - The DCP requires that each dwelling has a minimum of 35m² private open space located behind the building line. All dwellings have at least 35m² of private open space, with a principal area of 4m x 4m located off living areas. Units 1 - 5 slightly encroach into the 5m setback, however, this is acceptable in this instance given the large setback of the built form, accessibility to the northern sun, minimal front fence and incorporation of additional landscaping.

- Side and rear setbacks – Most of the dwellings are set back approximately 5m from the side boundaries and readily comply with the DCP 2012. The only exception is Unit 1 (south western elevation) and Unit 5 (north east elevation). The corner of unit 1 is located appropriately two metres from the western boundary and Unit 5 is also located two metres from the eastern boundary. The proposed setback to these boundaries is considered acceptable and will not result in increased overshadowing or have aural and visual privacy implications for adjoining residents.

- Building design and appearance - The proposal incorporates two-storey dwellings that are consistent with the scale, character and massing of development in the immediate area. The appearance of the development is considered to be compatible with the character of the locality.

- Solar access - The dwellings are generally orientated with courtyards and living areas to the north and north east. Overshadowing of adjoining properties would
be minimal given the setback from common boundaries and north-south orientation of the site.

The applicant has submitted a shadow diagram illustrating the impact on neighbouring sites. The shadows cast are considered to be reasonable, with the neighbouring allotments not being significantly affected by overshadowing between 9am-3pm on 21 June.

The proposal complies with Council’s solar access requirements in its current form.

- Loss of privacy and visual amenity - The DCP 2012 requires a separation distance of 9m between living room windows of adjoining dwellings. Views from ground floor windows to adjoining properties will be screened by the proposed 1.8m high solid fence. There are no living rooms proposed at first floor level. The applicant has submitted amended plans for Units 6 to 14 indicating highlight windows to the side elevation with a minimum sill height of 1500mm. Amenity impacts due to potential loss of visual privacy to neighbouring properties is considered acceptable.

- Views - A number of submissions raised concerns about the potential loss of views. Specifically, residents on the western side of the development currently have views across the neighbouring property to the wetland/open space area.

  The applicant’s architect has designed the buildings to follow the natural contour and break up the building mass along the western elevation. The proposal is within land zoned for residential use and maintains a density and form of development that is within Council’s guidelines for height and FSR controls. The proposal is deemed acceptable in terms of potential view loss.

- Fences and walls – The proposal includes a 1.8 metre boundary fence along the side and front boundaries. The front fence is set back four metres and will be constructed of timber battens providing 50% transparency. The area will be landscaped and will provide adequate privacy to the outdoor area and dwellings. It is important that this fence maintains a maximum height of 1.2m to not detract from the amenity and character of the area and this is a recommended condition of consent.

- Utilities and services – The development provides for adequate general storage within garages and has adequate storage for waste bins within the private courtyards. The development also provides for letterboxes at the street front. The applicant has indicated that all waste will be collected by a private contractor. The collection of waste by a private contractor is an acceptable option for this proposal and is reflected in draft conditions of consent.
g) **Landscaping, Open Space and Visual Amenity – Section 7.02**

The landscape plan submitted with the DA is considered acceptable for a Category 3 development as required by the DCP.

The proposal complies with the standards in the DCP in that it incorporates 25% of the site for landscaping and 25% of this is allocated as Deep Soil planting.

A 4m strip of Deep Soil Zone has been provided along the street frontage. The landscaped front setback on the street boundary provides a number of medium size trees and is considered to satisfy this requirement.

A detailed landscape plan has been submitted with the development application. The landscape plan includes additional planting along the northern boundary. The proposed landscaping incorporates tree planting that would assist in reducing the apparent bulk of the development and would provide for increased screening for adjoining properties. It is considered that the proposed landscaping for the site is a reasonable design and would complement the aesthetic quality and amenity for the development and surrounds.

h) **Traffic, Parking and Access – Section 7.03**

- **Dwelling parking** – The DCP requires that each dwelling has one parking space per dwelling. The proposal is providing a double garage for each dwelling and four visitor spaces. This exceeds the minimum standards.

- **Bicycle parking** – It is considered that each dwelling has sufficient bicycle storage in garages and courtyards for bicycle parking and satisfies the DCP.

- **Visitor parking** - The DCP requires five visitor parking spaces for this development proposal. The proposal has provided four visitor spaces which is considered acceptable given that all dwellings have double garages.

- **Access** – Driveways are sufficient in size and can comply with the relevant Australian Standard.

i) **Stormwater – Section 7.06**

The application has been supported by a concept stormwater management plan. The plan has been reviewed by Council’s Development Engineer who has advised that the plan is acceptable.

The proposal includes provisions for each dwelling to have a 4000L rainwater tank with overflows being directed to the proposed detention basin. Conditions requiring the detailed design of the stormwater management measures will be imposed on any consent granted.

Standard conditions of consent are recommended in this regard.
j) Energy Efficiency – Section 7.05

The application has been supported by a BASIX certificate and is considered satisfactory. Any consent issued will contain a condition requiring compliance with this certificate.

k) Waste Management - Section 7.08

A numbers of objectors have raised concerns about the placement of waste bins on Hardes Avenue. Given the residents’ concerns the applicant has indicated that all waste will be collected by a private waste collector. It is noted that the site frontage of 16.9m would be inadequate for the storage of individual bins for 21 units and therefore a private waste contractor would be a satisfactory solution. A condition has been included in the Draft Schedule of Conditions (refer to Attachment B) requiring that all waste be collected by a private waste contractor and full details be provided prior to the release of the Construction Certificate.

4.2.3 Impacts on the Natural and Built Environment [Section 79C(1)(b)]

a) Character - As outlined in Section 4.2.1 of this report, the proposed development is permissible within the residential zone and the development is well within the density and height controls for the site. Accordingly, development of this nature could not reasonably be considered inappropriate provided the design responds to the characteristics of the streetscape. In this regard, the streetscape is characterised by single and double-storey detached dwellings addressing the street with a consistent 5m front landscaped setback. It is therefore considered that the design is compatible with the character of the area and would integrate well within the existing streetscape.

b) Emergency Access, Traffic and Pedestrian Safety

While parts of Hardes Avenue is narrow, the proposed development will not have a significant impact on the existing surrounding road network. The increase in residential density is not expected to have a significant impact on pedestrian safety given the speed limit in and around the development site.

The proposal enables all vehicles to enter and exit the site in a forward direction and includes a separate pedestrian access from Hardes Avenue.

The internal driveway provides sufficient width to cater for the number of units proposed and for emergency vehicle access.

In terms of traffic generation and the potential impact on Hardes Avenue, Council’s Senior Traffic Consultant has provided the following comments:
The proposal will result in a small increase in traffic on the local road network (approximately 10 vehicle trip per hour or 1 per 6 minutes) which on its own will have no impact on overall road network efficiency. The site accesses Maryland Drive from Hardes Avenue with both roads currently operating well within their technical capacities. The local road network is considered satisfactory for the type and scale of this development. Additional traffic from the proposal will not create additional congestion within peak periods.

c) Property Values

The proposal will not adversely impact on the amenity of the adjoining premises or the neighbourhood and is not likely to detract from current market values.

d) Existing Services

The capacity of existing services is a consideration for Hunter Water and Energy Australia and was not considered as part of this application. The existing residential dwelling is currently serviced by an on-site sewage management system. The applicant advised that the proponent has entered into an instrument of agreement with Hunter Water Corporation to connect to the reticulated sewer system. Council accepts the connection of the proposed system to the Hunter Water Corporation as an appropriate and environmentally satisfactory solution.

e) Potential Impact on Wildlife and adjoining Wetland

The proposed development area is located approximately sixty metres from the edge of a freshwater wetland and an adequate buffer zone has been provided. The proposed development is unlikely to impact upon the wetland area provided appropriate stormwater and sediment and erosion control measures as detailed in this submission are incorporated into the design. The implementation of sediment and erosion control measures will be included as an appropriate condition of consent.

f) Air Flow

The proposed development will not have any significant impact on airflow to adjoining properties given the setbacks from side boundaries.

g) Lot size

The original proposal sought consent for a two lot Torrens title subdivision. The issue of non-compliance with the minimum lot size was raised with the applicant. The applicant has since amended the proposal to now include a 21 lot strata subdivision only. The proposal does not include a reduced lot size.

h) Noise

Due to the increase in density of dwellings on the site, the proposal will result in additional impacts in regard to noise. However, the noise expected to be
generated from residential use of the dwellings is not likely to adversely impact surrounding properties. Given the concerns raised by a number of residents the applicant has modified the proposal to include an acoustic fence along the western boundary to alleviate concerns from vehicle traffic noise and its potential impact on adjoining residents.

i) Construction Impacts

It is acknowledged there may be some short term impacts during the construction phase. A number of conditions have been included in the draft schedule of conditions (Attachment B) to ensure that any potential impacts are minimised during construction.

4.2.4 Social and Economic Impacts in the Locality [Section 79C(1)(b)]

The application proposes residential dwellings within a residential area. It is considered unlikely that a residential development of this nature would result in increased anti-social behaviour matters.

The development provides for increased housing choice within the area which is considered a positive social outcome.

Neighbouring objectors raised concern of a lack of public facilities in the area. It is unlikely that this proposal will increase the population of the area to any significant level to exacerbate any existing impacts that may exist, nevertheless, the proposed development is affected by Section 94 Contributions which will contribute towards additional facilities in the area. This is included in conditions of consent.

4.2.5 Suitability of the Site for the Development [Section 79C(1)(c)]

The site is affected by bushfire threat and requires approval from the NSW Rural Fire Service. Approval (bushfire safety authority) has been issued by the NSW Rural Fire Service with a number of conditions.

The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

4.2.6 Submissions made in accordance with the Act or Regulations [Section 79C(1)(d)]

This report has addressed the various concerns raised in the submissions received in response to the Public Notification and/or referral procedures under the Act and Regulation.
4.2.7 Public Interest [Section 79C(1)(e)]

- **Sustainability**

The proposed development is considered to be satisfactory having regard to the principles of ecologically sustainable development.

The proposal is consistent with Council’s urban consolidation objectives, making more efficient use of the established public infrastructure and services.

A BASIX Certificate for the development has been submitted with the application and meets the statutory requirements of the SEPP in relation to mandatory water and energy reduction. Compliance with the submitted BASIX Certificate will be conditioned.

The proposed development will not result in the disturbance of any endangered flora or fauna habitat or otherwise adversely impact on the natural environment.

- **General**

The proposed development does not raise any significant general public interest issues beyond matters already addressed in this report.

**ATTACHMENTS**

**Attachment A:** Plans and elevations of proposed development - 9 Hardes Avenue Maryland (DA 2014/1040)

**Attachment B:** Draft Schedule of Conditions – 9 Hardes Avenue Maryland (DA 2014/1040)

**Attachment C:** Processing Chronology – 9 Hardes Avenue Maryland (DA 2014/1040)
Attachment B

DRAFT SCHEDULE OF CONDITIONS
DA 2014/1040 – 9 HARDES AVENUE, MARYLAND

SCHEDULE 1

REASONS FOR CONDITIONS

1 The conditions of this consent have been imposed in accordance with Section 80A of the *Environmental Planning and Assessment Act 1979* (NSW). The conditions relate to any matter referred to in Section 79C(1) of relevance to the development the subject of the consent and are imposed to ensure that the development is undertaken in an orderly manner, with acceptable impacts on the natural and built environment.

APPROVED DOCUMENTATION

2 The development is to be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

<table>
<thead>
<tr>
<th>Plan No./Supporting Document</th>
<th>Reference/Version</th>
<th>Prepared by</th>
<th>Dated</th>
</tr>
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<tr>
<td>Survey Plan</td>
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<td>Site Level Plan</td>
<td>Rev 1</td>
<td>Michael Fitzgerald Consulting Engineers</td>
<td>July 2014</td>
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In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

3. A total monetary contribution of $251,501.18 is to be paid to Council, pursuant to Section 94 of the Environmental Planning and Assessment Act 1979 (NSW), towards the provision of the following public amenities and public services within the locality, such contribution to be payable prior to the issue of a Construction Certificate in respect of the proposed development.

   a) Traffic and Transport $17,450.10
   b) Social Infrastructure $234,051.08

Note: i) This condition is imposed in accordance with the provisions of the Newcastle City Council’s Western Corridor Section 94 Contribution Plan 2013 operational from 13 January 2014. A copy of the plan may be inspected at Council’s Customer Enquiry Centre, ground floor of the City Administration Centre, 282 King Street Newcastle 8.30 am to 5.00 pm, excluding public holidays.
ii) The amount of contribution payable under this condition has been calculated on the basis of the current rate as at the date of consent and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of Statistics (ABS). The CPI index rate is expected to rise at regular intervals and therefore the actual contribution payable is indexed and recalculated at the CPI rate applicable on the day of payment.

