Councillors,

In accordance with section 367 of the Local Government Act, 1993 notice is hereby given that a Development Applications Committee Meeting will be held on:

**DATE:** Tuesday 20 November 2018

**TIME:** Following the Public Voice Committee Meeting

**VENUE:** Council Chambers
2nd Floor
City Hall
290 King Street
Newcastle NSW 2300

J Bath
Chief Executive Officer

City Administration Centre
282 King Street
NEWCASTLE NSW 2300

Tuesday 13 November 2018

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**NOTE: ITEMS MAY NOT NECESSARILY BE DEALT WITH IN NUMERICAL ORDER**
CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 18 SEPTEMBER 2019

RECOMMENDATION

The draft minutes as circulated be taken as read and confirmed.

ATTACHMENTS

Attachment A: 180918 Development Applications Committee Minutes

Note: The attached minutes are a record of the decisions made by Council at the meeting and are draft until adopted by Council. They may be viewed at www.newcastle.nsw.gov.au
Minutes of the Development Applications Committee Meeting held in the Council Chambers, 2nd Floor City Hall, 290 King Street, Newcastle on Tuesday 18 September 2018 at 7.20pm.

PRESENT
The Lord Mayor (Councillor N Nelmes), Councillors M Byrne, J Church, D Clausen, C Duncan, J Dunn, K Elliott, B Luke, J Mackenzie, A Robinson, A Rufo, E White and P Winney-Baartz.

IN ATTENDANCE
J Bath (Chief Executive Officer), D Clarke (Director Governance), K Liddell (Director Infrastructure and Property and Interim Director Strategy and Engagement), F Leatham (Interim Director People and Culture), S Gately (Interim Director City Wide Services), E Kolatchew (Manager Legal), J Rigby (Manager Assets and Projects), P McCarthy (Interim Manager Regulatory and Assessment), J Vescio (Executive Officer, Chief Executive Office), C Field (Executive Officer, Lord Mayor's Office), M Murray (Policy Officer, Lord Mayor's Office), A Knowles (Council Services/Minutes) and K Sullivan (Council Services/Webcasting).

APOLOGIES
Nil.

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS
The Lord Mayor called for declarations of pecuniary and non-pecuniary interests.

Councillor Church
Councillor Church declared a non-pecuniary, conflict of interest in Item 14 - DA2018/00260 - 57-59 Robert Street, Wickham stating he was an acquaintance, colleague and friend of the applicant and would manage the conflict by removing himself from the chamber for discussion on the item.

Councillor Rufo
Councillor Rufo declared a non-pecuniary, significant conflict of interest in Item 14 - DA2018/00260 - 57-59 Robert Street, Wickham stating that he knew the applicant very well and would manage the conflict by removing himself from the chamber for discussion on the item.

Councillor Clausen
Councillor Clausen declared a less than significant, non-pecuniary interest in Item 13 - DA2017/01371 - 50 Honeysuckle Drive, Newcastle stating that the site was immediately opposite his place of employment and would remain in the chamber for discussion on the item.
Councillor Robinson
Councillor Robinson declared a non-pecuniary, less than significant interest in Item 13 - DA2017/01371 - 50 Honeysuckle Drive, Newcastle stating that he owned a couple of units next door and would remain in the chamber for discussion on the item.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE MEETING - 21 AUGUST 2018

MOTION
Moved by Cr Mackenzie, seconded by Cr Clausen

The draft minutes as circulated be taken as read and confirmed.

DEVELOPMENT APPLICATIONS

ITEM-13 DAC 18/09/18 - DA 2017/01371 - 50 HONEYSUCKLE DRIVE NEWCASTLE - ONE LOT INTO TWO LOT SUBDIVISION

MOTION
Moved by Cr Mackenzie, seconded by Cr Robinson

A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at Clause 4.1 Minimum Subdivision Lot Size, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.1 and the objectives for development within the B3 Commercial Core, B4 Mixed Use and RE1 Public Recreation zones in which the development is proposed to be carried out; and

B. That DA2017/01371 for a two-lot subdivision at 50 Honeysuckle Drive Newcastle be approved and consent granted, subject to conditions of consent being agreed with the applicant (ie. the Crown) or the Minister, generally as set out in the Draft Schedule of Conditions at Attachment B.

For the Motion: Lord Mayor, Cr Nelmes, Councillors Byrne, Church, Clausen, Duncan, Dunn, Elliott, Luke, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

Against the Motion: Nil.

Carried
CITY OF NEWCASTLE
Development Applications Committee Meeting 20 November 2018

ITEM-14 DAC 18/09/18 - DA 2018/00260 - 57-59 ROBERT STREET WICKHAM - DEMOLITION OF EXISTING BUILDING, ERECTION OF FOUR TWO-STOREY DWELLINGS AND FOUR INTO FOUR LOT TORRENS TITLE SUBDIVISION (BOUNDARY ADJUSTMENT)

Councillors Church and Rufo left the chamber for discussion on this item.

MOTION
Moved by Cr Clausen, seconded by Cr Mackenzie

A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at Clause 4.1A Exceptions to Minimum Lot Sizes, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.1A and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and

B. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and

C. That DA2018/00260 for demolition of a building, erection of four two-storey dwellings and four into four lot Torrens Title subdivision (Boundary Adjustment) at 57-59 Robert Street Wickham be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment B; and

D. That those persons who made submissions be advised of Council’s determination.

For the Motion: Lord Mayor, Cr Nelmes, Councillors Byrne, Clausen, Duncan, Dunn, Elliott, Luke, Mackenzie, Robinson, White and Winney-Baartz.

Against the Motion: Nil

Carried

Councillor Church and Rufo did not return to the meeting prior to the meetings close.

The meeting concluded at 7.27pm
PART I

BACKGROUND

The application seeks consent for the erection of a five-storey mixed use development, comprising of 31 residential units, two ground floor commercial units, associated car parking for 54 vehicles, site works and remediation at 116 Tudor Street Hamilton.

The application is referred to the Development Applications Committee for determination, due to proposed variations to the following development standards of Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than 10% variations:

1. maximum building height (59% variation proposed); and
2. floor space ratio (42% variation proposed).

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

The proposed development was publicly notified in accordance with Newcastle Development Control Plan 2012 and two submissions have been received in response. 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 Planning Assessment at Section 5.0.

The objectors formally declined the opportunity to make a presentation at a meeting of the Public Voice Committee.

Issues

1) Compliance with the height of buildings development standard of the Newcastle Local Environmental Plan 2012.

2) Compliance with the floor space ratio development standard of the Newcastle Local Environmental Plan 2012.

Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979. The development is considered to be acceptable and is recommended for approval, subject to the inclusion of the nominated conditions of consent.

RECOMMENDATION

A. That the Development Applications Committee note 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 of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the zone in which the development is proposed to be carried out;

B. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the zone in which the development is proposed to be carried out;

C. That DA2017/01088 at 116 Tudor Street Hamilton be approved and consent granted, subject to compliance with the conditions set out in the Schedule of Conditions at Attachment B; and

D. That those persons who made submissions be advised of Council’s determination.

Political Donation / Gift Declaration

Section 10.4 of the Environmental Planning and Assessment Act 1979 requires a person to disclose "reportable political donations and gifts made by any person with
a financial interest" in the application within the period commencing two years before
the application is made and ending when the application is determined. The
following information is to be included on the statement:

a) all reportable political donations made to any local Councillor of Council; and

b) all gifts made to any local Councillor or employee of that Council.

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 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 site is located on the northern side of Tudor Street, between Milton Street and
Chaucer Street, and has frontage to all three streets. The site is currently serviced
by two driveways from Chaucer Street and two driveways from Milton Street. The
development site has an area of 1,645m2.

The subject land, despite having been held in a single ownership for a number of
years was, until recently, in five separate allotments being Lots 1, 2, 3 and 4 DP
732785 and Lot 1 DP 198575. A commercial premise, "Newcastle Taxis" previously
occupied two of the lots, with car parking occupying another two lots and with Lot 1
in DP 198575 being vacant. The site is cleared of buildings and the five allotments
have recently been consolidated into a single parcel.

The land is subject to two different land use zones under the provisions of Newcastle
Local Environmental Plan 2012 (NLEP 2012), with the part of the site fronting Tudor
Street (previously known as Lots 2 and 3 in DP 732785) being zoned R4 High
Density Residential and with the rear of the site (formerly Lots 1 and 4 in DP 732785
and Lot 1 in DP 198575) being zoned R3 Medium Density Residential.

The Height of Buildings Map of NLEP 2012 provides for a 14 metre height limit over
the R4 zoned portion of the site and a 10 metre height limit over the R3 zoned
portion of the site. The Floor Space Ratio Map of NLEP 2012 provides for a 2:1 floor
space ratio over the R4 portion of the site and a 1.5:1 floor space ratio over the R3
portion of the site.