CPI quarterly figures are released by the ABS on a date after the indexation quarter and as a guide, these approximate dates are provided below. Indexation quarters from the ABS are as follows:

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<th>Approx release date</th>
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<td>Late October</td>
</tr>
<tr>
<td>December</td>
<td>Late January</td>
</tr>
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<td>March</td>
<td>Late April</td>
</tr>
<tr>
<td>June</td>
<td>Late July</td>
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</table>

4 Fences are to be constructed in a high quality presentation style of attractive appearance and of sufficient height to afford adequate privacy to residents in accordance with the performance criteria and provisions of Newcastle Development Control Plan 2012. Full details are to be included in the documentation for a Construction Certificate application.

5 A minimum 1.8 metre high acoustic fence is to be constructed along the western boundary of the premises. The required acoustic fencing is to be a lapped and capped timber fence or materials with similar or greater acoustic properties and maintained such that no significant gaps exist in the fence.

6 The proposal shall comply with the recommendations contained within the Bushfire Threat Assessments Report prepared by Newcastle Bushfire Consultant (Dated 22 July 2014). Full details are to be included in the documentation for a Construction Certificate application.

7 All garbage and recycling waste shall be collected by a private waste contractor. Final details from the private contractor indicating vehicle movement to and from the site, hours/days of collection are to be submitted with an application for a Construction Certificate.

8 All onsite stormwater detention or water quality treatment systems are to be individually identified and sign posted in accordance with Council’s Stormwater and Water Efficiency for Development Technical Manual (Updated 2013). Full details are to be included in documentation for a Construction Certificate application.

9 On-site parking accommodation is to be provided for a minimum of 26 vehicles and such be set out generally in accordance with the minimum parking layout standards indicated in Element 7.03 ‘Traffic, Parking and Access’ of Council’s adopted Newcastle Development Control Plan 2012. Full details are to be included in documentation for a Construction Certificate application.
10. The car park is to be designed to comply with AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking and AS/NZS 2890.6:2009 - Parking facilities - Off-street parking for people with disabilities. Full details are to be included in documentation for a Construction Certificate application.

11. All proposed driveways, parking bays, loading bays and vehicular turning areas are to be constructed with a basecourse of adequate depth to suit design traffic, being sealed with either bitumen seal, asphaltic concrete, concrete or interlocking pavers and being properly maintained. Full details are to be included in documentation for a Construction Certificate application.

12. The visitor parking bays are to be constructed in paving bricks or in a suitable alternative visually unobtrusive paving material which contrasts in colour and texture with that used in the construction of the driveway. Full details are to be included in documentation for a Construction Certificate application.

13. Kerbing or dwarf walls having a minimum height of 100mm are to be constructed along the edge of all garden or lawn areas adjacent to driveways and parking bays sufficient to discourage the encroachment of vehicles thereon. Full details are to be included in documentation for a Construction Certificate application.

14. Roof water from the proposed new work is to be directed to the proposed water tank (minimum size 4,000 L per dwelling) and being reticulated there from to any new toilet cisterns and cold water washing machine taps, with a mains water top up being installed to maintain between 10% and 15% of the tank capacity. Alternatively, an electronically activated mechanical valve device is to be installed to switch any new toilet cisterns and laundry taps to mains water when the tank falls below 10% capacity. The water tank and plumbing is to be installed in accordance with Australian Standard AS 3500, the relevant plumbing regulations and the requirements of the Hunter Water Corporation. Full details are to be provided with the Construction Certificate application.

15. All stormwater runoff from the proposed development being managed in accordance with the requirements of Element 7.06 ‘Stormwater’ of Newcastle Development Control Plan 2012, the associated Technical Manual and the latest issue of AS 3500.3 as applicable, as indicated on the stormwater management concept plan prepared by Michael Fitzgerald Consulting Engineers (Job No. 13-4527, Drg. Nos. C2 and C3, Issue 1, dated 30/07/14) and the stormwater water quality assessment prepared by Peter Sullivan & Associates Pty. Ltd. (including Detail Plan and Typical Sections and Details dated 24/10/14). Full details are to be included in documentation for a Construction Certificate application.

16. All new impervious surfaces, including driveways and paved areas are to be drained to the nominated discharge controls, full details are to be included in documentation for a Construction Certificate application.

17. All proposed planting and landscape elements indicated on the submitted landscape concept plan or otherwise required under the conditions of this consent are required to be detailed on a comprehensive landscape design plan and specification. The required comprehensive landscape design plan and specifications is to be in accordance with the provisions of Newcastle Development Control Plan 2012 and is to include details of the following:
k) Additional landscaping shall be incorporated adjacent to unit 1 on the western boundary
l) cross sections through the site where appropriate
m) proposed contours or spot levels
n) botanical names
o) quantities and container size of all proposed trees
p) shrubs and ground cover
q) details of proposed soil preparation
r) mulching and staking
s) treatment of external surfaces and retaining walls where proposed
t) drainage, location of taps and
u) appropriate maintenance periods.

The plan is to be prepared by a qualified landscape designer and be included in documentation for a Construction Certificate application.

18 The applicant is to comply with all requirements of the Hunter Water Corporation regarding the connection of water supply and sewerage services, including the payment of any required cash contribution towards necessary amplification of service mains in the locality as a result of the increased intensity of land use proposed. A copy of the Corporation’s compliance certificate (refer s50 Hunter Water Act 1991) is to be included in documentation for a Construction Certificate application.

19 Adequate facilities are to be provided within the proposed individual private courtyards, or in another adequately screened location, for the storage of garbage. Full details are to be included in documentation for a Construction Certificate application.

20 A group type mailbox is to be provided at the street frontage in accordance with the requirements of Australia Post, clearly displaying individual unit numbers and the required house number. Full details are to be included in the documentation for a Construction Certificate application.

21 A residential vehicular crossing is to be constructed across the road reserve, in accordance with the following criteria:

i. Constructed in accordance with Council’s A1300 – Driveway Crossings Standard Design Details.
ii. The driveway crossing, within the road reserve, shall be a maximum of 6 metres wide.
iii. Letterboxes, landscaping and any other obstructions to visibility should be kept clear of or limited in height to 1.2 metre, in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance.
iv. The proposed driveway shall be a minimum of 3 metres clear of the trunk of any tree within the public reserve.
v. The proposed driveway shall be a minimum of 750mm clear of the centre of any pole or obstruction within the public reserve and 1 metre clear of any drainage pit.
These works are not approved until consent under Section 138 of the Roads Act 1993 (NSW) has been granted by Council. An application under Section 138 must be applied for and approved before the issue of a Construction Certificate.

22 A separate application must be lodged and consent obtained from Council for all works within the road reserve pursuant to Section 138 Roads Act 1993 (NSW), before the issue of any Construction Certificate.

23 The height of the front fence shall be a maximum height of 1.2 metres. Full details are to be included in documentation for a Construction Certificate application.

24 The development shall comply with the requirements specified by the Rural Fire Service (refer letter dated 9 December 2014). Full details are to be included in documentation for a Construction Certificate application.

CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK AND DURING THE CONSTRUCTION PHASE

25 Toilet facilities are to be available or provided at the work site before works begin and be maintained until the works are completed, at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site. Each toilet is to:

   a) be a standard flushing toilet connected to a public sewer, or

   b) have an on-site effluent disposal system approved under the Local Government Act 1993 (NSW), or

   c) be a temporary chemical closet approved under the Local Government Act 1993 (NSW).

26 The existing street tree on Hardes Avenue, Maryland maybe removed subject to the following conditions:

   a) The tree shall be removed and disposed of at no cost to Council. Please call City Greening Services to organise the tree’s removal (49746043). The 4 new street trees are to be procured as minimum 100L container size conforming to the NATSPEC quality provisions.

   b) The 4 new street trees are to be planted by or under the direct supervision of an AQF level 3 qualified horticulturalist or arborist. The work is to be in accordance with the requirement for tree planting Appendix 8 – Tree Planting Details plan number A362/1 in the Newcastle Urban Forest Technical Manual (Dec 2010). The location for each tree is to be determined in accordance with section 11.0 Design for new trees, in the Newcastle Urban Forest Technical Manual (Dec 2010).

   c) The 4 new trees are to be maintained for a minimum of 12 months.
d) If any of the new trees are found to be faulty, damaged, dying or dead before the completion of the 12 month maintenance period, it shall be replaced with the same species and at the same size specified above and the 12 month maintenance period will recommence.

Note: The above works can be undertaken by Council and any associated fees are in accordance with Council’s fees and charges. Please contact Council’s City Greening Services to arrange a quote 49746043.

27 Building demolition is to be planned and carried out in accordance with Australian Standard 2601:2001 - The Demolition of Structures.

28 A Hazardous Substances Management Plan is to be prepared by a competent person for the building(s) or parts of the building(s) proposed to be demolished in accordance with Australian Standard 2601:2001 - The Demolition of Structures. A copy of the Hazardous Substances Management Plan is to be provided to Council (marked to Attention: Compliance Services) and the demolisher prior to commencement of work.

29 The demolition works are to be undertaken in accordance with Australian Standard 2601:2001 - The Demolition of Structures and the following requirements:

   a) demolition works shall be conducted in accordance with the submitted Hazardous Substances Management Plan and a copy of the Hazardous Substances Management Plan shall be kept on-site for the duration of the proposed development

   b) the removal, handling and disposal of any asbestos material is to be undertaken only by an asbestos removal contractor who holds the appropriate class of Asbestos Licence, issued by the WorkCover Authority of NSW

   c) a copy of all waste disposal receipts are to be kept on-site for the duration of the proposed development and made available to authorised Council Officers upon request

   d) seven working days notice in writing is to be given to Council and the owners/occupiers of neighbouring premises prior to the commencement of any demolition works. Such written notice is to include the date demolition will commence and details of the name, address, contact telephone number(s) and licence details (type of licences held and licence numbers) of any asbestos removal contractor and demolition contractor. Notification to owners/occupiers of neighbouring premises shall also include Council’s contact telephone number (49742000) and the Workcover Authority of NSW telephone number (49212900) and

   e) on sites where asbestos materials are to be removed, a standard commercially manufactured sign containing the words ‘DANGER ASBESTOS REMOVAL IN PROGRESS’ measuring not less than 400mm x 300mm is to be erected in a prominent position during asbestos removal works.
30 The demolisher is to ensure that all services (ie water, telecommunications, gas, electricity, sewerage etc), are disconnected in accordance with the relevant authority’s requirements prior to demolition.

31 Any waste containers used in association with the proposed demolition are to be located on the site where possible.

Note: Where this is not feasible, application must be made for Council’s approval to position the container on the adjacent public road in accordance with Council’s adopted Building Waste Container Policy.

32 The demolisher is to ensure that all demolition material is kept clear of the public footway and carriageway as well as adjoining premises.

33 Any demolition/waste building materials that are not suitable for recycling are to be disposed of at Council’s Summerhill Waste Management Facility or other approved site.

34 Waste management shall be implemented in accordance with the approved Waste Management Plan. At a minimum, the following measures shall be implemented during the construction phase:

a) a waste container of at least one cubic metre capacity shall be provided, maintained and regularly serviced from the commencement of operations until the completion of the building for the reception and storage of waste generated by the construction of the building and associated waste

b) the waste container is to be, at minimum, constructed with a 'star' picket (corners) and weed control mat (sides), or equivalent. The matting is to be securely tied to the pickets

c) appropriate provision is to be made to prevent wind blown rubbish leaving the site and

d) footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

Note: Fines may be issued for pollution/littering offences under the Protection of the Environment Operations Act 1997 (NSW).

35 A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

a) showing the name, address and telephone number of the principal certifying authority for the work

f) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours and

g) stating that unauthorised entry to the work site is prohibited.
Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

36 All building work must be carried out in accordance with the provisions of the Building Code of Australia.

37 In the case of residential building work for which the Home Building Act 1989 (NSW) requires there to be a contract of insurance in force in accordance with Part 6 of that Act, such a contract of insurance is to be in force before any building work authorised to be carried out by this consent commences.

38 All excavations and backfilling are to be executed safely in accordance with appropriate professional standards and excavations are to be properly guarded and protected to prevent them from being dangerous to life and property.

39 If the soil conditions require it, retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided and adequate provision must be made for drainage.

40 All building materials, plant and equipment is to be placed on the site of the development so as to ensure that pedestrian and vehicular access in public places is not restricted and to prevent damage to the road reserve. The storage of building materials on Council reserves including the road reserve is not permitted.

41 A residential vehicular crossing is to be constructed across the road reserve, in accordance with the following criteria:

   a) Constructed in accordance with Council’s A1300 – Driveway Crossings Standard Design Details.
   b) In the case of a single car garage/parking space, the driveway crossing, within the road reserve, shall be a maximum of 3 metres wide.
   c) In the case of a double car garage/parking space, the driveway crossing, within the road reserve, shall be a maximum of 4.5 metres wide.
   d) Letterboxes, landscaping and any other obstructions to visibility should be kept clear of or limited in height to 1.2 metre, in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance.
   e) The proposed driveway shall be a minimum of 3 metres clear of the trunk of any tree within the public reserve.
   f) The proposed driveway shall be a minimum of 750mm clear of any pole or obstruction within the public reserve and 1 metre clear of any drainage pit.