The site is located within the Hamilton Renewal Corridor, as recognised by the
Newcastle Development Control Plan 2012 (NDCP 2012), being a corridor that
supports the provision of increased residential densities.

2.0 THE PROPOSAL

A copy of the current amended plans is included at Attachment A.
A number of changes were made to the originally submitted proposal in response to the advice of the Urban Design Consultative Group and suggestions from officers.

These changes include:

i. Reduction in overall building height.

ii. Reduction in the overall number of units.

iii. Increased setbacks of the fifth floor.

iv. Increased rear setback and separation distance from neighbouring residences to the north.

v. Internal reconfiguration of units for improved residential amenity.

vi. Improved activation of the streetscape through additional commercial floor area.

vii. Changes to building colours, materials, finishes and additional articulation of the facade.

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 was originally publicly notified in accordance with NDCP 2012. One submission was received, objecting to the proposal on the grounds of privacy and overlooking.

The proposal was subsequently amended and re-notified, with one submission being received, objecting to the proposal on the grounds of on-street parking and impacts to neighbours during the construction period.

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

1) Amenity Issues:

   i. Privacy - Overlooking from west-facing balconies to the rear yards of properties located in Bridge Street.

2) Traffic and Infrastructure Issues:

   i. Traffic - Traffic generation and increased traffic movements around the site.
ii. Parking - Increased pressure for on-street parking, particularly during construction.

3) Environmental:
   i. Noise and vibration - Impacts to neighbours and surrounding businesses during construction.
   ii. Dust and debris - Impacts to neighbours and surrounding businesses during construction.

4) Miscellaneous:
   i. Impact to surrounding businesses - Disruption to neighbouring businesses during the construction period.

The objector’s concerns are addressed under the relevant matters for consideration in the following section of this report.

4.0 INTEGRATED DEVELOPMENT

The proposal is not ‘integrated development’ pursuant to Section 4.46 of the Environmental Planning and Assessment Act 1979.

5.0 PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979, as detailed hereunder.

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)

This policy applies to the proposed development and contains planning controls for the remediation of contaminated land. SEPP 55 provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration as to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

The subject site was historically used as a service station. Service station operations ceased in 1995 and the site has since been used as the terminal for Newcastle Taxis. The site is currently unoccupied.

A Detailed Site Investigation and Remediation Action Plan (RAP) have been submitted in support of the application. A NSW Environmental Protection Authority accredited site auditor has reviewed the RAP and the Auditor concludes that “the site may be made suitable if the RAP is followed”.

On this basis, the provisions of the SEPP have been met and a number of relevant conditions are recommended in the draft schedule of conditions (appended at Attachment B).

**State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)**

The proposal was required to be referred to Ausgrid in accordance with the ISEPP and a response has been received, raising no major concerns in respect of the application.

The Ausgrid advice has been forwarded to the applicant for their information and future action.

**State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

A BASIX Certificate was lodged with the application, demonstrating that the development can achieve the required water and energy reduction targets. A condition of consent has been recommended, requiring that the development be carried out in accordance with the BASIX Certificate.

**State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (SEPP 65)**

This policy applies to the development of new residential flat buildings and aims to improve the quality of residential flat development. SEPP 65 requires the consent authority to take into consideration the advice of a Design Review Panel and the design quality of the development when evaluated in accordance with the design quality principles and the Apartment Design Guide. An assessment of the development under the design principles is provided below.

The Urban Design Consultative Group (UDCG) reviewed the proposal on two occasions. A summary of the UDCG’s advice in relation to the nine design principles is provided in the table below.

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<tr>
<th>Design Quality Principles</th>
<th>Assessment</th>
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<tr>
<td><strong>Principle 1: Context and Neighbourhood Character</strong></td>
<td></td>
</tr>
<tr>
<td>UDCG comments:</td>
<td>Officer's comment:</td>
</tr>
<tr>
<td>The subject site is on Tudor Street, two</td>
<td>Noted.</td>
</tr>
<tr>
<td>blocks west of Beaumont Street, the main</td>
<td></td>
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<tr>
<td>commercial strip in Hamilton. The site</td>
<td></td>
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<tr>
<td>itself is bounded by Tudor Street to the</td>
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<tr>
<td>south, Milton Street to the east and</td>
<td></td>
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<tr>
<td>Chaucer Street to the west, with mostly</td>
<td></td>
</tr>
<tr>
<td>two-storey detached and semi-detached</td>
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</table>
This area is currently undergoing redevelopment and despite the majority of the nearby building stock being two storeys in height, there are several structures which do not conform to this pattern. For example, Beaumont Street has five-storey and six-storey buildings near its intersection with Tudor Street, and opposite the subject site, two existing structures have recently been converted into apartments (‘The Atrium’). These structures have the massing of three- and four-storey buildings.

In general, this location is appropriate for mixed-use development, broadly in line with the scale of this DA.

**Principle 2: Built Form and Scale**

**UDCG comments:**

The DA proposes several variations to the building envelope controls that of these variations are potentially acceptable.

The general strategy to shift the bulk of the building more to the south than the controls would support, in order to reduce the bulk towards the north (which is where major privacy conflicts are likely to occur). This is a reasonable approach, and some minor height exceedances in the centre of the site arising from this strategy, are potentially supportable.

The street wall height visible in the area is variable. Any levels above this tend to be set back behind this line, except for some prominent corner sites. Council’s DCP seeks to protect and reinforce this urban character in its controls for building envelopes.

The DCP also allows for some encroachment to this street wall control on

**Officer’s comments:**

The proposed design has been amended to include an upper floor setback of 6m (Level 4) to assist in reducing the perceived bulk of the building when viewed from the streetscape, while expressing simple clean lines to the built form.

Design changes and refinements have been achieved, as discussed further below.
corner sites, but the intention is that this is to allow for variation in the streetscape and to signal significant intersections.

A minor exceedance of the allowable height might be supported by the UDCG in the centre of the site and not visible, and especially if it was for a communal facility. The DA proposes an approximate 10m high street wall, which, while non-complaint with the DCP is potentially supported by the UDCG.

<table>
<thead>
<tr>
<th>Principle 3: Density</th>
<th>Officer's comment:</th>
</tr>
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<tbody>
<tr>
<td>UDCG comments:</td>
<td>Noted.</td>
</tr>
<tr>
<td>The FSR appears to marginally exceed the maximum allowable, although in itself this is not of major concern for the UDCG.</td>
<td></td>
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<thead>
<tr>
<th>Principle 4: Sustainability</th>
<th>Officers comments:</th>
</tr>
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<tbody>
<tr>
<td>UDCG comments:</td>
<td>24 out of 31 (77%) of apartments have a dual aspect and are naturally cross ventilated.</td>
</tr>
<tr>
<td>No comment at this stage</td>
<td>22 of 31 apartments (71%) receive a minimum of two hours sunlight midwinter. The BASIX Certificate is required to be complied with.</td>
</tr>
<tr>
<td></td>
<td>The revised landscaping plan has also included more appropriate plantings, which will assist, not only visually, but also environmentally and will improve residential amenity.</td>
</tr>
<tr>
<td></td>
<td>The sustainability requirements have been met.</td>
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<thead>
<tr>
<th>Principle 5: Landscape</th>
<th>Officer’s comment:</th>
</tr>
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<tbody>
<tr>
<td>UDCG comments:</td>
<td>Upper level terraces and both of the communal areas incorporate additional landscaping to soften the edges of the</td>
</tr>
<tr>
<td>There appears to be scope for deep soil</td>
<td></td>
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planting and appropriate landscaping to
the podium level and rooftop communal
space.

<table>
<thead>
<tr>
<th>Principle 6: Amenity</th>
<th>Officer's comment:</th>
</tr>
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<tbody>
<tr>
<td>UDCG comments:</td>
<td>The proposal has been amended to increase the building separation (between 6m - 16.7m) to the neighbouring residences to the north of the site. By adding developable area to the built form towards the front portion of the site (Tudor Street), greater amenity and visual privacy is achieved for both the existing residences and potential future residences.</td>
</tr>
<tr>
<td>While privacy conflicts within the development are generally well handled, there remain concerns about excessive overlooking of properties to the north. The property to the north west of the subject site may not presently be occupied by a residential building, but it is likely to be sometime in the next decade.</td>
<td></td>
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<tr>
<th>Principle 7: Safety</th>
<th>Officer's comment:</th>
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<tbody>
<tr>
<td>UDCG comments:</td>
<td>The main residential vehicular parking is accessed from Chaucer Street. The residential car parking is securely located and separated from the public domain. Both entry and egress for the commercial and visitor parking is from Milton Street.</td>
</tr>
<tr>
<td>The driveways will need to be secured after-hours. Both the entry and egress for the commercial car parking should be from Milton Street only. This will reduce the extent of vehicle-crossings of Chaucer Street and improve pedestrian visibility and safety.</td>
<td></td>
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<tr>
<th>Principle 8: Housing Diversity and Social Interaction</th>
<th>Officer's comment:</th>
</tr>
</thead>
<tbody>
<tr>
<td>UDCG comments:</td>
<td>Noted, comments regarding rooftop communal open space and landscaping are addressed in previous items above. Design changes and refinements have been achieved, as previously discussed.</td>
</tr>
<tr>
<td>No comment at this stage.</td>
<td></td>
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<tr>
<td>It is highly desirable to include a small communal space / roof deck serving the residents. The Panel would support these elements being above the height control, and</td>
<td></td>
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potentially offering the aesthetic advantage of articulating the top profile of the building."

<table>
<thead>
<tr>
<th>Principle 9: Aesthetics</th>
<th>Officer's Comment:</th>
</tr>
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<tbody>
<tr>
<td>UDCG comments:</td>
<td>Noted.</td>
</tr>
<tr>
<td>The general materials, colours and textures proposed are appropriate.</td>
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</table>

<table>
<thead>
<tr>
<th>Amendments Required to Achieve Design Quality</th>
<th>Officer's Comments:</th>
</tr>
</thead>
<tbody>
<tr>
<td>UDCG comments:</td>
<td></td>
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<tr>
<td>The following issues should be addressed:</td>
<td></td>
</tr>
<tr>
<td>Building height; and</td>
<td></td>
</tr>
<tr>
<td>Amenity and privacy problems and related setbacks; and</td>
<td></td>
</tr>
<tr>
<td>Landscaping</td>
<td></td>
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<tr>
<td>The amended proposal is considered to have adequately addressed the key areas of concern raised by the Group in respect to access, landscaping, amenity and aesthetics. The proposal is considered to be an appropriate response to the site and its surroundings within the context of a growth precinct and being a desirable site redevelopment in this location on the edge of the Hamilton commercial precinct.</td>
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Apartment Design Guide (ADG) - Key "Rule of Thumb" Numerical Compliances

The ADG provides benchmarks and guidelines for the design and assessment of a residential apartment development. The following section contains an assessment of the development against key controls of the ADG.

3B Orientation:

The proposal has been designed to address Tudor Street, which is a main arterial road into Hamilton and Newcastle. Tudor Street is a wide street and shadows cast to the south do not affect any properties across the road. The development is designed with commercial tenancies on the ground floor to activate the street.

3C Public Domain interface:

The proposal has been designed to enhance the public domain through the use of resilient surface materials, discrete or concealed service areas, clearly defined entrances to the building for pedestrian and vehicle access, and activation spaces including the commercial tenancies fronting the street. Balconies and windows of
upper level apartments overlook all streets and the public spaces on the development, facilitating passive surveillance.

Secured pedestrian access is provided to the development from Tudor Street with a secondary access from Milton Street. Landscaping is incorporated in the rear setback to soften the car parking area.

3D Communal and Public open space:

Communal areas are located on Level 4 and at ground level, with 230m² of communal open space located over the two levels. This equates to 14% of the site area and any shortfall is accommodated by introducing larger private terraces. Additionally Gregson Park is less than 100m from the site and is a significant recreational park for the residents of Hamilton.

3E Deep Soil Zones:

70m² of deep soil landscaping is proposed along the north boundary, to provide a buffer to adjoining lots and amenity to the ground floor common area of the proposed building. Upper level terraces and communal areas incorporate large landscaped garden beds to soften the edges of the built form and to provide a greater amenity for the users. Landscaping is also proposed along Tudor Street, Chaucer Street and Milton Street, with appropriate selections to contribute to the public domain.

The ADG acknowledges that deep soil zones may not be possible in respect of proposals that involve the building typology and location of that which is proposed. The variation is considered acceptable as non-residential uses occupy the site at ground floor level, which is appropriate for the renewal corridor location of the site. Overall, the landscaping design responds to the site conditions.

3F Visual Privacy:

When applying separation to buildings on adjoining sites, half the minimum separation distance measured to the boundary is applied. This distributes the building separation equally between sites. Therefore, the minimum separation distances (side and rear setbacks) for buildings are:

Up to 4 storeys / up to 12 metres:

a). 6 metres between habitable rooms / balconies
b) 3 metres between non-habitable rooms

5 to 8 storeys / approx. 25 metres:

a) 9 metres between habitable rooms / balconies
b) 6m between habitable and non-habitable rooms
Compliant separation exists for all apartments. The design has been amended to increase the separation distances (between 6m - 16.7m) to the adjoining residences to the north of the site. By adding developable area to the built form towards Tudor Street, greater amenity and visual privacy is achieved for both the existing residences and potential future residences. Vertical screening is introduced to prevent direct lines of sight.

3G Pedestrian Access and Entries:

The main pedestrian access to the development is from a secured lobby fronting Tudor Street. A covered loggia provides alternate access to the lobby from Milton Street and the visitor car park. Secure electronic access is provided to all lobbies.

3H Vehicle Access:

The main residential vehicular entrance is located for access from Chaucer Street. The car parking is securely located and separated from public access. Commercial and visitor parking is accessed from Milton Street, behind the main building frontage.

Lift and stair access is provided centrally to the building to avoid conflict with vehicular movements. Garbage rooms are located on the ground floor of the development.

3J Bicycle and Car Parking:

The development meets the car parking requirements for the precinct. The majority of parking is located in a secure basement to allow for an active street frontage. At-grade parking is allocated for visitors and commercial uses.

4A Solar and Daylight Access:

Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of two hours direct sunlight between 9am and 3pm at mid-winter.

In total, 22 of 31 apartments (71%) meet the required two hours of sunlight. High level windows and roof glazing elements have been incorporated where necessary to achieve direct sunlight to units. Six out of 31 apartments (19%) are south facing, however, these apartments front Tudor Street where activation/surveillance is encouraged.

4B Natural Ventilation:

At least 60% of apartments are required to be naturally cross-ventilated. 24 of 31 (77%) of apartments have a dual aspect, with the same percentage being naturally cross ventilated. All single aspect units are designed with an open plan and a wide frontage to incorporate cross flow ventilation and facilitate natural ventilation.
4C Ceiling Height:

All apartments have ceiling heights of 2.7m. Non-habitable rooms will have ceiling heights of 2.4m to allow for service co-ordination.

All apartments meet the ceiling height requirements of the ADG.

4D Apartment Size and Layout

Apartments are required to have the following minimum internal areas:

- a) 1-Bedroom / minimum 50m² internal area
- b) 2-bedroom / minimum 70m² internal area
- c) 3-Bedroom / minimum 90m² internal area

All apartment areas are in excess of the minimum sizes set out in the criteria. The apartment sizes are greater than the minimum required under the SEPP to provide a better level of amenity and an alternative to most apartments currently on the market.

4E Private Open Space and Balconies:

All apartments have balconies that meet or exceed the minimum areas and depths specified by the ADG. Balconies and private open spaces are located adjacent to and with direct access from the primary living space of apartments. Balustrades incorporate a combination of solid upstand and glazing, to provide a balance of privacy and views.

4F Common Circulation and Spaces:

The ADG indicates that the maximum number of apartments off a circulation core to a single level should be eight.

There are nine apartments proposed on each floor, throughout Levels 1-3, and four apartments on Level 4.

To support this minor non-compliance the lift core receives a good level of natural daylight and ventilation. Additionally, there are two lifts servicing the single core. Daylight and natural ventilation to the common corridor and lobby is also provided.

4H Acoustic Privacy:

Adequate building separation is provided within the development and from neighbouring buildings and adjacent uses.

Newcastle Local Environmental Plan 2012 (NLEP 2012)
Clause 2.1 - Land Use Zones

The land is zoned part R3 Medium Density Residential and part R4 High Density Residential under the provisions of NLEP 2012.

The foremost portion of the proposed development located on the R4 High Density Residential zoned part of the site (fronting Tudor Street), comprises ground floor business/retail premises with a residential flat building above.

The portion of the building proposed to be built upon the R3 Medium Density Residential zoned land does not have any ground floor commercial uses and therefore is classified as a residential flat building.

The proposal development is permissible and consistent with the relevant objectives within both of the applicable zones under the provisions of NLEP 2012.

Clause 4.3 - Height of Buildings

The Height of Buildings Map of NLEP 2012 provides for a 14 metre height limit over the R4 zoned portion of the site and a 10 metre height limit over the R3 zoned portion of the site.

The proposed development will result in a total height of 15.9m, equating to an exceedance of 1.9m over the R4 zoned portion of the site (subject to a 14m height limit) and 5.9m over the R3 zoned portion of the site (subject to a 10m height limit).

The applicant has submitted a clause 4.6 variation request to this standard. Refer to discussion under Clause 4.6 Exceptions to Development Standards below.

Clause 4.4 - Floor Space Ratio (FSR)

The Floor Space Ratio Map of NLEP 2012 provides for a 2:1 FSR over the R4 portion of the site and a 1.5:1 FSR over the R3 portion of the site.