These works are not approved until a consent under Section 138 of the Roads Act 1993 (NSW) has been granted by Council. An application under Section 138 must be applied for and approved before the commencement of works.
42 A separate application must be lodged and consent obtained from Council for all works within the road reserve pursuant to Section 138 Roads Act 1993 (NSW), before the commencement of works.

43 Any alteration to natural surface levels on the site is to be undertaken in such a manner as to ensure that there is no increase in surface water runoff to adjoining properties or that runoff is impounded on adjoining properties, as a result of the development.

44 All roof and surface waters are to be conveyed to a properly constructed dispersion trench measuring 600mm x 600mm x 1m in length for every 25m$^2$ of new impervious area. The required dispersion trench is to be constructed in accordance with Element 7.06 ‘Stormwater’ of Newcastle Development Control Plan 2012.

45 The proposed visitor parking bays are to be clearly indicated by means of signs and/or pavement markings.

46 All parking and loading bays are to be permanently marked out on the pavement surface, with loading bays and visitor parking facilities being clearly indicated by signs.

47 The vehicular entrance and exit driveways and the direction of traffic movement within the site are to be clearly indicated by means of reflectorised signs and pavement markings.

48 Construction/demolition work that generates noise that is audible at residential premises is to be restricted to the following times:

- Monday to Friday, 7:00 am to 6:00 pm and
- Saturday, 8:00 am to 1:00 pm.

No noise from construction/demolition work is to be generated on Sundays or public holidays.

49 Council’s ‘PREVENT POLLUTION’ sign is to be erected and maintained in a conspicuous location on or adjacent to the property boundary so it is clearly visible to the public or at other locations on the site as otherwise directed by Council for the duration of demolition and construction work.

Note: Council’s ‘PREVENT POLLUTION’ sign can be obtained by presenting your development application receipt at Council’s Customer Enquiry Counter at 282 King Street Newcastle.

50 Any excavated material to be removed from the site is to be assessed, classified, transported and disposed of in accordance with the NSW Environment Protection Authority (EPA)’Waste Classification Guidelines Part 1: Classifying Waste’.

51 Any fill material imported into the site is to be Virgin Excavated Natural Material or material subject to a Resource Recovery Exemption that is permitted to be used as a fill material, in accordance with the provisions of the Protection of the Environment Operations Act 1997 (NSW) and the Protection of the Environment
Any fill material subject to a Resource Recovery Exemption received at the site must be accompanied by documentation demonstrating that material’s compliance with the conditions of the exemption, and this documentation must be provided to Council officers or the Principal Certifying Authority on request.

Erosion and sediment control measures are to be implemented prior to the commencement of works and maintained during the period of demolition and/or construction in accordance with the requirements of Managing Urban Stormwater: Soils and Construction 4th Edition - Vol. 1 (the ‘Blue Book’) published by Landcom, 2004. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.

Prior to the commencement of work, a 3m wide all weather vehicle access is to be provided from the kerb and gutter to the building under construction, to reduce the potential for soil erosion. Sand shall not be stockpiled on the all weather vehicle access.

All necessary measures are to be undertaken to control dust pollution from the site. These measures must include, but not are limited to:

- restricting topsoil removal
- regularly and lightly watering dust prone areas (note: prevent excess watering as it can cause damage and erosion
- alter or cease construction work during periods of high wind and
- erect green or black shade-cloth mesh or similar products 1.8m high around the perimeter of the site and around every level of the building under construction.

Where the proposed development involves the destruction or disturbance of any existing survey monuments, those monuments affected are to be relocated at no cost to Council by a Surveyor registered under the Surveying and Spatial Information Act 2002 (NSW).

The premises are to be identified by the provision of house and street numbers on the building exterior and mailbox, respectively, such that they are clearly visible from the road frontage.

The minimum numeral heights shall be:

- exterior of the building = 75mm
- group mailbox - street number = 150mm
- house number = 50mm
CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE, A SUBDIVISION CERTIFICATE OR A STRATA CERTIFICATE

58 An application is to be made for a Strata Certificate in accordance with the requirements of Division 4 of the Strata Scheme (Freehold Development) Act 1973 (NSW).

59 All commitments listed in the relevant BASIX certificate for the development are to be satisfactorily completed prior to the issue of an Occupation Certificate. Should there be any changes to the specifications of the dwelling that have implications for compliance with the approved certificate, except where restricted or excluded by any other condition of consent, an amended BASIX Certificate can be relied upon as having complied with this condition. A copy of any amended BASIX Certificate is to be provided to Council within fourteen days of receipt.

60 All public footways, footpaving, kerbs, gutters and road pavement damaged during the works are to be immediately repaired following the damage, to a satisfactory state that provides for safe use by pedestrians and vehicles. Full restoration of the damage is to be carried out to Council’s satisfaction prior to the completion of demolition work or prior to the issue of any occupation certificate in respect of development involving building work.

61 All works within the road reserve required by this consent are to be completed prior to the issue of a Final Occupation Certificate.

62 Any redundant existing vehicular crossing is to be removed at no cost to Council. The road reserve and kerb is to be restored to Council’s satisfaction, to match the existing infrastructure. These works are to be completed prior to the issuing of a Final Occupation Certificate for the proposed development.

63 A copy of the stormwater drainage design plans approved with the Construction Certificate with ‘work as executed’ levels indicated, shall be submitted to the Principal Certifying Authority and to Newcastle City Council prior to the issue of an Occupation Certificate. The plans shall be prepared by a Practising Professional Engineer or Registered Surveyor experienced in the design of stormwater drainage systems.

64 The water management measures as indicated on the submitted plans and Statement of Environmental Effects and/or as modified under the terms of this consent are to be implemented and the nominated fixtures and appliances are to be installed and operational prior to issue of an Occupation Certificate.

65 A Landscape Practical Completion Report is to be submitted to the Principal Certifying Authority prior to the issue of the Final Occupation Certificate. The report is to verify that all landscape works have been carried out in accordance with the comprehensive landscape design plan and specifications that were required to be included in documentation for a Construction Certificate application and is to verify that an effective maintenance program has been commenced.
CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

66 The premise/s is/are allocated the following street address/es in accordance with Council’s House Numbering Policy and the Surveying and Spatial Regulation.

<table>
<thead>
<tr>
<th>Unit/dwelling number on plan</th>
<th>Unit</th>
<th>Street number</th>
<th>Street name</th>
<th>Street type</th>
<th>Suburb</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>9</td>
<td>Hardes</td>
<td>Avenue</td>
<td>Maryland</td>
</tr>
<tr>
<td>2</td>
<td>1</td>
<td>9</td>
<td>Hardes</td>
<td>Avenue</td>
<td>Maryland</td>
</tr>
<tr>
<td>3</td>
<td>1</td>
<td>9</td>
<td>Hardes</td>
<td>Avenue</td>
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<td>Hardes</td>
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<td>Hardes</td>
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<td>Hardes</td>
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<td>Hardes</td>
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<td>8 to 21</td>
<td>8 to 21</td>
<td>9</td>
<td>Hardes</td>
<td>Avenue</td>
<td>Maryland</td>
</tr>
</tbody>
</table>

67 All garbage and recycling waste shall be collected by a private waste contractor.

68 The water management measures as indicated on the submitted plans and Statement of Environmental Effects and/or as modified under the terms of this consent are to be implemented and the nominated fixtures and appliances are to be installed and operational prior to issue of an Occupation Certificate.

69 The driveway crossing, parking areas and stormwater management system are to be properly maintained for the life of the development.

70 All vehicular movement to and from the site is to be in a forward direction.

71 Proposed parking areas, vehicle bays, driveways and turning areas are to be maintained clear of obstruction and be used exclusively for purposes of car parking, loading and unloading, and vehicle access, respectively. Under no circumstances are such areas to be used for the storage of goods or waste materials.

ADVISORY MATTERS

72 Retaining walls not clearly noted on the approved plans or outside of the parameters of ‘exempt development’ as specified in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (NSW) are to be subject to a separate development application. An application in this regard is to be approved prior to any works relating to the retaining wall taking place.

73 An application is to be submitted to Council for the removal or pruning of any trees located more than three metres from the dwelling, wall measured from the centre of the trunk to the footings of the dwelling, excluding carports and pergolas.

74 It is recommended that, prior to commencement of work, the free national community service ‘Dial before you Dig’ be contacted on 1100 or by fax on 1200
652 077 regarding the location of underground services in order to prevent injury, personal liability and even death. Inquiries should provide the property details and the nearest cross street/road.

75 Any necessary alterations to public utility installations are to be at the developer/demolisher's expense and to the requirements of both Council and any other relevant authorities. Council and other service authorities should be contacted for specific requirements prior to the commencement of any works.

76 Any approval for fences on side boundaries, common to other private properties, is independent of any consent or agreement which may be required of any adjoining owner under the provisions of the *Dividing Fences Act 1991* (NSW).

77 Prior to commencing any construction works, the following provisions of the *Environmental Planning and Assessment Act 1979* (NSW) (the ‘Act’) are to be complied with:

   a) a Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act

   b) a Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act and

   c) Council is to be given at least two days notice of the date intended for commencement of building works, in accordance with Section 81A(2)(c) of the Act.

78 Prior to the occupation or use of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the proposed development. An application for an Occupation Certificate must contain the information set out in Clause 149 of the *Environmental Planning and Assessment Regulation 2000* (NSW).

79 It is an offence under the provisions of the *Protection of the Environment Operations Act 1997* (NSW) to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice (‘on-the-spot fine’) or prosecution.

80 Failure to comply with the conditions of consent constitutes a breach of the *Environmental Planning and Assessment Act 1979* (NSW), which may be subject to a penalty infringement notice (‘on-the-spot fine’) or prosecution.

**End of conditions**

**Fire Safety Schedule**

Nil
Attachment C

**PROCESSING CHRONOLOGY**
**DA 2014/1040 – 9 HARDES AVENUE, MARYLAND**

12 September 2014 - Development application lodged with Council.
24 September 2014 - Public exhibition (14 days).
3 October 2014 - Applicant advised of issues raised after technical assessment of the application and in public submissions.
4 November 2014 - Response received from applicant.
17 February 2015 - Public Voice.
24 March 2015 - Mediation.

**OFFICER'S RECOMMENDATION**

The application to erect 21 x two-storey dwellings, retaining walls, associated landscaping and strata subdivision at 9 Hardes Avenue, Maryland be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions (refer to Attachment B)

**ALTERNATE MOTION**
Moved by Cr Rufo, seconded by Cr Luke

The application to erect 21 x two-storey dwellings, retaining walls, associated landscaping and strata subdivision at 9 Hardes Avenue, Maryland be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions (refer to Attachment B) and as amended below:

*Cont'd over...*
Amend Condition 5 to state:

5  a) The applicant shall submit amended plans showing a monolithic retaining wall and acoustic fence to a height of 1800mm (which includes approximately 400mm of concrete at the bottom of the fence) along the western boundary; and
b) The applicant shall provide further details of the privacy screens for units 15 to 21. The privacy screens shall consist of fixed louvres of not more than 25% transparency and shall be attached to the upper windows facing the eastern boundary.

Amend condition 7 to state:

7 All garbage and recycling waste shall be collected by a private waste contractor. Final details from the private contractor indicating vehicle movement to and from the site, hours/days of collection are to be submitted with an application for a Construction Certificate.

Amend condition 21 to state:

21 A residential vehicular crossing is to be constructed across the road reserve, in accordance with the following criteria:

   i) Constructed in accordance with Council’s A1300 – Driveway Crossings Standard Design Details.
   ii) The driveway crossing, within the road reserve, shall be a minimum of 6 metres wide.
   iii) Letterboxes, landscaping and any other obstructions to visibility should be kept clear of or limited in height to 1.2 metre, in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance.
   iv) The proposed driveway shall be a minimum of 3 metres clear of the trunk of any tree within the public reserve.
   v) The proposed driveway shall be a minimum of 750mm clear of the centre of any pole or obstruction within the public reserve and 1 metre clear of any drainage pit.

These works are not approved until consent under Section 138 of the Roads Act 1993 (NSW) has been granted by Council. An application under Section 138 must be applied for and approved before the issue of a Construction Certificate.

For the Motion: The Lord Mayor, Councillors Compton, Crakanthorp, Doyle, Luke, Osborne, Posniak, Robinson, Rufo, Tierney and Waterhouse.

Against the Motion: Councillor Dunn.

Carried
The issue of parking arose and the General Manager indicated the matter would be referred to the Traffic Committee for review.

Councillor Clausen returned to the Chamber at the conclusion of this item.
ITEM-5  DA 2013/0636 - 116-136 LAKE RD, ELERMORE VALE - ERECTION OF A THREE STOREY 159 BED RESIDENTIAL CARE FACILITY

APPLICANT:  EMPOWERED LIVING SUPPORT SERVICES LIMITED
OWNER:  PEPPERWOOD CLOSE PTY LTD & PEPPERWOOD RIDGE PTY LTD
REPORT BY:  PLANNING AND REGULATORY
CONTACT:  DIRECTOR PLANNING & REGULATORY / MANAGER DEVELOPMENT AND BUILDING SERVICES

PART I

PURPOSE

An application has been received seeking consent to erect a three storey 159 bed residential care facility.