The proposed development will result in a FSR of 2.84:1 over the R4 zoned portion of the site (subject to a 2:1 FSR) and a FSR of 1.44:1 over the R3 zoned portion of the site (subject to a 1.5:1 FSR).

The applicant has submitted a clause 4.6 variation request to the FSR standard of 2:1 for the R4 portion of the site. Refer to discussion under Clause 4.6 Exceptions to Development Standards below.

Clause 4.6 - Exceptions to Development Standards

Height of Buildings

The proposal includes a building that exceeds the maximum height of buildings under Clause 4.3 of NLEP 2012. The objective of Clause 4.6 is to provide an
appropriate degree of flexibility in applying certain development standards to achieve better outcomes from development.

Clause 4.6 of NLEP 2012 enables consent to be granted to a development even though the development would contravene a development standard. In assessing the proposal against the provisions of clause 4.6, it is noted that:

1. Clause 4.3 (height of buildings) is not expressly excluded from the operation of this clause; and

2. The applicant has prepared a written request, requesting that Council vary the development standard and demonstrating that:
   a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
   b) There are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6(3) requires a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that:

   a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

   b) There are sufficient environmental planning grounds to justify contravening the development standard.

The applicant's written submission contends that enforcing compliance with both the 10m and 14m building height development standards is unreasonable or unnecessary in the circumstances. An extract of the applicant's request to vary the Development Standard is provided below.

**Extent of Non-Compliance**

The ground level along Tudor Street is higher at the intersection of Milton Street than that of Chaucer Street. The exceedance of the 14m height limit is 1.9m on the Chaucer Street elevation. The exceedance of the 10m height limit on the Chaucer Street elevation is 5.9m however it is relevant that the building is terraced away from the neighbouring development to the north and now has a minimum setback of between 6m and 15m with no building occupying the north eastern corner of the site.

The height exceedance of 1.9m in the worst case is a 13.5% exceedance of the prescribed 14m maximum building height. The height exceedance of 5.9m in the worst case is a 59% exceedance of the prescribed 10m height limit. As noted elsewhere, the difference in level between Milton Street and Chaucer Street contribute to the exceedance of the height limits.
Are there Sufficient Environmental Planning Grounds?

The encroachment has a positive impact in terms of minimising conflict between the neighbouring detached housing and the proposed mixed use development. It does not unreasonably impact on surrounding development and or the public domain.

The proposed building height and design allows for an appropriate quantity and variety of housing supply along an urban transport corridor, which is appropriately zoned and earmarked for intensification. Non-compliance with the standard allows for the economically viable development of the land.

From an environmental planning perspective, the following options have been considered:

i. Decreasing the setbacks to the neighbouring detached residential housing lots adjoining has been considered however the potential impact in terms of loss of solar access, overlooking and bulk and scale are considered unacceptable.

ii. Reducing the floor to ceiling heights within units is a viable option, however, will not result in compliance with the development standard. Further, such a change would have a greater impact on the amenity of the proposed residential development for future residents than the benefit gained from such a reduction.

iii. Lowering the Floor Level. This would however contravene the Flood Planning Level.

iv. Delete units from the upper floor level. This would impact on the built form of the development and the variety and quantity of housing supply proposed to be provided by the development and result in transfer of built form to the setback currently provided to the northern boundary. This is considered undesirable.

Floor space ratio

The proposal includes a building that exceeds the maximum floor space ratio under Clause 4.4 of NLEP 2012. Clause 4.6 of NLEP 2012 enables consent to be granted to a development even though the development would contravene a development standard. In assessing the proposal against the provisions of clause 4.6, it is noted that:

3. Clause 4.3 (height of buildings) is not expressly excluded from the operation of this clause; and

4. The applicant has prepared a written request, requesting that Council vary the development standard and demonstrating that:

   c) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
d) There are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6(3) requires a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that:

a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

b) There are sufficient environmental planning grounds to justify contravening the development standard.

The applicant's written submission contends that enforcing compliance with the 2:1 FSR development standard is unreasonable or unnecessary in the circumstances. An extract of the applicant's request to vary the Development Standard is provided below.

**Extent of Non-Compliance**

The proposal seeks a FSR of 2.84:1 over the R4 zoned portion of the site. The variation to the FSR over this portion of the site is 42%.

**Are there Sufficient Environmental Planning Grounds?**

The proposed building height, associated FSR and design allows for an appropriate quantity and variety of housing supply along an urban transport corridor, which is appropriately zoned and earmarked for intensification. The departure from the development standard over a small part of the site on the Tudor Street frontage has a positive impact in terms of minimising conflict and to ensure minimal impact to the neighbouring low scale housing during transition of the area to higher densities.

The proposal is wholly in keeping with the objectives of Clause 4.4 of the LEP in terms of bulk and scale does not unreasonably impact on surrounding development and or the public domain.

From an environmental planning perspective, the following options have been considered:

1) The area is in transition to higher density living in keeping with zoning provisions.

2) Decreasing the setbacks to the neighbouring detached residential housing lots adjoining and increasing the FSR to the permissible ratio of 1.5:1 over this part of the site has been considered however the potential impact in terms of loss of solar access, overlooking and bulk and scale are considered unacceptable.

3) Delete units from the upper floor level. This would impact on the built form of the development and the variety and quantity of housing supply proposed to be provided by the development and result in transfer of built
form to the setback currently provided to the northern boundary. This is considered undesirable.

4) The implications of the reduction in yield as a result of deleting the upper level would be contrary to the Objects of the Environmental Planning and Assessment Act, in particular the promotion and coordination of the orderly and economic use of development and land.

5) The exceedance of the FSR over the site fronting Tudor Street allows for greater setbacks to the adjoining residential properties to the north. The FSR proposed over the R3 portion of the site is less than permissible. Increasing the FSR in this part of the site has the potential to negatively impact the neighbouring properties and would be contrary to the objectives of Clause 4.4 of the LEP.

Officer's comment

An assessment of the requests in relation to the height of buildings and FSR development standards has been undertaken and it is considered that:

a) The requests adequately address the matters required to be demonstrated by clause 4.6(3) of NLEP 2012.

b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R3 Medium Density and R4 High Density Zones in which the development is proposed to be carried out.

c) The Secretary's (ie. of the Department of Planning and Environment) concurrence to the exception to the height of buildings development standard and the FSR development standard, as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS18-003 of 21 February 2018.

d) The applicant has demonstrated that the standard is unreasonable in this instance and that the proposed height and density of development is consistent with the character of surrounding developments in the area and is in accordance with the relevant zone objectives. The proposed non-compliance would not result in any significant impacts and therefore the proposal has planning merit.

The proposed exception to the height of building and FSR development standards of NLEP 2012 is considered to be an acceptable planning outcome and, in this instance, strict compliance would be unnecessary. The proposed variations to the development standard, in this instance, are also unlikely to cause any undue adverse environmental impacts, including impacts on neighbouring properties in terms of overshadowing and visual privacy.
The proposal is consistent with the intended future urban form within the area, having regard to the combination of controls under NLEP 2012 and Newcastle DCP 2012 (specifically Section 6.06 - Hamilton Renewal Corridor).

The request for the height of the proposed building to exceed the relevant 10m and 14m height limits and the 2:1 floor space ratio is supported.

**Clause 5.10 - Heritage Conservation**

The subject site does not contain any heritage items and is not within a heritage conservation area.

The subject site is located in the vicinity of three heritage items as follows:

- **Former police station** 57 James Street Hamilton Local heritage significance
- **Anzac House** 117 Tudor Street Hamilton Local heritage significance
- **Date palms** Chaucer Street Hamilton Local heritage significance

The proposed development will not have a significant impact on the heritage significance of these heritage items. The height, bulk and scale resulting of the proposed development is consistent with the intended future character of the area and the overall impacts of the proposal are acceptable in relation to streetscape and overshadowing.

**Clause 6.1 - Acid Sulfate Soils**

A detailed investigation of the site included an assessment for acid sulfate soils. Results indicated a natural dark red-brown medium to coarse grained sand material, encountered at depths ranging from approximately 2-3m, contains the potential for acid generation and will require an Acid Sulfate Soils Management Plan to prevent the potential release of acid leachate to the surrounding environment. An appropriate condition is recommended to require that an acid sulfate soils management plan be developed and complied with.

**Clause 6.2 - Earthworks**

The extent of earthworks proposed to facilitate the development is considered to be acceptable having regard to this clause.

**5.2 Any draft environmental planning instrument that is or has been placed on public exhibition**

There is no exhibited draft environmental planning instrument relevant to the application.
5.3 Any development control plan

Newcastle Development Control Plan (DCP)

This section applies with respect to the character associated with design and appearance. The overall floor space ratio, height and character of the development is considered to be acceptable in the context of the area and the site, as previously discussed elsewhere in this report.