The proposal involves a predominately two storey structure with a smaller third sub-floor level below. The design of the proposed facility consists of two large ‘wings’, on two levels, which are designed to accommodate the proposed 159 bed residential care facility (ie ‘nursing home’).

The middle core of the ‘wings’ is proposed to contain the centralised service, amenities and leisure/entertainment facilities of the proposed development. The proposal also includes associated access, parking and engineering works.

A copy of the amended plans for the proposed development is at Attachment A.

The application was publicly notified in accordance with Council's Public Notification policy for a period of 14 days and no submissions were received in response.

The application has been referred to Council’s Development Applications Committee for determination as the construction value of the proposal development ($18.0 million) exceeds the $10 million staff delegation limit and a proposed variation to the maximum height provided for by Newcastle Local Environmental Plan 2012 is more than minor.
Issues

- Whether the development is acceptable in relation to its impacts on adjoining properties in terms of traffic, parking and environmental aspects.
- Whether the proposed residential care facility is acceptable having regard to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP Seniors)

Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979 (as amended) NSW and is considered to be acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

1. Council notes the objection under clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at clause 4.3 Height, and Council considers the objection to be justified in the circumstances and consistent with the aims of the relevant LEP clause.

2. The application to erect a three storey 159 bed residential care facility be approved subject to the draft conditions outlined in the schedule appended at Attachment B.

Political Donation / Gift Declaration

Under Section 147 of the Environmental Planning and Assessment Act 1979, the applicant, and any person related to this Development Application must report any political donation and/or gift to a Councillor and/or any gift to a Council employee within a two year period before the date of this application.

The applicant has answered NO to the following question on the application form: Have you, or are you aware of any person having a financial interest in the application, made a ‘reportable political donation’ or ‘gift’ to a Councillor or Council employee within a two year period before the date of this application?
PART II

1.0 THE SUBJECT SITE

The subject property comprises Lot: 231 & 232 DP: 872597 and Lot: 4 DP: 328834 116-136 Lake Road Elermore Vale. The overall site is of an irregular shape located on the western side of Lake Road with the Wallsend-Glendale cycleway located at the rear.

The total area of the site is approximately 5.45 hectares (the proposed development uses approximately 4.44 of this total) and has a frontage of approximately 315.0 metres to Lake Road (though the effective frontage of the proposed development is approximately 245m).

The western side of Lake Road in the immediate area has been used for a range of low-scale uses. To the north of the site is the existing Seventh Day Adventist facility and to the south is another existing two storey aged care facility (ie 108 beds). The eastern side of Lake Road consists of predominately single dwelling houses with limited medium density developments or other uses (eg ‘Darby’s Pies’). It is noted that notwithstanding the differences in the nature of the existing development, the current zoning for both sides of Lake Road is R2 – Low Density Residential.

The land slopes down to the west with existing stands of eucalyptus trees towards the western boundary of the site. A large portion of the site is relatively open and is currently being used as individual paddocks for horses. There is a small dam located on the western half of 136 Lake Road.

2.0 THE PROPOSAL

The application was originally lodged as a two storey 159 bed residential care facility. The applicant subsequently requested that Council accept an amendment to change the proposal to include a third sub-floor level and additional landscaping/bowling green. The submitted amendment did not change the overall number of beds proposed (ie 159 beds) but utilised an area which was previously proposed to undertake significant engineering earthworks to address the existing slope of the land. The amended design utilises the slope of the land to create a smaller sub-floor level below the main two-storey structure and large above ground outdoor area.

A residential care facility is defined under SEPP Seniors as follows:

In this Policy, a residential care facility is residential accommodation for seniors or people with a disability that includes:

(a) meals and cleaning services, and
(b) personal care or nursing care, or both, and
(c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care,
not being a dwelling, hostel, hospital or psychiatric facility.
Note. The *Aged Care Act 1997* of the Commonwealth requires residential care facilities to which that Act applies to meet certain requirements.

The design of the proposed facility consists of two large ‘wings’, on two levels, which are designed to accommodate the proposed 159 bed residential care facility (ie ‘nursing home’). These ‘wings’ are generally orientated away from Lake Road opening out towards the west. The submitted layout for the proposal includes 69 beds on the ground level and 90 beds on the 1st floor level.

The middle core of the ‘wings’ is proposed to contain the centralised service, amenities and leisure/entertainment facilities. The proposal also includes associated access and parking and engineering works.

The lower sub-floor level contains predominately leisure/entertainment facilities for the future residents including a bar, lounge and multipurpose room (ie cinema/chapel/education room). This level also includes associated offices, storage and training rooms.

The ground floor level contains the main entry, accessed from the Lake Road of the building, and is provided with porte cochere. The ground floor level also includes a central core containing lounge and dining areas, medical and personal services rooms (eg hairdresser) and administration offices. Each wing contains residents bedrooms with a central corridor of additional dining areas/lounges and nurses station. The southern wing of this floor also contains the main kitchen and services facilities. Adjacent to these facilities, within the car park area, is a loading dock and separate single storey building to house service and infrastructure facilities (ie garbage, maintenance room and generator).

The top most proposed floor has a very similar layout to the ground floor level but does not include the main kitchen/service facilities and replaces the administration offices, medical and personal services rooms with larger dining and lounge room areas.

It is further noted that the design allows for up to 64 of the proposed beds to be utilised specifically for residents with dementia (ie two areas on each floor).

The proposed large outdoor area also forms a covered awning/driveway area that has been designed to interconnect with possible works under a future separate application.

The development provides for a total of 51 parking spaces (ie inclusive of three accessible parking spaces).

The grounds of the development are proposed to be extensively landscaped. The landscape design is inclusive of a bowling green.

The proposal will utilise the existing signage pylon at 116 Lake Road and, as such, no new signage structures are proposed.
A copy of the amended plans is appended at Attachment A. The various steps in the processing of the application are outlined in the Processing Chronology appended at Attachment C.

3.0 PUBLIC NOTIFICATION

The application has been publicly notified in accordance with the requirements of the Environmental Planning and Assessment Act, 1979, the associated Regulation and the Newcastle DCP 2012. No submissions were received as a result.

4.0 ENVIRONMENTAL PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 79C(1) of the Environmental Planning and Assessment Act 1979, as detailed hereunder.

4.1 Statutory Considerations [Section 79C(1)(a)(i) and (ii)]

Integrated Development

The submitted application has been made on an Integrated Development basis under the Environmental Planning & Assessment Act 1979. The proposal triggers Integrated Development due to the need to obtain a bushfire safety authority under the Rural Fires Act 1997 as the proposal is defined as a special fire protection purpose, being a retirement village.

The application has been assessed by the NSW Rural Fire Service and they have issued their 'General Terms of Approval' supporting the application.

The 'General Terms of Approval' have been incorporated into the recommended conditions of consent appended at Attachment B.

4.1.2 State Environmental Planning Policies

State Environmental Planning Policy 44 – Koala Habitat Protection (SEPP 44)

The land subject of the application is affected by SEPP 44. The applicants submitted an Eight Part Test, confirming that in 2005 no core koala habitat was located on the land. No additional koala feed trees have been established on the site since 2005.

The proposal affects eleven existing trees which are sparsely located towards the eastern side of the subject site. None of these trees are koala 'feed tree species' under SEPP 44.

It is considered that the proposal is acceptable having to the provisions of SEPP 44.
State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)

A detailed site investigation and Remedial Action Plan (RAP) has been submitted. These reports have shown that the site is affected by Total Recoverable Hydrocarbons (TRH), zinc and asbestos. Following the further investigation of contamination levels within the RAP, it was determined that the TRH, Benzo(a)pyrene and zinc concentrations for the site are acceptable in terms of the National Environment Protection (Assessment of Site Contamination) Measure (NEPM).

The submitted RAP details adequate measures to address the existing asbestos contamination on the site.

Conditions have been recommended within Attachment B addressing the required remediation and validation. Overall it is considered that the application is acceptable having regard to the provisions of SEPP 55.

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP Seniors)

The proposal is considered to be acceptable having regard to the provisions of SEPP Seniors subject to the conditions of consent at Attachment B.

A detailed assessment of the proposal in terms of the SEPP Seniors is given below:

Clause 4 - Land to which Policy applies

SEPP Seniors applies to land where the zoning allows dwellings or residential flat buildings to be permissible. The subject site is zoned R2 Low Density Residential under the provision of NLEP 2012 and both the required land uses are permissible, hence SEPP Seniors applies to the land.

Clause 11 - Residential Care Facilities

The application has been assessed and is considered to meet the requirements of the following residential care facility definition:

'residential care facility is residential accommodation for seniors or people with a disability that includes:
   (a) meals and cleaning services, and
   (b) personal care or nursing care, or both, and
   (c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care, not being a dwelling, hostel, hospital or psychiatric facility.'
Clause 18 - Restrictions on occupation of seniors housing allowed under this Chapter

A condition must be imposed (ie statutory requirement of SEPP Seniors limiting the future resident groups of the development to only those allowable under the provisions of SEPP Seniors (eg aged or people with a disability) and this requirement is also to be registered as a restriction on the use of the land under the provisions of the *Conveyancing Act 1919*.

Relevant conditions in this respect are recommended at Attachment B.

Clause 26 – Location & Access to facilities

A private minibus will be available to the residents, operating at least twice a day to access shops, services and entertainment.

The applicant has also outlined that bus services are in available within 400m of the subject site via each side of Lake Road. These services are available at least once per hour during the day except for Sundays.

A broad range of shops, banking services, commercial services and medical services are available at the Wallsend shopping area and at the shopping centre located on Croudace Road, Elermore Vale.

The application further outlines a number of services which will be provided on the site including; ‘...medical services (including physio), a hairdresser, library, café/bar, art room, various leisure/amenity rooms & facilities in the subfloor area, and outdoor recreation opportunities, including a bowling green.’ It is considered that the amended design provides for the required access within the subject site.

The applicants have demonstrated that the off-site access to facilities is in accordance with the requirements of SEPP Seniors. It is noted that reliance is placed predominately on the availability of the private minibus to achieve this off-site access to facilities having regard to the nature of the likely future residents (ie more limited ability to access the available bus stops) and no details have been submitted demonstrating that the off-site pedestrian access to the bus stops meets the pedestrian grades criteria (ie it may be achievable but has not been demonstrated).

It is considered that the requirements of this clause have been met.

Clause 27 - Bushfire Prone Land

The application has been assessed by the NSW Rural Fire Service under the Integrated Development provisions of the *Environmental Planning and Assessment Act 1979*. The NSW Rural Fire Service considered the proposal to be acceptable and have issued their *General Terms of Approval* which have been incorporated within the recommended conditions of consent appended to Attachment B.
The proposed development is located on a major State road (ie Lake Road) with dual carriageway and signalised intersections. It is further noted that several major hospitals operate in the Newcastle area with both the John Hunter Hospital (Lookout Road, New Lambton Heights) and Mater Hospital (Edith Street, Waratah) being in proximity.

It is considered that the site would be capable of being readily accessed by emergency services in the event of a bushfire emergency. It is further noted that the proposal is located closer to Lake Road side of the site and that there is an open, largely un-vegetated area, to the west of the proposed building before denser vegetation commences nearer to the western boundary of the site.

It is considered that the proposal is acceptable in terms of bushfire prone lands.

Clause 28 - Water and sewer

The site has access sewer and water services. A condition requiring the submission of a Section 50 Certificate from Hunter Water Corporation prior to the release any Construction Certificate is included within the conditions recommended at Attachment B

Clause 33 Neighbourhood Amenity and Streetscape

The design and location of the development is considered to have an acceptable impact on the amenity of the neighbourhood and on the streetscape. The proposal is located on a site with a significant down slope away from Lake Road. Notwithstanding that the Lake Road elevation of the proposal will be two storey in height, it will read as closer to single storey as the majority of the ground floor is below the height of Lake Road. The site is large (ie 5.45 hectares in area) and it is considered that the proposal's height, bulk and scale is consistent with the context of the site and area.

The proposal has a variable front setback of between 23.8 and 30.7m. These setbacks are considered to be acceptable having regard to the context of the site and neighbouring developments which have similar setbacks.

It is considered that the development provides for an acceptable architectural appearance and is satisfactory in terms of the character of the area. The design provides for articulation of the building via the combination of design, materials, finishes and fenestration.

It is considered that the requirements of this clause have been adequately addressed.

Clause 34 – Visual and Acoustic Privacy

The proposal's separation from neighbouring development to the north, east and west is such that it poses no privacy impact issues.
The southern setback is variable but is 13.9m at its closest. The proposal is considered to have minimal privacy impacts towards the south due to the building layout, in combination with the slope of land, setbacks and proposed landscaping.