The main planning requirements of relevance in the DCP are discussed below.

Commercial Uses - Section 3.10

The development provides two commercial tenancies fronting Tudor Street (224m² total). The proposed development would contribute to the enhancement of the economic viability of commercial centres and contributes to the provision of residential accommodation services and commercial mixed use services within the Hamilton growth precinct.

The proposed development is considered to achieve the objectives and controls within this section of the DCP. These include activation of street frontages, promotion of uses that attract pedestrian traffic along ground floor street frontages for commercial and food and drink premises, and compatibility with other redevelopment sites in the locality.

Flood Management - Section 4.01

Council's Senior Development Officer (Engineering) has provided the following comments in relation to the proposal:

'The proposed development is compliant with Council's flood requirements with minimum floor levels above RL 6.12 m AHD, the basement car park entry level at RL 6.12 m AHD (100 year ARI protection) and the ground level car park at RL5.78 m AHD which is above the 100 year ARI flood level. The level 1 floor level is also above the PMF level so a flood refuge has been provided within the upper levels.'

Accordingly, the proposal is considered to be acceptable in relation to flooding risks.

Mine Subsidence - Section 4.03

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

Safety and Security - Section 4.04

The overall building design and functionality, with frontage to three public streets allows increased casual surveillance of all surrounding footpath areas.
The proposal achieves good surveillance by providing clear sight lines between private and public spaces, effective lighting of public places, suitable landscaping and activation of the Tudor Street frontage.

Social Impact - Section 4.05

It is considered unlikely that a residential development of the nature proposed would result in increased anti-social behaviour. The development provides for increased housing choice within the area, which is considered a positive social outcome.

Soil Management - Section 5.01

A sediment and erosion management plan has been submitted with the application, with provisions to minimise sediments leaving the site during the construction period. A condition is recommended to require that sediment and erosion control measures remain in place for the relevant construction period.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP 55.

Heritage Items - Section 5.05

This issue is discussed under Clause 5.10 Heritage of NLEP 2012.

Archaeological Management - Section 5.06

The site is not specifically listed in the Newcastle Archaeological Management Plan 1997 or NLEP 2012 as an ‘Archaeological Site’.

Hamilton Renewal Corridor - Section 6.06

The site is located within the Hamilton Renewal Corridor (Precinct One). This Corridor provides an opportunity for economic renewal and higher density housing. Council's Development Control Plan notes that this precinct lacks a consistent character, given the range of uses, building types and scales, as well as consisting of vacant and underdeveloped sites. It is envisaged that this precinct will capitalise on the outlook and proximity to Gregson Park and provide for higher density residential uses within mixed use developments.

Development sites in this precinct are to have a minimum lot width of 24m to Tudor Street. The subject site has a frontage of 40m to Tudor Street.

Development is to be built to the front boundary along Tudor Street and street corners are to be emphasised by permitting a departure from the building envelopes. Setbacks are to respect the low scale residential character of the adjacent residential precinct to the north.
The proposed development provides an appropriate interface with adjoining residential properties to the rear, by concentrating building mass to the Tudor Street boundary and maintaining separation from rear residential development. The street wall height, whilst in excess of the prescribed requirement is appropriately expressed through the use of colours, textures, lightweight materials and glazing on the upper floors.

The site is an isolated site bounded by Chaucer Street and Milton Street intersections at either side. As a result, the site does not form part of a continuous or consistent street wall height.

The proposed development is of a high architectural quality and would contribute to a vibrant and active streetscape through its design. Overall, the primary built form is considered appropriate in light of surrounding development in the area and the emerging context for the Hamilton growth precinct.

Landscape Open Space and Visual Amenity - Section 7.02

A suitably qualified Landscape Architect has prepared the submitted landscape plan.

The site is currently devoid of any landscaping. The proposed landscaping scheme will improve the amenity of the site and the area generally, and will cater for substantial landscape elements not currently available on the site.

The proposal is acceptable having regard to the requirements of this section. It is noted that these requirements overlap with criteria elsewhere within the DCP and SEPP 65.

Traffic, Parking and Access - Section 7.03

The proposal has been assessed by CN’s Senior Development Officer (Engineering) and is considered to be acceptable subject to conditions, as recommended. Details of the traffic and parking assessment are outlined within Section 5.6 of this report.

Section 7.05 - Energy efficiency

The proposal is acceptable having regard to this section.

Stormwater - Section 7.06 and Water Efficiency - Section 7.07

The proposal can comply with CN’s policies relating to water management. Appropriate conditions have been recommended to require that the development meet the relevant standards.

Waste Management - Section 7.08

A Waste Management Plan (inclusive of Site Waste Minimisation Management Plan) was included as part of the application. Details of management of construction
waste materials and operational waste are included in the Plan. The proposal provides for on-site storage facilities.

It is not appropriate in this location and for this scale of development to permit kerb-side collection of bins. Conditions are recommended that require on-site collection and management of waste facilities. Further confirmation will be required with respect to servicing, either by private contractor or CN waste services.

Based on the submitted information, the proposal is considered to be acceptable.

Street Awnings and Balconies - Section 7.10

The proposal provides a street awning along the frontage of the retail premises at ground level. The awning has been designed to be incorporated as part of the architectural design of the building and is appropriate for the site. No balconies are proposed to extend over the footpath area on the street.

Development Contributions

The proposed development generates a development contribution of $99,000.00, payable as per the Newcastle Section 94A Development Contributions Plan 2009.

A condition requiring this contribution to be paid has been included in the Schedule of Conditions (refer to Attachment B).

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the Environmental Planning and Assessment Act 1979 and Regulation 2000.

No Coastal Management Plan applies to the site or the proposed development.

5.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

a) Character, Streetscape, External Appearance, Urban Design, Height, Bulk and Scale

The application was considered by the Urban Design Consultative Group and it is considered that the amended plans are acceptable having regard to the proposed height, external appearance, character, bulk and scale.

The proposal is consistent with the future character envisaged by the relevant planning controls and is considered acceptable in this regard.
b) Traffic, Access and Parking

The proposal has been assessed by CN’s Senior Development Officer (Traffic), and found to be acceptable, subject to draft conditions included in Attachment B.

CN’s Senior Development Officer (Traffic) provided the following comments:

Traffic Generation

'The traffic report has identified the additional traffic generation from the development is up to 26 vehicle trips per hour and that traffic generation from the current use of the site would be greater than this. Therefore the development will not result in an increase in traffic on the road network therefore will not adversely impact on the local and state road network.'

Parking Demand

'As the site is within the Hamilton renewal corridor the car parking rate applicable to the development is as follows;

i) 0.6 car spaces per 1 bedroom unit, 0.9 spaces per 2 bedroom unit and 1.4 spaces per 3 bedroom unit plus 1 space for the first 3 units then 1 space per 5 units for visitors.

ii) 1 bike space per unit plus 1 space per 10 units for visitors.

iii) 1 motorcycle space per 20 car spaces.

iv) 1 space per 50 m² GFA for the commercial premises.

The proposal provides 41 secured resident car parks within the basement plus 13 commercial visitor and additional resident spaces at ground level, which more than complies with the DCP. Provision has been made for bicycle storage has been provided within the car park area. The excess car parking more than compensates for the lack of motorcycle spaces therefore the development is compliant with Council's DCP. The traffic report has identified the car parking is also compliant with AS2890.1-2004.'

c) Environmental

The proposal has been assessed by CN's Senior Environmental Protection Officer with regard to noise and land contamination and is considered to be acceptable subject to recommended conditions being included in the consent. The following comments have been provided by CN's Senior Environmental Protection Officer:

Contamination

'The subject site was historically used for as a service station dating back to the 1960s. Service station operations ceased in 1995. The service station site was
decommissioned in 1996. The site was used as the admin building for Newcastle Taxis following the end of service station operations. The site is currently unoccupied.

The site was formerly subject of a contamination notice by the NSW EPA relating to hydrocarbon contamination from former site activities associated with service station and mechanical workshop operations. The site has been remediated in the past between 1996 and 2003 when remedial activities were ceased and the site was deemed to be remediated to a standard appropriate for industrial/commercial use.

As the site is proposed to be used in part for residential purposes and incorporated a basement (which increases potential vapour risks), CN requested the applicant provide further information to address contamination to ensure the site can be made suitable for the proposed landuse.

A Detailed site inspection and Remedial Action Plan (RAP) were prepared to support the application. The RAP prescribes a remedial strategy which includes excavation of areas of elevated hydrocarbon contamination at depth beyond that which would be normally required for the proposed development and disposal of this material off site following appropriate waste classification.

A NSW EPA accredited site auditor has reviewed the RAP and the Auditor concludes that “the site may be made suitable if the RAP is followed.”