The applicants have submitted an acoustic report which demonstrates that the proposal will meet the acoustic criteria under SEPP Seniors.

Clause 35 – Solar Access and Design for Climate

It is considered that the layout of the proposed building achieves adequate solar access.

The applicants have submitted shadow diagrams for the proposal which demonstrates that the shadowing impact on the neighbouring property to the south (ie 138 Lake Rd) is acceptable. The shadow impact is largely limited to before 12pm on 21 June and falls only on a small portion of the land and none on the existing building.

Clause 36 Stormwater

The drainage design is considered to be acceptable subject to conditions appended at Attachment B.

Clause 37 – Crime Prevention

The application has been assessed having regard to 'Crime Prevention Through Environmental Design' principles and is considered to be acceptable.

Clause 38 – Accessibility

The proposal, having regard to the design, layout and the future proposed residents, it is considered to be adequate in terms of access. The amended design provides for additional large indoor and outdoor areas that are level and accessible via lifts.

Clause 39 – Waste Management

The proposal is designed to achieve waste collection via a private contractor which is considered acceptable in this instance.

Clause 40 – Development Standards

There are various development standards which a proposal must comply with as follows:

- 40(2) – The site is over the minimum 1000m² being 5.41 hectares overall.
- 40(3) – The site has a frontage of over 245m and complies with the 20m frontage requirement.
40(4)(a) – The 8m height limit under this clause does not apply to the proposal as it only applies where residential flat buildings are prohibited within the zone (ie they are permissible within the R2-Low Density Residential Zone).

Other development standards for residential care facilities are controlled via a separate Commonwealth aged care accreditation process and the provisions of the Building Code of Australia also apply. These are not matters for consideration within a development application.

48 - Standards that cannot be used to refuse development consent for residential care facilities

Council must not refuse consent to a development application for a residential care facility where it meets the following requirements:

(a) building height: if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to two storeys),

The proposal exceeds this height as discussed further at Section 4.1.3. Exceeding this height does not preclude Council approving the proposal (ie this subclause only prevents Council refusing based on height if compliance is met).

(b) density and scale: if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less,

The proposal complies with this subclause having a FSR of approximately 0.2:1.

(c) landscaped area: if a minimum of 25 square metres of landscaped area per residential care facility bed is provided,

The proposal complies with this subclause having well in excess of 25m² per bed.

(d) parking for residents and visitors: if at least the following is provided:
   (i) One parking space for each 10 beds in the residential care facility (or one parking space for each 15 beds if the facility provides care only for persons with dementia), and
   (ii) One parking space for each two persons to be employed in connection with the development and on duty at any one time, and
   (iii) One parking space suitable for an ambulance.

The proposal provides for 51 parking spaces (ie inclusive of three accessible parking spaces). It is considered that there are numerous spaces available that are suitable for use as an ambulance bay. It is further noted that there proposal has a dedicated port cochere (which would be the most practical location in an ambulance emergency and a separate loading dock could also be utilised if urgency warranted).
The 51 proposed spaces exceeds the amount as determined by applying the SEPP Senior criteria, ie 32 spaces.

State Environmental Planning Policy 64 – Advertising and Signage (SEPP 64)

The proposal has been considered having regard to the provisions of SEPP 64 and is considered to be acceptable.

The proposed signage utilises the existing signage pylon and no new signage structures are proposed which would be affected by the provisions of SEPP 64.

State Environmental Planning Policy Infrastructure (ISEPP)

Under Clause 104 of the iSEPP the application was referred to Roads and Maritime Services (RMS) as the proposal exceeds the triggers under Schedule 3.

The RMS has indicated that the proposal is acceptable subject to conditions of consent which have been incorporated within the conditions recommended at Attachment B.

Other State Environmental Planning Policies

The proposal is not contrary to the provisions of any other relevant State Environmental Planning Policy.

4.1.3 Newcastle Local Environmental Plan 2012

Clause 2.1 Land Use Zones

The subject property is included within the R2-Low Density Residential zone under the provisions of the Newcastle Local Environmental Plan 2012, within which zone residential accommodation is permissible with Council's consent. As outlined within Section 4.1.2, the provisions of SEPP Seniors apply and make permissible the current proposal where dwellings and residential flat buildings are also permissible (ie these are forms of residential accommodation). The proposed development is also consistent with the zone objectives.

Clause 4.3 Height of Buildings & Clause 4.6 Exceptions to development standards
The site has a 8.5m height limit under the Newcastle LEP 2012. The submitted proposal has a variable effective building height due to the significant slope of the existing land and the proposed building being sited into that slope. The maximum height of the proposal is approximately 11.0m at the ridgeline (ie approximately 29.4% variation).

The applicants have submitted a request to vary the height development standard under Clause 4.6 of the NLEP 2012 to allow this 2.5m variation.

The applicants submit that the height development standard is unnecessary and unjustified in this instance due to the following reasons:

a) The objectives of the height standard under the NLEP 2012, as follows, are still met by the proposal,

'(1) The objectives of this clause are as follows:
   (a) to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,
   (b) to allow reasonable daylight access to all developments and the public domain.'

b) The proposal is consistent with the bulk, scale, form and character of the locality,

c) Strict compliance with the height standard would limit the articulated roof design (ie hipped roof) and likely result in a flattened roof form which would be less attractive.

d) Notwithstanding that the proposal is a relatively large development, it is well setback from neighbouring sites and harmonious within its sloping topography. It is argued that the proposal does not visually dominate the streetscape, any public space or result in unacceptable overshadowing.

e) The exceedance of the height standard will not have any detrimental impacts on the public.

The applicant's submission argues that the height variation is partly the function of the size and design necessary for a residential care facility (RCF) as follows:

'The departure from the 8.5m height limit arises predominantly from the substantial size of the proposed RCF. In order to achieve economies of scale and maximise service efficiency, the building is required to be of a certain size, as proposed. In order to ensure the visual attractiveness of the building when viewed from Lake Road and other areas, a hipped roof form has been used (to avoid use of a flattened roof form which would be ‘looked down on’ and appear unattractive from Lake Road). The size of the building necessarily results in the need for a taller roof height to maintain visual harmony in the context of the overall development.'
Clause 4.6 Variation Assessment

It is considered that the variation to the height standard is reasonable in this instance having regard to the criteria under Clause 4.6, the zone objectives, the objectives of Clause 4.3 and assessment of the impacts of the proposal.

The R2-Low Density Residential Zone objectives are included below:

'Objectives of zone

• To provide for the housing needs of the community within a low density residential environment.
• To enable other land uses that provide facilities or services to meet the day to day needs of residents.
• To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment."

The residential care facility meets the zone objectives providing for the housing needs of the community and diverse housing forms. The need to provide adequate access contributes to the design having large-long floor plates on single levels. This has also resulted in the design aiming to site the development 'into the slope' as much as possible.

The development will appear closer to single storey in height when viewed from the Lake Road than its two storey height shown within the Lake Road elevation. The difference in height between Lake Rd and the proposed ground floor level of the proposal is 4.0-5.0m and is proposed to be landscaped with a combination of taller growing trees and associated ground covers over several changes in height via retaining walls.

A relatively small proportion of the proposed third subfloor level overlaps with the main building and this area is lower again than the proposed ground floor and is predominately located further downslope. The third subfloor level is partially created via excavation of the existing ground levels and does not increase the height of the overall proposal as defined under the NLEP 2012, which is based on natural ground levels (ie as included below). It is further noted that the original design proposed an extensive amount of engineering and earthworks which has been replaced by the proposed third-subfloor and large above ground outdoor area.

'building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.'

It is considered that the applicants have adequately addressed the objectives of Clause 4.6, as included below. The development, as a residential care facility, has proposed relatively large floor plates along the axis of the contours of the site to minimise the extent of impact and cut/fill. It is agreed that further lessening the height of the roof form to decrease the height would result in an unattractive roof
appearance, especially when viewed from Lake Road, and would result in a poorer architectural and planning outcome in this instance. Strict compliance with the height limit would likely require the overall development to either be smaller, undertake more significant earthworks to cut into the site and/or spread out further down the slope on multiple levels which would be considered problematic for a *residential care facility* and its future residents (ie as opposed to multi-unit housing generally).

4.6 Exceptions to development standards

(1) The objectives of this clause are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.'
A merit assessment of the proposed development confirms, as detailed above and within Section 4.2, that impacts in terms of privacy, overshadowing, streetscape, character of the locality, bulk scale and context are acceptable.

It is considered that the proposed variation to the height development standard is acceptable in this instance.

**Clause 4.4 Floor Space Ratio**

Under the Newcastle LEP 2012 the site is affected by a 0.6:1 floor space ratio. The submitted development is approximately 0.2:1 and would comply. Notwithstanding this, the proposal could be up to 1:1 under SEPP Seniors provisions which prevail over the Newcastle LEP 2012 in respect to the floor space ratio.

**Clause 5.10 - Heritage Conservation**

The site is not within a heritage conservation area and does not contain a heritage item. The neighbouring land directly to the west of the site contains a heritage item (ie former West Wallsend steam tram line - currently the Wallsend-Glendale 'cycleway').

The proposed buildings will be located at the eastern edge of the subject site and sufficiently clear of the heritage item that it will have no real impact on the heritage item (ie 'cycleway').

The drainage for the proposed development relies on an existing 900mm diameter pipe running under the 'cycleway' which has sufficient capacity for the stormwater of the current proposal.

It is considered that the proposal has minimal impact on this neighbouring heritage item and is acceptable.

**Clause 6.1 – Acid Sulfate Soils**

The site is mapped as being affected by Class 5 acid sulphate soils. The proposed development will not impact on the acid sulfate soils.

**Clause 6.2 - Earthworks**

The level of earthworks proposed to facilitate the development is considered to be acceptable having regard to this clause. The amended design suitably minimises the extent of proposed earthworks as much as is reasonable having regard to the existing topography and otherwise meeting the site and access grades required for a residential care facility under the provisions of SEPP Seniors.
4.2 Merit Considerations

4.2.1 Relevant Strategic Policies

The proposal is considered to be acceptable having regard to the Lower Hunter Regional Strategy which projects an additional 160,000 residents between 2006-2035 and the need for 16,500 more jobs. The proposal provides for aged housing facilities which are consistent with the Strategy in providing a range of housing diversity.

4.2.2 Newcastle Development Control Plan [Section 79C(1)(a)(iii)]

Section 3.08 - Seniors Housing

The proposal is satisfactory having regard to this section of the DCP.

Section 4.02 - Bush Fire Protection

The application has been assessed by the NSW Rural Fire Service under the terms of Integrated Development of the Environmental Planning & Assessment Act 1979 and the Rural Fires Act 1997. The NSW Rural Fire Service considered the proposal to be acceptable and have issued their General Terms of Approval which have been incorporated within the recommended conditions of consent appended to Attachment B.

It is considered that the proposal is acceptable in terms of this section of the DCP.

Section 4.03 - Mine Subsidence

The applicants have obtained approval conditions from the Mine Subsidence Board for the submitted proposal. Conditions regarding approval of the final drawings by the Mine Subsidence Board prior to construction are included within the conditions appended at Attachment B.

Section 4.04 - Safety and Security

The proposal is considered to be acceptable in terms of safety and security aspects of the 'Crime Prevention Through Environmental Design' principles.

Section 4.05 - Social Impact

It is considered that the proposal will not have any negative social or economic impacts. Conversely, the construction of the 159 bed residential care facility is likely to have both positive social and economic benefits including in the short term construction jobs and in the longer term providing needed beds for aged and/or disability care.
Section 5.01 - Soil Management

It is considered that the proposal is acceptable in terms of this section. Conditions have been imposed regarding soil and sedimentation control at Attachment B.

Section 5.02 - Land Contamination

The proposed development is considered to be acceptable subject to conditions of consent. The applicants have prepared a detailed site investigation and Remedial Action Plan and the requirements of the DCP have been adequately addressed.

Conditions have been recommended within Attachment B addressing the required remediation and validation for the proposed development.

Section 5.03 - Tree Management

The site is over 2 hectares in area and does not require the submission of an arborist report or tree retention value assessment under the DCP. Notwithstanding this, the applicant has submitted an arborist report for the application. The proposal would result in the removal of 11 mature trees but the site has mostly sparse grass covering and has historically been used for the purposes of agriculture.

The arborist's assessment of the 11 trees to be removed indicates that only four of the trees have had moderate or high tree retention value. The remaining trees are either in poor health or categorised as weed species.

The removal of the 11 mature trees over the effective 4.4 hectare area is considered to be not significant. Furthermore, the proposal includes comprehensive landscaping of the development including the planting of over 30 larger growing trees.

Section 5.04 - Aboriginal Heritage, Section 5.05 - Heritage Items & Section 5.06 Archaeological Management

The proposal is considered to be acceptable in terms of European heritage as discussed within Section 4.1.3 of the report above.

An Aboriginal Archaeological Heritage Impact Assessment was undertaken by the applicants. Following an initial review, an intensive survey of the study area was undertaken with representatives of the Awabakal Local Aboriginal Land Council.