The ESU considers that the proposed remedial strategy is reasonable and can be practically implemented. Appropriate conditions should be applied to ensure the RAP and auditor recommendations are complied with. Also a condition of consent will be recommended to ensure an auditor reviews the required validation documentation and provides a site audit statement confirming the site has been made suitable for the proposed landuse prior to occupation.’

Acid sulfate soils

The detailed investigation of the site included an assessment for acid sulfate soils. Results indicated a natural dark red-brown medium to coarse grained sand material encountered at depths ranging from approximately 2-3 m contains the potential for acid generation and will require an Acid Sulfate Soils Management Plan to prevent the release of acid leachate to the surrounding environment. An appropriate condition will be recommended to require an acid sulfate soils management plan be developed and complied with.’

Noise

A noise impact assessment has been carried out in relation to the proposal. The purpose of this assessment was to determine the noise impact from passing road traffic within habitable spaces of the development and to ensure that noise levels comply with the requirements of the Roads and Maritime Services, Department of Planning and Environment, NSW Environment
Protection Authority and City of Newcastle. Assessment was also been carried out to determine the noise impact activities and equipment associated with the development may have on nearby neighbours (i.e. vehicle movements, mechanical plant).

Given the large scale of development and proximity to sensitive landuses, Council required the assessment to also include a Construction Noise and Vibration Management Plan.

Section 7 of the Noise Impact Assessment provides detailed recommendations to be incorporated into the proposal to ensure acoustic guidelines will be met which address:

i. appropriate glazing, roof/ceiling/wall construction
ii. balcony design (enclosed balustrade required to a height of 900mm)
iii. mechanical plant room design
iv. basement carpark louvre design

Given the variability of potential commercial/retail occupancies, the acoustic assessment did not prescribe specific controls for these areas. No hours of operation have been proposed for these premises. It is recommended standard retail hours be applied unless specific details are provided to justify longer hours.

Given the specific acoustic design requirements, a condition is recommended to ensure the recommendations of the acoustic report are implemented and an acoustic consultant provides certification upon completion of construction."

d) Amenity (Privacy, Overshadowing and Views)

Privacy

The proposed development will not result in any significant privacy impacts on neighbouring properties. All the windows and balconies are either screened by walls or are in excess of the separation distances under the Apartment Design Guide.

Acoustics

A noise assessment was carried out to support the proposed development. The noise assessment demonstrated that compliance with internal noise level requirements would be achieved.

Views

The development does not result in unreasonable impact on views or outlook. There are no significant views that will be impacted in this location. The impact on the general outlook is reasonable having regard to the allowable height and scale for development under relevant planning policies.
There are no significant external impacts associated with the proposal. The application has demonstrated that there will be no significant adverse traffic impacts and it is considered that the development does not cause any significant overshadowing, privacy impacts or view loss for adjacent properties. The proposal is also likely to have broad positive economic and social impacts in that it will create additional employment opportunities, support the demand for local services and facilities; increase social activity and street activation within this central location close to existing amenities and public transport services.

5.7 The suitability of the site for the development

The site it is located in the Hamilton Renewal Corridor, which is well serviced by public transport and community facilities.

The proposal will likely have positive economic benefits in the locality as the increased number of residents supports the demand for local services and facilities.

The proposal has been considered by CN's Senior Environmental Protection Officer in terms of the land contamination issues and acoustic impacts on the proposed development and it is considered that the proposal is acceptable.

The proposal includes sufficient measures to address potential crime and safety issues.

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

5.8 Any submissions made in accordance with this Act or the regulations

The application was originally publicly notified in accordance with the DCP. One submission was received, objecting to the proposal on the grounds of privacy and overlooking.

The proposal has been subsequently amended in response to concerns raised by officers and the overall building height has been reduced. The amended application was re-notified and one submission was received, objecting to the proposal on the grounds of on-street parking and impacts to neighbours during the construction period.

The key issues raised within the submission have been discussed previously in this report. The following provides a summary of the issues raised and a response to those issues.

i. Traffic - Traffic generation and increased traffic movements around the site.

Comment: Additional traffic generated by the proposed development is considered to have minimal impact on the operation and performance of the local road network and nearby intersection.
ii. Parking - Increased pressure for on-street parking, particularly during construction.

Comment: The proposed development provides sufficient car parking on the site and meets the parking requirements outlined within the DCP. The demand for on-street parking is not expected to change significantly as a consequence of the proposed development.

iii. Disruption to neighbouring businesses during the construction period.

Comment: Conditions of consent have been included in the Schedule of Conditions (refer to Attachment B) in relation to hours of work, construction and traffic management measures. Prior to commencing works, the developer is required to submit a Construction Traffic Management Plan to Council for approval. The plan is required to address traffic control measures and ensure safe, continuous movement of traffic and pedestrians within the road reserve.

5.9 The public interest

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

The development is in the public interest and will allow for the orderly and economic development of the site.

6.0 CONCLUSION

The proposal is acceptable when assessed against the relevant heads of consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 and is supported on the basis that the recommended conditions in Attachment B are included in any consent issued.

The amended proposal provides an acceptable level of amenity within the context of this area and is generally consistent with state and local guidelines relating to building design and amenity. As such, the amended proposal is considered to address the issues arising from the UDCG and officer's assessment, and is an acceptable form of development within the context of the site and location.

The proposed development will assist with enhancing the quality and amenity of the public domain, through street activation, while not adversely impacting on any identified view corridors. The design of the development has appropriately addressed heritage issues and resolved streetscape and circulation requirements. The proposed building's bulk, mass and articulation sit comfortably within the streetscape. The proposal is acceptable having regard to environmental impacts and the principles of ecologically sustainable development.
ATTACHMENTS

Attachment A: Submitted Plans Under Separate Cover - 116 Tudor Street Hamilton
Attachment B: Draft Schedule of Conditions - 116 Tudor Street Hamilton
Attachment C: Processing Chronology - 116 Tudor Street Hamilton
Attachment B

SCHEDULE OF CONDITIONS

Application No: DA2017/01088
Land: Lot 1 DP 1232442
Property Address: 118 Tudor Street Hamilton NSW 2303
Proposed Development: Erection of five-storey mixed use development, comprising 31 residential units, two ground floor commercial units, associated car parking, site works and remediation

REASONS FOR CONDITIONS

1. The conditions of this consent have been imposed in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979. The conditions relate to any matter referred to in Section 4.15 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>
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<th>Plan No.</th>
<th>Version</th>
<th>Prepared by</th>
<th>Dated</th>
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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. The car park is to be designed to comply with AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking and AS/NZS 2890.8:2009 - Parking facilities - Off-street parking for people with disabilities. Details are to be included in documentation for a Construction Certificate application.

4. All proposed driveways, parking bays, loading bays and vehicular turning areas are to be constructed with a base course 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.

5. Roof water from the proposed new work is to be directed to the proposed water tank and being reticulated 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 designed in accordance with the Plumbing Code of Australia (National Construction Code Volume 3). Full details are to be included in documentation for a Construction Certificate application.

6. Overflows from the roof water 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 included in documentation for a Construction Certificate application.

7. 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 Northrop Engineers Job No NL166976 Drawing C01DA to C03DA Issue A dated 14/07/17. Full details are to be included in documentation for a Construction Certificate application.

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. 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.

10. The floor level of all proposed buildings or building additions is to be not below RL 6.12m Australian Height Datum and being indicated on plans for a Construction Certificate application. The finished floor levels are to be certified by a registered Surveyor prior to the placement of the floor material and a copy of the Surveyor’s Certificate is to be forwarded to the Principal Certifying Authority.

11. The whole of the proposed structure below known flood level (i.e. reduced level RL 6.12m Australian Height Datum) is to be constructed in materials and finishes that are resistant to damage from floodwaters/tidal waters. Any new machinery or equipment, electrical circuitry or fitting, storage unit or similar items likely to be damaged by floodwaters/tidal waters being installed above the said height or alternatively being of materials and functional capability resistant to the effects of floodwaters/tidal waters. Full details are to be included in documentation for a Construction Certificate application.
12. 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.

13. 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 an Erosion and Sediment Control Plan that is to be submitted for approval with the Construction Certificate application. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.

14. Working drawings and specifications of the proposed building are to be submitted to the Subsidence Advisory NSW 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.

15. A detailed Acid Sulfate Soil Management Plan addressing all elements provided in the Acid Sulfate Soil Manual (ASSMAC 1998) shall be prepared and submitted with documentation for a Construction Certificate application. The plan shall be implemented for the duration of remediation and construction works as required.

16. 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.

17. A design verification statement from a qualified designer shall be submitted to the Certifying Authority. The statement shall confirm the Construction Certificate plans and specifications achieve or improve the design quality of the development for which consent is granted, having regard to the design quality principles set out in Part 2 of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development.

Full details are to be included in the documentation for the first Construction Certificate for the residential flat development.

Note: ‘Qualified Designer’ means a person registered as an architect in accordance with the Architects Act 2003. This condition is imposed in accordance with Clauses 143A of the Environmental Planning and Assessment Regulation 2000.
18. Commercial vehicular crossings are to be constructed across the road reserve in Chaucer Street and Milton Street, in accordance with the following criteria:
   a) Constructed in accordance with Council's A1300 - Driveway Crossings Standard Design Details.
   b) The driveway crossing, within the road reserve, shall be a maximum of 6 metres wide.
   c) 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.
   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 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 has been granted by Council. An application under Section 138 must be applied for and approved before the issue of a Construction Certificate.

19. The developer is to design and construct the following works within the Tudor Street, Chaucer Street and Milton Street frontages of the site at no cost to Council and in accordance with Council's guidelines and design specification:
   a) Public Domain Works - Reconstruct full width footpath to Council specifications.

Detailed public domain plan including longitudinal and cross sections is to be provided to Council for review and approval as part of the S138 Roads Act 1993 application.

20. Prior to the issue of a Construction Certificate, the proponent is to prepare and submit to the PCA and Council an Environmental Management Plan (EMP) for works on the site, which is 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 and process water. 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. This strategy should be cross-referenced with the water management strategy.
   d) A soil management strategy, detailing measures to be implemented to manage the identification and control and disposal of any acid sulphate soils or soil contamination identified during site works.
   e) A noise and vibration management program detailing measures to minimise the impact of the construction phase on the amenity of the locality in accordance with Australian Standard AS 2436. 2010 (Guide to Noise and Vibration control).
on Construction, Demolition and Maintenance Sites).

f) A waste minimisation strategy, which aims to avoid production of waste and maximise reuse, recycling or reprocessing of potential waste material.

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

21. A total monetary contribution of $99,000.00 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:

a) This condition is imposed in accordance with the provisions of The City of Newcastle 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.

b) The City of Newcastle 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.

c) 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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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

22. The proposed remediation work is to be carried out in accordance with the requirements of the submitted Remedial Action Plan (RAP) prepared by Cardno dated 10 August 2018 and letter; Interim Advice 2 Rev1 - Auditor’s Review - August 2018; 114-116 Tudor Street, Hamilton NSW 2303.

23. 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, or

c) Be a temporary chemical closet approved under the Local Government Act 1993.

24. If construction work is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the need to enclose a public place, a hoarding or fence must be erected between the work site and the public place. If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place. Any such hoarding, fence or awning is to be removed when the work has been completed.

25. An application is to be made to and approved by Council for the erection of a hoarding or part closure of the footway prior to construction being commenced. Such hoarding structure or protective fence shall comply with the Work Health and Safety Act 2011, Work Health and Safety Regulation 2011 and any relevant approved industry code of practice. Notice of intention of commencement must be given to WorkCover New South Wales.

26. A rigid and durable sign is to be erected on any site on which building work is being carried out, before the commencement of the work:

a) showing the name, address and telephone number of the Principal Certifying Authority for building work and subdivision work, and

b) showing the name, address and telephone number of the Principal Contractor for any building work and also including a telephone number on which the Principal Contractor may be contacted at any time for business purposes, and

c) stating that unauthorised entry to the work site is prohibited, and

d) being erected in a prominent position that can be read easily by anyone in any public road or other public place adjacent to the site.

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

27. All building work must be carried out in accordance with the provisions of the National Construction Code.

28. 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.

29. 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.

30. Prior to commencement of site works the developer is to submit to Council for approval a Construction Traffic Management Plan addressing traffic control measures to be utilised in the public road reserve during the construction phase.

31. The Construction Traffic Management Plan is to be prepared by a Roads & Maritime Services accredited person with a Design and Audit Traffic Control Plans Certificate in accordance with Australian Standard 1742.3:2009 - Manual of uniform traffic devices -
traffic control for works on roads. The plan is to ensure the provision for safe, continuous movement of traffic and pedestrians within the road reserve.

32. 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.

33. 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.

34. The proposed customer/staff parking bays are to be permanently marked out on the pavement surface and being clearly indicated by means of signs and/or pavement markings.

35. 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.

36. Construction 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 work is to be generated on Sundays or public holidays.

37. 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 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.

38. Any excavated material to be removed from the site is to be assessed, classified, transported and disposed of in accordance with the Department of Environment and Climate Change’s ‘Waste Classification Guidelines Part 1: Classifying Waste’.

39. Any fill material imported into the site is to be Virgin Excavated Natural Material or material subject to a Resource Recovery Order that is permitted to be used as a fill material under the conditions of the associated Resource Recovery Exemption, in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the Protection of the Environment (Waste) Regulation 2014.

40. Documentation demonstrating the compliance with the conditions of the appropriate Resource Recovery Order and Resource Recovery Exemption must be maintained for any material received at the site and subsequently applied to land under the conditions of the Resource Recovery Order and Exemption. This documentation must be provided to Council officers or the Principal Certifying Authority on request.

41. 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 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

42. 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.

43. 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 shadecloth mesh or similar products 1.8m high around the
perimeter of the site and around every level of the building under construction.

44. 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.

45. 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.

46. A Community Liaison Officer is to be appointed prior to construction works
commencing to act as a point of contact for adjacent occupiers throughout the
construction phase of the development. The Community Liaison Officer is to be
engaged until construction works are completed. Contact details of the Community
Liaison Officer are to be provided to Council and adjoining occupiers via a letterbox
drop/community newsletter and signage at the site.

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

47. 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.

48. Prior to the issuing of an Occupation Certificate the following documentation is to be
submitted to Certifying Authority and Council;

   i. A validation report (prepared in accordance with the requirements of the RAP as
approved by the site auditor) by a suitably qualified consultant in accordance
with the relevant NSW Environment Protection Authority Guidelines.
ii. An Environmental Management Plan for the long term management of contamination as approved by the NSW accredited Site Auditor - if required based on validation report and auditor requirements.

iii. A 'Part A' Site Audit Statement with the purpose of reviewing the completed remedial works, validation report and any required Long Term Environmental Management Plan to determine the suitability of the land for the proposed landuse.

49. 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 work or prior to the issue of any Occupation Certificate in respect of development.

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

51. 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 The City of Newcastle 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.

52. 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.

53. A design verification statement from a qualified designer shall be submitted to the Principal Certifying Authority prior to the issue of an Interim or Final Occupation Certificate, whichever occurs first. The statement shall confirm the development has been constructed in accordance with the quality principles set out in Part 2 of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development.

Note: 'Qualified Designer' means a person registered as an architect in accordance with the Architects Act 2003. This condition is imposed in accordance with Clauses 154A of the Environmental Planning and Assessment Regulation 2000.

54. Appropriate acoustic treatment is to be implemented in accordance with the recommendations set out in the report prepared by Reverb Acoustics, dated October 2017. Written final certification confirming the recommended acoustic treatment has been implemented in accordance with the requirements of the above report is to be submitted to the Principal Certifying Authority and Council prior to the issue of an Occupation Certificate.

Note: The acoustic consultant may need to be involved during the construction process in order to ensure final certification is achieved.

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

55. The hours of operation or trading of the commercial premises are to be not more than from:

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Same day
56. 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, 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.

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.

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.

59. 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.

60. 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'.

61. Appropriate arrangements being made for the collection of garbage (recyclable and non-recyclable) from within the site such arrangements being in place prior to the occupation of the premises the subject of this development application. Garbage bins are not to be presented to the street for kerbside collection.

62. 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.

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<th>Lot on plan</th>
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**ADVISORY MATTERS**

- 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.

- 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.
- 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.

- 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*.

- Prior to commencing any building works, the following provisions of Division 6.2 of the *Environmental Planning and Assessment Act 1979* are to be complied with:
  
  a) A Construction Certificate is to be obtained; and
  
  b) A Principal Certifier is to be appointed for the building works and Council is to be notified of the appointment; and
  
  c) Council is to be given at least two days notice of the date intended for commencement of building works.

- 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.

- 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*.

- 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.

- An annual Fire Safety Statement in the form described in Clause 175 of the *Environmental Planning and Assessment Regulation 2000* 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.

- It is an offence under the provisions of the *Protection of the Environment Operations Act 1997* 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.