The survey determined that the topography of the site and previous agricultural land use meant that there was a low likelihood of archaeological items in the construction area of the proposal and that and that any artefacts are more likely to have been washed down slope to the creek line.

A condition has been recommended within Attachment B to address any potential archaeological items which may be uncovered during construction.
Section 7.01 – Building Design Criteria

The proposal is considered to have acceptable setbacks and meets the Building Height Envelope. The majority of criteria under this Section of the DCP are replaced effectively by the provisions of the SEPP.

Section 7.02 – Landscape Open Space & Visual Amenity

The proposal has submitted an acceptable landscape plan in accordance with the provisions of the DCP. The remaining landscaping criteria are replaced effectively by the provisions of SEPP Seniors and are limited to 25m² of landscaping per bed which is provided by the development.

Section 7.03 - Traffic, Parking & Access

The traffic and access aspects have been assessed by Council’s Senior Development Engineer and the Roads and Maritime Service and are considered to be acceptable having regard to the terms of the DCP. The proposal complies with the parking requirements of SEPP Seniors, which prevail over the DCP provisions.

Section 7.06 - Stormwater & Section 4.01 – Flood Management & Section 7.07 - Water Efficiency

The flooding, stormwater and water efficiency of the proposal are acceptable having regard to the terms of the DCP.

Section 7.08 – Waste Management

The proposal is designed to have waste collected solely within the site by a private contractor and is considered to be acceptable having regard to the DCP.

Section 7.09 Outdoor Advertising and Signage

The signage proposed utilises the existing signage pylon and no new signage structures are proposed and, as such, the proposal is considered to be acceptable under the DCP.

8.0 Public Participation

The proposal has been notified in accordance with this element.

4.2.3 Impacts on the Natural and Built Environment [Section 79C(1)(b)]

a) Character, External Appearance, Height, Bulk & Scale

The majority of surrounding allotments are larger parcels of land and contain relatively large developments in terms of overall scale. The current proposal is considered to be consistent with this existing streetscape/landscape. The neighbouring aged care facility to the south is a two storey, 108 bed facility. To the north is another two storey building currently being used by AusGrid.
The proposal is designed to be sited within the slope of the existing topography as much as possible while meeting the access grade criteria for an aged care facility. The 'wings' of the proposal follow the existing contours in this part of the site.

The design of the proposal is such that from Lake Road the development will appear to be single storey in height, notwithstanding its two storey elevation facing Lake Road.

The proposal provides for a well articulated design and a roof form which is a combination of various hips and gables. The height exceedance under the Newcastle LEP 2012, which partially results from the roof design, is considered to be acceptable (ie as discussed within Section 4.1.3). Conversely, an alternative 'flatter' roof form (eg a low skillion style roof) would result in a poor visual appearance, especially from Lake Road, with little planning benefit.

The proposed development has significant setbacks from neighbouring properties and its shadowing, privacy and views impacts are considered to be acceptable. It is considered that the proposals size, height, bulk and are acceptable.

The proposal will be a combination of face brick and metal roofing. The proposed colour scheme involves various neutral shades of browns in terms of both the face brick and roofing/guttering. The combination of design, materials and colours is considered to be acceptable in terms of character and external appearance.

b) Traffic, Access & Parking

The application has been assessed by Council's Senior Engineering Officer and the Roads and Maritime Service (RMS) and is considered to be satisfactory. The requirements of the RMS have been incorporated into the conditions recommended at Attachment B. The detailed assessment by Council's Engineer is included below:

**Vehicular access, driveway design and crossing location**

Access to the site is from Lake Road and is constrained by various assortments of street furniture located along the site. Lake Road is a classified road and as such a referral to RMS has been completed with RMS returning advice to Council.

The proposed access to the development consists of dual driveways at a single point of entry. The existing single driveway to the Ausgrid facility will be upgraded to a dual entry with an internal circulating roundabout. The existing driveway if duplicated at a similar grade should be able to be designed and constructed in accordance with Council and Australian Standards. The plans indicate an internal arrangement for access and maneuvering that meets Australian Standard swept path turning circles, aisle widths and allows ingress and egress into the site in a forward direction. Ingress and egress to the site for all vehicles is to be in a forward direction.
The advice issued from RMS, details the requirements to upgrade the access to the development with a deceleration lane, on road catering for cyclists, a wider shared footpath, street lighting and the relocation of the existing bus shelter and central island access. The access to the site and road upgrade will be the subject of a section 138 Roads Act Approval by Council. Conditions should be added to any approval issued by Council including the requirements of RMS.

Traffic Generation

The proposed development has the potential to increase traffic movements to the site.

The Traffic Impact Assessment has concluded that the capacity of Lake Road is significantly higher than current traffic volumes.

c) Flood & Stormwater Management

The subject site is not flood prone. The amended stormwater design is considered to be acceptable having regard to the provisions of the Newcastle DCP 2012 and associated Stormwater and Water Efficiency for Development Technical Manual.

d) Environmental Issues

Land Contamination

The proposal has been assessed by Council’s Senior Environment Protection Officer and is considered to be acceptable subject to conditions of consent. The officer’s detailed assessed is included below:

‘The Stage 2 – Detailed Site Investigation report identified soil contamination by Total Recoverable Hydrocarbons (TRH), zinc and asbestos. That report provided the general conclusion that the recommendations for soil contamination and asbestos should be addressed in a Remediation Action Plan (RAP).

The RAP reports the results of a “statistical appraisal” for the TRH, Benzo(a)pyrene and zinc concentrations identified at the site. This has been done to determine whether the results meet the investigation levels given in the NEMP on the basis of their average concentrations or by not exceeding “hot spot” levels. This assessment determines that “overall TRH, benzo(a)pyrene, and zinc concentrations are not considered to exceed adopted EIL and HILs”.

Asbestos then remains as the only contaminating material requiring attention.

The RAP proposes the removal of the asbestos pieces and asbestos-affected soil. This will be achieved through a process of “hen pecking” the surface debris, further assessment to assess the extent of asbestos impacted soils, excavation and removal of these soils, and a validation program to confirm the complete removal of the asbestos fragments on the surface and the asbestos affected soils.’
The remediation and validation will be confirmed through appropriate conditions recommended within Attachment B.

**Flora & Fauna**

The applicants submitted an Eight Part Test addresses the potential for impact on flora and fauna. The report found that the subject site has undergone considerable disturbance due to the previous agricultural uses of the land (eg previous clearing, grazing and weed invasion). No threatened flora was found to be present on the site. The area contains little habitat for any threatened species (ie fauna) and does not constitute core koala habitat.

The submitted reports have included recommendations that felling of hollow bearing trees undertaken with the supervision of a suitably qualified ecologist and using a soft-felling method to ensure the safety of any fauna species which could potentially be present. An appropriate condition of consent has been contained within Attachment B.

e) **Amenity (Privacy, Overshadowing & Views)**

**Privacy**

The proposed development will not result in any unreasonable privacy impacts on neighbouring properties. The combination of the topography, proposed landscaping and setbacks is such that there is limited opportunity for privacy impacts to the south (ie the closest boundary) and no privacy impacts to the north, east or west due to the extensive setbacks.

**Overshadowing**

The proposed development will not result in any unreasonable overshadowing impacts on neighbouring properties. The design, topography and setbacks of the proposal are such that the development has limited overshadowing and only affects a small portion of the neighbouring site (ie 138 Lake Rd) before 12pm on the 21 June, as shown in the shadow diagrams submitted by the applicant. This shadow mostly falls on a driveway within the neighbouring site and does not affect the building at all.

**Views**

The development does not result in any unreasonable impact on views or outlook. There are no significant views that will be impacted in this location. The impact on general outlook is not unreasonable having regard to the nature of the topography and relatively vacant nature of the existing site.
4.2.4 Social and Economic Impacts in the Locality [Section 79C(1)(b)]

It is considered that the proposal will not have any negative social or economic impacts. Conversely, the construction of the 159 bed residential care facility is likely to have both positive social and economic benefits including in the short term construction jobs and in the longer term providing needed beds for aged and/or disabled care.

4.2.5 Suitability of the Site for the Development [Section 79C(1)(c)]

The site is within a Mine Subsidence District and conditional approval for the proposed development has been granted by the Mine Subsidence Board.

The NSW Rural Fire Service has issued their General Terms of Approval and, subject to these conditions, the proposal is acceptable. The existing land contamination has been investigated by the applicant's consultants, reviewed by Council's Senior Environment Protection Officer, and is considered to be acceptable subject to conditions which have been recommended at Attachment B. The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

4.2.6 Submissions made in accordance with the Act or Regulations [Section 79C(1)(d)]

The proposed development received no public submissions during public notification.

The requirements of the Roads and Maritime Service, Mine Subsidence Board and the General Terms of Approval issued by the NSW Rural Service have been incorporated into the conditions recommended at Attachment B.

4.2.7 Public Interest [Section 79C(1)(e)]

- **Sustainability**

  The proposed development is considered to be satisfactory having regard to the principles of ecologically sustainable development.

- **General**

  The proposed development does not raise any significant public interest issues beyond matters already addressed in this report.

**ATTACHMENTS**

**Attachment A:** Amended plans and elevations of proposed development - 116-136 Lake Road, Elermore Vale.

**Attachment B:** Draft Schedule of Conditions - 116-136 Lake Rd, Elermore Vale.

**Attachment C:** Processing Chronology - 116-136 Lake Rd, Elermore Vale.
Attachment B

DRAFT SCHEDULE OF CONDITIONS
DA 2013/0636 - 116-136 LAKE ROAD, ELERMÖRE VALE

SCHEDULE 1

REASONS FOR CONDITIONS

1 The conditions of this consent have been imposed in accordance with Section 80A of the Environmental Planning and Assessment Act 1979 (NSW). The conditions relate to any matter referred to in Section 79C(1) of relevance to the development the subject of the consent and are imposed to ensure that the development is undertaken in an orderly manner, with acceptable impacts on the natural and built environment.

APPROVED DOCUMENTATION

2 The development is to be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

<table>
<thead>
<tr>
<th>Plan No./Supporting Document</th>
<th>Reference/Version</th>
<th>Prepared by</th>
<th>Dated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site/Floor Plan</td>
<td>Proj No 1017 Dwg No A02 Rev 1, A03 Rev 3, A04 Rev 3 &amp; A06 Rev 3</td>
<td>Empowered Living Support Services Ltd</td>
<td>30/5/14</td>
</tr>
<tr>
<td>Elevation/Section Plan</td>
<td>Proj No 1017 Dwg No A01 Rev 3 &amp; A05 Rev 3</td>
<td>Empowered Living Support Services Ltd</td>
<td>30/5/14</td>
</tr>
<tr>
<td>Landscape Plans</td>
<td>Proj No 1079 Sheet 1, 3, 4, 5, 6, 7, 8 7, 8 &amp; 9 of 12 Rev G</td>
<td>Moir Landscape Architecture</td>
<td>7/8/14</td>
</tr>
<tr>
<td>Statement of Environmental Effects</td>
<td></td>
<td>City Plan Services</td>
<td>August 2014</td>
</tr>
<tr>
<td>Waste Management Plan</td>
<td></td>
<td>Empowered Living Support Services Ltd</td>
<td>20/01/13</td>
</tr>
</tbody>
</table>
In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

3. On-site parking accommodation is to be provided for a minimum of 51 vehicles and be set out in accordance with the minimum parking layout standards indicated in Element 7.03 'Traffic, Parking and Access’ of Council’s adopted Newcastle DCP 2012. Full details are to be included in documentation for a Construction Certificate application.

4. The car park is to be designed to comply with AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking and AS/NZS 2890.6:2009 - Parking facilities - Off-street parking for people with disabilities. Full details are to be included in documentation for a Construction Certificate application.

5. All proposed driveways, parking bays, loading bays and vehicular turning areas are to be constructed with a basecourse of adequate depth to suit design traffic, being sealed with either bitumen seal, asphaltic concrete, concrete or interlocking pavers and being properly maintained. Full details are to be included in documentation for a Construction Certificate application.

6. Kerbing or dwarf walls having a minimum height of 100mm are to be constructed along the edge of all garden or lawn areas adjacent to driveways and parking bays sufficient to discourage the encroachment of vehicles thereon. Full details are to be included in documentation for a Construction Certificate application.

7. Roof water from the proposed new work is to be directed to the proposed rainwater tank and being reticulated therefrom to any new toilet cisterns and cold water washing machine taps, with a mains water top up being installed to maintain between 10% and 15% of the tank capacity. Alternatively, an electronically activated mechanical valve device is to be installed to switch any new toilet cisterns and laundry taps to mains water when the tank falls below 10% capacity. The water tank and plumbing is to be installed in accordance with Australian Standard AS 3500, the relevant plumbing regulations and the requirements of the Hunter Water Corporation. Full details are to be provided with the Construction Certificate application.

8. Overflows from the rainwater tank and any additional discharge controls (if required) are to be directed to Council’s drainage system by means of an interallotment drainage line or underground pipe directly to the street gutter. Full details are to be provided with the Construction Certificate application.
9 All stormwater runoff from the proposed development being managed in accordance with the requirements of Section 7.06 ‘Stormwater’ of Newcastle Development Control Plan 2012, as indicated on the stormwater management concept plan prepared by Cardno (Drg. No. 80515200-CI-001-3, dated 12/02/2015). Full details are to be included in documentation for a Construction Certificate application.

10 All new impervious surfaces, including driveways and paved areas are to be drained to the nominated discharge controls, full details are to be provided with the Construction Certificate application.

11 The easement to drain water within the site is to be shaped to contain any overland stormwater flow along the course of the easement and is to be kept clear of obstruction at all times. Full details are to be included in documentation for a Construction Certificate application.

12 Any fencing proposed across the required floodway or overland flowpath is to be of an open mesh or rod style. Full details are to be included in documentation for a Construction Certificate application.

13 Any landscaping within the proposed development is to be designed and positioned in such a manner as to ensure that the designated floodways, on overland flowpaths, are not obstructed. Full details are to be included in documentation for a Construction Certificate application.

14 All proposed planting and landscape elements indicated on the submitted landscape concept plan or otherwise required under the conditions of this consent are required to be detailed on a comprehensive landscape design plan and specification. The required comprehensive landscape design plan and specifications is to be in accordance with the provisions of Newcastle Development Control Plan 2012 and is to include details of the following:

- v) cross sections through the site where appropriate
- w) proposed contours or spot levels
- x) botanical names
- y) quantities and container size of all proposed trees
- z) shrubs and ground cover
- aa) details of proposed soil preparation
- bb) mulching and staking
- cc) treatment of external surfaces and retaining walls where proposed
- dd) drainage, location of taps and
- ee) appropriate maintenance periods.

The plan is to be prepared by a qualified landscape designer and be included in documentation for a Construction Certificate application.
The applicant is to comply with all requirements of the Hunter Water Corporation regarding the connection of water supply and sewerage services, including the payment of any required cash contribution towards necessary amplification of service mains in the locality as a result of the increased intensity of land use proposed. A copy of the Corporation’s compliance certificate (refer s50 Hunter Water Act 1991) is to be included in documentation for a Construction Certificate application.

The applicant is to comply with the requirements of the Hunter Water Corporation in respect of any building or structure proposed to be erected over any services or drain under the Corporation's control. Details addressing any requirements of the Hunter Water Corporation are to be included in documentation for a Construction Certificate application.

The design and construction of the proposed development is to be in accordance with the relevant requirements of the Australian Standard 4674-2004 Design, Construction and Fit-Out of Food Premises. Full details are to be included in the documentation for the Construction Certificate application.

Working drawings and specifications of the proposed building are to be submitted to the NSW Mine Subsidence Board for approval prior to an application for a Construction Certificate and any requirements of the Board are to be included in the documentation for a Construction Certificate application.

Compliance in full with the General Terms of Approval under the Rural Fires Act, 1997, as stipulated by the NSW Rural Service (dated 18 July 2013 Ref No: DA13062887987 NL) and detailed below. Full details are to be submitted to the Accredited Certifier prior to the issue of the Construction Certificate:

**Asset Protection Zones**

The intent of measures is to provide sufficient space for fire fighters and other emergency services personnel, ensuring radiant heat levels permit operations under critical conditions of radiant heat, smoke and embers, while supporting or evacuating occupants. To achieve this, the following conditions shall apply:

1. At the commencement of building works and in perpetuity the property around the building shall be managed as follows:
   - North for a distance of 40 metres as an Asset Protection Zone.
   - West for a distance of 20 metres as an Asset Protection Zone.
   (Note: in forested areas a portion of the APZ may be maintained as an outer protection zone as specified in Table A2.7 of ‘Planning for Bush Fire Protection 2006’.)

**Water and Utilities**

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

2. Water, electricity and gas are to comply with section 4.1.3 of ‘Planning for Bush Fire Protection 2006’.
Access
The intent of measures for internal roads is to provide safe operational access for emergency services personnel in suppressing a bush fire, while residents are accessing or egressing an area. To achieve this, the following conditions shall apply:

3. Internal roads shall comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006'.

Evacuation and Emergency Management
The intent of measures is to provide suitable emergency and evacuation (and relocation) arrangements for occupants of special fire protection purpose developments. To achieve this, the following conditions shall apply:


Design and Construction
The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

5. All new construction shall comply with Australian Standard AS3959-2009 "Construction of buildings in bush fire-prone areas" section 5 (BAL 12.5) and section A3.7 of Addendum Appendix 3 of "Planning for Bush Fire Protection 2006".

Landscaping
6. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

Prior to the issue of a Construction Certificate, the proponent preparing and submitting to the PCA and Council an Environmental Management Plan (EMP) for construction/demolition works on the site, such to be kept on site and made available to authorised Council officers upon request. The EMP is to include but not be limited to:

a) A site management strategy, identifying and addressing issues such as environmental health and safety, site security, and traffic management.
b) A water management strategy, detailing erosion and sediment control, management of soil stockpiles, control and management of surface water, groundwater. Procedures should also be included to ensure that all roads adjacent to the site are kept free and clear from mud and sediment.
c) A dust management strategy, detailing procedures to minimise dust generation, with particular reference to control techniques and operational limits under adverse meteorological conditions.
d) A noise and vibration management program, detailing measures to minimise the impact of the development on local amenity. Provision for noise and vibration monitoring during works should be incorporated into the program.
e) A waste minimisation strategy, which aims to avoid production of waste and maximise reuse, recycling or reprocessing of potential waste material.

f) A community relations plan, which aims to inform local residents and other local stakeholders of the proposed nature and timeframes for demolition and construction activities together with contact details for site management.

CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK AND DURING THE CONSTRUCTION PHASE

21 Toilet facilities are to be available or provided at the work site before works begin and be maintained until the works are completed, at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site. Each toilet is to:

a) be a standard flushing toilet connected to a public sewer, or
b) have an on-site effluent disposal system approved under the *Local Government Act 1993* (NSW), or
c) be a temporary chemical closet approved under the *Local Government Act 1993* (NSW).

22 Waste management shall be implemented in accordance with the approved Waste Management Plan. At a minimum, the following measures shall be implemented during the construction phase:

a) a waste container of at least one cubic metre capacity shall be provided, maintained and regularly serviced from the commencement of operations until the completion of the building for the reception and storage of waste generated by the construction of the building and associated waste
b) the waste container is to be, at minimum, constructed with a 'star' picket (corners) and weed control mat (sides), or equivalent. The matting is to be securely tied to the pickets
c) appropriate provision is to be made to prevent wind blown rubbish leaving the site and
d) footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

Note: Fines may be issued for pollution/littering offences under the *Protection of the Environment Operations Act 1997* (NSW).

23 A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

a) showing the name, address and telephone number of the principal certifying authority for the work
b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours and
c) stating that unauthorised entry to the work site is prohibited.
Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

24 All building work must be carried out in accordance with the provisions of the Building Code of Australia.

25 All excavations and backfilling are to be executed safely in accordance with appropriate professional standards and excavations are to be properly guarded and protected to prevent them from being dangerous to life and property.

26 If the soil conditions require it, retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided and adequate provision must be made for drainage.

27 All building materials, plant and equipment is to be placed on the site of the development so as to ensure that pedestrian and vehicular access in public places is not restricted and to prevent damage to the road reserve. The storage of building materials on Council reserves including the road reserve is not permitted.

28 A commercial vehicular crossing is to be constructed across the public footway at the proposed driveway entrance/exit at no cost to Council, as per the following:

   a) Constructed in accordance with Council’s Standard Drawing A1300 (Driveway Crossing Standard Design Details).
   b) The driveway crossing, within the road reserve, shall be a maximum of 12 metres wide.
   c) Letterboxes, landscaping and any other obstructions to visibility should be kept clear of or limited in height to 1.2m in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance.
   d) The proposed driveway shall be a minimum of 3 metres clear of the trunk of any tree within the public reserve.
   e) The proposed driveway shall be a minimum of 750mm clear of any pole or obstruction within the public reserve and 1 meter clear of any drainage pit.

Note: A separate approval from Council must be obtained for all works within the public road reserve pursuant to Section 138 of the Roads Act 1993. For further information contact Council’s Works Depot on 4974 6000 to request a Road Opening Approval. A fee will be payable in this regard.

29 The vehicular access / driveway to the proposed development shall be designed and constructed in accordance with the Austroads Guide to Road design 2009 (with RTA supplements) and relevant Australian Standards, to RMS / Council requirements. The following RMS requirements apply to the access / driveway:

   a) Vehicular access to / from the development shall be restricted to left in / left out only.
   b) An Austroads Type AUL left turn deceleration lane and a left out give-way facility shall be provided on Lake Road.
c) The intersection shall be designed and constructed to accommodate the turning paths of the largest design vehicle.
d) Provision for on-road cyclists shall be made at the intersection and along the full length of the works.
e) Street lighting shall be provided in accordance with Australian Standard AS1158, or as determined by RMS.
f) Kerb and gutter shall be provided at the intersection and along the length of works, or as determined by RMS.
g) All lanes shall be 3.5 metres in width, or as determined by RMS.
h) Adequate sight distance for vehicles entering and exiting the site shall be provided.
i) The existing 1.2 metre wide footpath shall be upgraded to a 2.5 metre shared path across the full Lake Road frontage of the site.
j) The existing bus zone on the western side of Lake Road shall be relocated to the satisfaction of RMS and Council.
k) The existing pedestrian refuge on Lake Road located approximately 25 metres south of the bus shelter shall be relocated, at the time the deceleration lane is constructed, to a location acceptable to RMS and Council. It is to be designed and constructed to current standards.
l) Any road widening / property acquisition required shall be provided at no cost to RMS. This would include any plans of subdivision and associated survey / legal costs.
m) Dedication of property as public road reserve shall be at no cost to RMS, in favour of Council.

As these road works are required on a State road RMS will require the developer to enter into a Works Authorisation Deed (WAD) with RMS. RMS will exercise its powers under Section 87 of the Roads Act 1993 (the Act) and the functions of the roads authority, to undertake road works in accordance with Sections 64, 71, 72 and 73 of the Act, as applicable, for all works under the WAD.

The WAD is to be executed prior to the issue of a Construction Certificate for the development and all road works covered under the WAD shall be completed prior to issuing any Occupation Certificate (interim or final) for the development.

30 Any alteration to natural surface levels on the site is to be undertaken in such a manner as to ensure that there is no increase in surface water runoff to adjoining properties or that runoff is impounded on adjoining properties, as a result of the development.

31 All parking bays are to be permanently marked out on the pavement surface.

32 The vehicular entrance and exit driveways and the direction of traffic movement within the site are to be clearly indicated by means of reflectorised signs and pavement markings.
Construction/demolition work that generates noise that is audible at residential premises is to be restricted to the following times:

- Monday to Friday, 7:00 am to 6:00 pm and
- Saturday, 8:00 am to 1:00 pm.

No noise from construction/demolition work is to be generated on Sundays or public holidays.

Council’s ‘PREVENT POLLUTION’ sign is to be erected and maintained in a conspicuous location on or adjacent to the property boundary so it is clearly visible to the public or at other locations on the site as otherwise directed by Council for the duration of demolition and construction work.

Note: Council’s ‘PREVENT POLLUTION’ sign can be obtained by presenting your development application receipt at Council’s Customer Enquiry Counter at 282 King Street Newcastle.

Any excavated material to be removed from the site is to be assessed, classified, transported and disposed of in accordance with the NSW Environment Protection Authority (EPA)’Waste Classification Guidelines Part 1: Classifying Waste’.

Any fill material imported into the site is to be Virgin Excavated Natural Material or material subject to a Resource Recovery Exemption that is permitted to be used as a fill material, in accordance with the provisions of the Protection of the Environment Operations Act 1997 (NSW) and the Protection of the Environment (Waste) Regulation 2005 (NSW).

Any fill material subject to a Resource Recovery Exemption received at the site must be accompanied by documentation demonstrating that material’s compliance with the conditions of the exemption, and this documentation must be provided to Council officers or the Principal Certifying Authority on request.

Erosion and sediment control measures are to be implemented prior to the commencement of works and be maintained during the period of construction in accordance with the details set out on the Erosion and Sediment Control Plan submitted with the application, and with the below requirements:

a) control over discharge of stormwater and containment of run-off and pollutants leaving the site must be undertaken through the installation of erosion control devices such as catch drains, energy dissipaters, level spreaders and sediment control devices such as hay bale barriers, filter fences, filter dams and sediment basins and

b) controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover. Erosion and sediment control measures are to be designed in accordance with the requirements of the Managing Urban Stormwater: Soils and Construction 4th Edition – Vol. 1 (the ‘Blue Book’) published by Landcom, 2004.
All necessary measures are to be undertaken to control dust pollution from the site. These measures must include, but not are limited to:

i) restricting topsoil removal
j) regularly and lightly watering dust prone areas (note: prevent excess watering as it can cause damage and erosion
k) alter or cease construction work during periods of high wind and
l) erect green or black shade-cloth mesh or similar products 1.8m high around the perimeter of the site and around every level of the building under construction.

The removal of any hollow bearing trees is to be undertaken using a soft felling method and under the supervision of a suitably qualified ecologist to ensure the safety of any fauna species that could potentially be present.

Where the proposed development involves the destruction or disturbance of any existing survey monuments, those monuments affected are to be relocated at no cost to Council by a Surveyor registered under the Surveying and Spatial Information Act 2002 (NSW).

Prior to the commencement of any works, the applicant inviting an officer or authorised representative of the Awabakal Local Aboriginal Land Council (LALC) to be present on site during initial site works, any works within the drainage line and as otherwise requested by the LALC. Should any Aboriginal relics or artefacts be discovered during the course of any works on-site, work must cease immediately and the Principal Certifying Authority informed. Work may only be resumed following written consent being obtained from the National Parks and Wildlife Service. Copies of any such consents are to be provided to the Council and NSW Office of Water prior to the resumption of work.

Note: It is illegal to knowingly damage, deface or destroy a “relic” or Aboriginal Place without the prior written consent of the Director.

Contamination remediation works are to be undertaken and carried out strictly in accordance with the report Remediation Action Plan 122-136 Lake Road, Elermore Vale New South Wales reference number 18555E-R4.0 prepared by Environmental & Safety Professionals and dated October 2014, except as otherwise provided by the conditions of this consent.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE, A SUBDIVISION CERTIFICATE OR A STRATA CERTIFICATE

All public footways, footpaving, kerbs, gutters and road pavement damaged during the works are to be immediately repaired following the damage, to a satisfactory state that provides for safe use by pedestrians and vehicles. Full restoration of the damage is to be carried out to Council’s satisfaction prior to the completion of demolition work or prior to the issue of any occupation certificate in respect of development involving building work.

All works within the road reserve required by this consent are to be completed prior to the issue of a Final Occupation Certificate.
46 Any redundant existing vehicular crossing is to be removed at no cost to Council. The road reserve and kerb is to be restored to Council’s satisfaction, to match the existing infrastructure. These works are to be completed prior to the issuing of a Final Occupation Certificate for the proposed development.

47 The appropriate notation is to be made on a survey plan and accompanying instrument under Section 88B of the Conveyancing Act setting out the terms of the required drainage easement and such being lodged with Council for certification by the General Manager and being registered with NSW Government Land & Property Information prior the issuing of an Occupation Certificate for the proposed development, it being noted that the instrument is to provide that the drainage easement is unable to be released, varied or modified without the concurrence of the Newcastle City Council.

48 An easement to drain water 3m wide over the existing stormwater pipeline within the subject property is to be created. Such easement is to be in favour of Council and created prior to the issue of an Occupation Certificate for the proposed development.

Note: All associated survey and legal expenses will be undertaken by Council at Council’s expense upon receipt of written request by the owner but Council will not bear the cost of private surveys.

49 A copy of the stormwater drainage design plans approved with the Construction Certificate with ‘work as executed’ levels indicated, shall be submitted to the Principal Certifying Authority and to Newcastle City Council prior to the issue of an Occupation Certificate. The plans shall be prepared by a Practising Professional Engineer or Registered Surveyor experienced in the design of stormwater drainage systems.

50 The water management measures as indicated on the submitted plans and Statement of Environmental Effects and/or as modified under the terms of this consent are to be implemented and the nominated fixtures and appliances are to be installed and operational prior to issue of an Occupation Certificate.

51 A Landscape Practical Completion Report is to be submitted to the Principal Certifying Authority prior to the issue of the Final Occupation Certificate. The report is to verify that all landscape works have been carried out in accordance with the comprehensive landscape design plan and specifications that were required to be included in documentation for a Construction Certificate application and is to verify that an effective maintenance program has been commenced.

52 A restriction as to user being registered against the title of the property, in accordance with section 88E of the Conveyancing Act 1919, limiting the use of any accommodation to the kinds of people given under condition 64 of this Notice of Determination and such being lodged with Council for certification by the General Manager and being registered with the Department of Lands, Land and Property Services prior to issue of any Occupation Certificate or occupation of the premises, it being noted that the instrument is to provide that the restriction is unable to be released, varied or modified without the concurrence of the Newcastle City Council.
53 The portion of the site required for road widening, is to be transferred to Council for dedication as road. A suitable survey plan providing for the dedication is to be submitted with an accompanying Subdivision Certificate Application for Council certification and such plan is to be registered with the NSW Government Land & Property Information prior to the issuing of an Occupation Certificate for the proposed development.

Note: All associated survey and legal work is to be undertaken by the Developer at the Developers expense.

54 The premises are to be identified by the provision of house numbers on the building exterior and mailbox such that they are clearly visible from the road frontage.

The minimum numeral height shall be 75mm.

55 Prior to issue of an Occupation Certificate, the food business must notify the relevant enforcement agencies, under the Food Act 2003 and (for licensed food businesses) under the Food Regulation 2010. Notification is to be provided to Council and the NSW Food Authority.

56 Prior to the issuing of the Occupation Certificate or occupation of the premises, a Validation Report confirming the site achieves the contamination remediation goals given in the report Remediation Action Plan 122-136 Lake Road, Elermore Vale New South Wales reference number 18555E-R4.0 prepared by Environmental & Safety Professionals is to be submitted to the Principal Certifying Authority and Council's Regulatory Services unit.

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

57 The use and occupation of the premises, including all plant and equipment installed thereon, is not to give rise to any offensive noise, as defined under the Protection of the Environment Operations Act 1997 (NSW).

Should Council consider offensive noise has emanated from the premises, the owner/occupier of the premises will be required to submit an acoustic assessment prepared by a suitably qualified acoustical consultant recommending appropriate acoustic measures necessary to ensure future compliance with this condition and will be required to implement such measures within a nominated period. Furthermore, written certification from the said consultant confirming the recommended acoustic measures have been satisfactorily implemented will be required to be submitted to Council prior to the expiration of the nominated period.

58 The driveway crossing, parking areas and stormwater management system are to be properly maintained for the life of the development.
Vehicles are to be loaded or unloaded standing wholly within the premises and within loading bays designated on the submitted plans or as otherwise provided in accordance with the conditions of this consent and under no circumstances are vehicles to be loaded or unloaded at the kerbside, across the public footpath or in a manner which obstructs vehicular access to the site.

Any vehicle or plant owned or operated by the occupants of the premises in connection with the conduct of their business is to be parked within the confines of the site in spaces designated on the submitted plans, or otherwise provided in accordance with the conditions of this consent.

All vehicular movement to and from the site is to be in a forward direction.

Proposed parking areas, vehicle bays, driveways and turning areas are to be maintained clear of obstruction and be used exclusively for purposes of car parking, loading and unloading, and vehicle access, respectively. Under no circumstances are such areas to be used for the storage of goods or waste materials.

A Maintenance Manual for all water quality devices is to be prepared in accordance with Council's Stormwater and Water Efficiency for Development Technical Manual (Updated 2013). The Maintenance Manual is to address maintenance issues concerning the water quality devices including periodic monitoring and maintenance to ensure the system functions as designed and meets water quality targets as indicated in the DCP. The manual is to be kept on site at all times.

The proposed development being limited to the accommodation of only: (a) seniors or people who have a disability, (b) people who live within the same household with seniors or people who have a disability or (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy, in accordance with the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

Note: The following definitions apply in terms of seniors and people who have a disability:

**Seniors** are any of the following:
(a) people aged 55 or more years,
(b) people who are resident at a facility at which residential care (within the meaning of the Aged Care Act 1997 of the Commonwealth) is provided,
(c) people who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider.

**People with a disability** are people of any age who have, either permanently or for an extended period, one or more impairments, limitations or activity restrictions that substantially affect their capacity to participate in everyday life.
65 The operator of the proposed development shall provide a dedicated private mini-bus to transport residents to shops, services and entertainment venues at least twice a day for the life of the development.

66 The largest vehicle to service/utilise the site being a 12.5m medium rigid bus or truck.

ADVISORY MATTERS

67 It is recommended that, prior to commencement of work, the free national community service ‘Dial before you Dig’ be contacted on 1100 or by fax on 1200 652 077 regarding the location of underground services in order to prevent injury, personal liability and even death. Inquiries should provide the property details and the nearest cross street/road.

68 Any necessary alterations to public utility installations are to be at the developer/demolisher’s expense and to the requirements of both Council and any other relevant authorities. Council and other service authorities should be contacted for specific requirements prior to the commencement of any works.

69 Any approval for fences on side boundaries, common to other private properties, is independent of any consent or agreement which may be required of any adjoining owner under the provisions of the Dividing Fences Act 1991 (NSW).

70 Prior to commencing any construction works, the following provisions of the Environmental Planning and Assessment Act 1979 (NSW) (the ‘Act’) are to be complied with:

a) a Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act
b) a Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act and
c) Council is to be given at least two days notice of the date intended for commencement of building works, in accordance with Section 81A(2)(c) of the Act.

71 Prior to the occupation or use of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the proposed development. An application for an Occupation Certificate must contain the information set out in Clause 149 of the Environmental Planning and Assessment Regulation 2000 (NSW).

72 It is an offence under the provisions of the Protection of the Environment Operations Act 1997 (NSW) to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice (‘on-the-spot fine’) or prosecution.
73 Failure to comply with the conditions of consent constitutes a breach of the *Environmental Planning and Assessment Act 1979* (NSW), which may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.

74 The applicant should be aware there is the potential for road traffic noise to impact on the development. In this regard, the developer, not RMS is responsible for providing noise attenuation measures in accordance with the Office of Environment and Heritage NSW Road Noise Policy 2011, should the applicant seek assistance at a later date.

**End of conditions**

**Fire Safety Schedule**

Nil
### Attachment C

**PROCESSING CHRONOLOGY**

**DA 2013/0636 – 116-136 LAKE RD ELMORE VALE**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>16 June 2013</td>
<td>Application lodged.</td>
</tr>
<tr>
<td>19 June - 3 July 2013</td>
<td>Public Notification.</td>
</tr>
<tr>
<td>18 July 2013</td>
<td>NSW Rural Fire Service issue General Terms of Approval.</td>
</tr>
<tr>
<td>26 July 2013</td>
<td>Roads &amp; Maritime Services issue their advice.</td>
</tr>
<tr>
<td>4 December 2013</td>
<td>Further information requested.</td>
</tr>
<tr>
<td>12 February 2014</td>
<td>Additional details submitted.</td>
</tr>
<tr>
<td>15 April 2014</td>
<td>Further information requested.</td>
</tr>
<tr>
<td>7 August 2014</td>
<td>Additional information submitted - amendment of proposal.</td>
</tr>
<tr>
<td>17 September 2014</td>
<td>Further information requested.</td>
</tr>
<tr>
<td>29 October 2014</td>
<td>Additional details submitted.</td>
</tr>
<tr>
<td>17 December 2014</td>
<td>Further information requested.</td>
</tr>
<tr>
<td>12 February 2015</td>
<td>Additional details submitted.</td>
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</table>
MOTION
Moved by Cr Compton, seconded by Cr Waterhouse

1 Council notes the objection under clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at clause 4.3 Height, and Council considers the objection to be justified in the circumstances and consistent with the aims of the relevant LEP clause.

2 The application to erect a three storey 159 bed residential care facility be approved subject to the draft conditions outlined in the schedule appended at Attachment B.

For the Motion: The Lord Mayor, Councillors Clausen, Compton, Crakanthorp, Doyle, Dunn, Luke, Osborne, Posniak, Robinson, Rufo, Tierney and Waterhouse.

Against the Motion: Nil. Carried

PROCEEDINGS IN BRIEF

PROCEDURAL MOTION
Moved by Cr Osborne, seconded by Cr Posniak

The Development Applications Committee recommit the minutes of the Adjourned Development Applications Committee of 2 December 2014.

The Committee adjourned at 6.05pm and reconvened at 6.10pm to take advice on the procedural motion.

The General Manager reported that in accordance with the Code of Meeting Practice the procedural motion was in order but there could be no debate on the substantive motion, the vote or the resolution but may speak only as to Councillor Osborne's apparent misunderstanding.

Councillor Osborne indicated that he was moving the procedural motion having regard to a possible inconsistency in the minutes that had already been confirmed.
For the Motion: Councillors Clausen, Crakanthorp, Doyle, Dunn, Posniak and Osborne.

Against the Motion: The Lord Mayor, Councillors Compton, Luke, Robinson, Rufo, Tierney and Waterhouse.

Defeated

LATE ITEM OF BUSINESS

Councillor Osborne proceeded to move a late item of business in respect to a previously determined Development Application in respect of 15C Wrightson Avenue, Bar Beach which was now the subject of legal proceedings.

The General Manager advised that the Development Applications Committee did not have the authority to discuss how legal proceedings were to be conducted and suggested the late item be raised at the Ordinary Council meeting.

Councillor Osborne withdrew the late item of business.

The meeting concluded at 6.18pm.