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

- For the purpose of applying the provisions of the Building Code of Australia for class 1, 2, 3, 4, 9a (health care) and 9c (aged care) buildings, it is advised that the proposed building is located in a Flood Hazard Area and the:
a) Defined Flood Level (DFL) is RL 5.62 m Australian Height Datum (AHD)
b) Flood Hazard Level is RL 6.12 m AHD (Freeboard is 500mm above DFL)
c) Maximum Flow Velocity of floodwaters for the Defined Flood Event is 0.1 m/s

END OF CONDITIONS
SCHEDULE 2

REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being: Newcastle Local Environmental Plan 2012 and applicable State Environmental Planning Policies.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Newcastle Development Control Plan 2012.
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development has appropriate management and mitigation of impacts through conditions of consent.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

- Confirm and clarify the terms of Council's determination;
- Identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;
- Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- Set standards and measures for acceptable environmental performance; and
- Provide for the ongoing management of the development.
### Attachment C

THE CITY OF NEWCASTLE
Report to Development Applications Committee Meeting on 20/11/2018

**PROCESSING CHRONOLOGY**

**DA2017/01088 - 116 Tudor Street Hamilton**

<table>
<thead>
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<tr>
<td>6 September 2017</td>
<td>Application lodged</td>
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<tr>
<td>12 September 2017</td>
<td>Public notification of application</td>
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<tr>
<td>15 November 2017</td>
<td>Application presented to UDCG</td>
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<tr>
<td>9 February 2018</td>
<td>Amended plans received</td>
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<td>21 March 2018</td>
<td>Amended plans reviewed by UDCG</td>
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<td>21 May 2018</td>
<td>Application re-notified</td>
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<tr>
<td>14 August 2018</td>
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The application seeks consent for demolition of a dwelling and outbuilding, erection of a three-storey dwelling, associated pergola, swimming pool, fencing and retaining walls, at 70 Memorial Drive Bar Beach.

The application is referred to the Development Applications Committee for determination, due to proposed variations to the following development standards of Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than 10% variations:

i. maximum building height (16.2% variation proposed); and

ii. floor space ratio (15.0% variation proposed).

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

1) Compliance with the height of buildings development standard of the NLEP 2012; and

2) Compliance with the floor space ratio development standard of the NLEP 2012.

Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979 and is considered to be acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and

B. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and

C. That DA2018/00592 for demolition of a dwelling and outbuilding, erection of a three-storey dwelling, associated pergola, swimming pool, fencing and retaining walls, at 70 Memorial Drive Bar Beach, be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment B.

Political Donation / Gift Declaration

Section 10.4 of the Environmental Planning and Assessment Act 1979 requires a person to disclose "reportable political donations and gifts made by any person with a financial interest" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

a) All reportable political donations made to any local Councillor of Council; and
b) All gifts made to any local Councillor or employee of that Council.

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 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 of one allotment, being Lot 8 DP 32622, known as 70 Memorial Drive Bar Beach. The site is rectangular in shape with a street frontage of 15.24m and a depth of 39.625m (area 603.9m²). The site is located on the northern side of Memorial Drive, 65m south of the Wrightson Avenue intersection.

The subject site slopes steeply from the front boundary towards the rear boundary (7m fall) and it currently contains an older style two-storey dwelling, detached garage, decks and a number of trees and vegetation in the rear yard.

The subject site slopes steeply from the front boundary towards the rear boundary (7m fall) and it currently contains an older style two-storey dwelling, detached garage, decks and a number of trees and vegetation in the rear yard.

The general form of development in the area consists of a mixture of original dwellings (typically 50-60 years old), newly renovated two-storey and three-storey dwellings and modern dwellings up to three stories in height.

2.0 **THE PROPOSAL**

The applicant seeks consent to demolish the buildings on the site and erect a three-storey dwelling with a swimming pool and pergola in the rear yard. Due to the slope of the site (7m fall over the site), the applicant is also seeking consent for the construction of retaining walls and associated site works.

The upper level (Level 1) of the proposed dwelling contains the master bedroom, three other bedrooms and a bathroom. The middle level (Ground Level) contains the entry foyer and the main living areas. The Lower Level contains a large garage, secondary living area, guest bedroom, wine cellar and outdoor kitchen. Decks are provided to the front and rear of Ground Level and Level 1. Due to the slope of the site, each floor of the proposed dwelling is a split level design with the lift and stairwell located centrally to service the various floor levels.

The proposed dwelling has a modern architectural style, with concealed roofing, rendered finishes, light-weight cladding and large glazed areas.

The proposal was amended, at the request of City of Newcastle (CN) officers, to comply with CN's development standards for the construction of the driveway crossover, replacement of the footpath and the height of the front fence adjacent to the driveway. The applicant was also requested to submit information regarding consistency with the building envelope, the proposed floor space ratio and view...
sharing. Additional reports were also requested with regard to geotechnical assessment and the removal of trees.

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

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

3.0 PUBLIC NOTIFICATION

No submissions were received as a result of the notification process.

4.0 INTEGRATED DEVELOPMENT

The application does not seek to integrate approvals from another public authority into the assessment process for the proposed development.

5.0 PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979, as detailed hereunder.

5.1 Provisions of any environmental planning instrument

State Environmental Planning Policy No 55 - Remediation of Land

This policy applies to the proposed development and contains planning controls for the remediation of contaminated land.

Prior to granting consent to the carrying out of any development on land, CN is required to consider whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

The subject land is currently being used for residential purposes and CN’s records do not identify any past contaminating activities on the site. The proposal is considered to be acceptable having regard to this environmental planning instrument.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)

The Vegetation SEPP contains provisions similar to those previously contained in Clause 5.9 of NLEP 2012 (clause now repealed) and provides that CN’s Development Control Plan (DCP) can make declarations with regard to certain matters, and further that CN may issue a permit for tree removal.
The proposal has been assessed in accordance with Section 5.03 of Newcastle Development Control Plan 2012 (NDCP 2012) and is considered to be satisfactory. There is declared vegetation within 5 metres of the proposed development, and the applicant has submitted an arborist report recommending the removal of 3 trees, including 1 that is an undesirable species (date palm).

State Environmental Planning Policy (Coastal Management) 2018

The subject site is located within the coastal zone and is specifically mapped as being within the coastal environment area and coastal use area. The proposed development is considered to have minimal impact with regard to the general development controls of the SEPP and the specific controls in relation to the coastal environment area and coastal use area.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

The proposal was required to be referred to Ausgrid, in accordance with the ISEPP. The referral to Ausgrid generated no major concerns in respect of the application. The Ausgrid advice has been forwarded to the applicant for their information and future action.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX Certificate was lodged with the application, demonstrating that the development can achieve the required water and energy reduction targets. A condition of consent has been recommended, requiring that the development be carried out in accordance with the BASIX Certificate.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

The following summarises an assessment of the proposal against the provisions of NLEP 2012 that are relevant to the proposed development:

Clause 2.1 - Land Use Zones

The subject property is zoned R2 Low Density Residential under NLEP 2012, within which zone the proposed development is permissible with CN's consent.

The proposed development is consistent with the objectives of the R2 Low Density Residential zone, which are:

a. To provide for the housing needs of the community within a low density residential environment.

b. To enable other land uses that provide facilities or services to meet the day to day needs of residents.
c. To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.

Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of the structures on the site. Conditions are recommended to ensure demolition works and disposal of material is managed appropriately and in accordance with relevant standards.

Clause 4.3 - Height of Buildings

Under NLEP 2012 the subject site has a maximum building height of 8.5m. The proposed development has a maximum height of 9.875m, exceeding the prescribed maximum height by 16.2% (i.e. 1.375m in height).

The applicant has illustrated the encroachment on the elevation drawings and cross sectional drawings, as well as providing 3D perspectives. The drawings can be found at Attachment A.

The applicant has submitted a request for a variation to this development standard, as per Clause 4.6 of NLEP 2012. Refer to the discussion under Clause 4.6 - Exceptions to Development Standards below.

Clause 4.4 - Floor Space Ratio

Under NLEP 2012 the subject site has a maximum floor space ratio (FSR) of 0.6:1.

The proposed development has an FSR of 0.69:1, exceeding the prescribed maximum FSR by 15.0% (i.e. 59.0m² of gross floor area).

The applicant has submitted a request for a variation to this development standard, as per Clause 4.6 of NLEP 2012. Refer to the discussion under Clause 4.6 - Exceptions to Development Standards below.

Clause 4.6 - Exceptions to development standards

Maximum building height

Under NLEP 2012 the subject site has a maximum building height of 8.5m.

The proposed development has a maximum height of 9.875m, exceeding the prescribed maximum height by 16.2% (i.e. 1.375m in height).

The objectives of clause 4.3 of NLEP 2012 are:

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.

Clause 4.6 of NLEP 2012 enables consent to be granted to a proposed development even though the development would contravene a development standard. In assessing the proposal against the provisions of Clause 4.6, it is noted that:

1. Clause 4.3 of NLEP 2012 is not expressly excluded from the operation of this clause; and

2. The applicant has prepared a written request, requesting that CN vary the development standard and demonstrating that:

   a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

   b) There are sufficient environmental planning grounds to justify contravening the development standard.

The applicant's request to vary the development standard is as follows:

   i. Strict compliance is unreasonable/unnecessary as the height of dwellings in the immediate vicinity form the context for the urban development rather than the numerical control.

   ii. Strict compliance with the standard would hinder the development of the land to the social and economic benefit of the wider community. The development plans to enhance the amenity of the site.

   iii. Strict compliance would be unreasonable / unnecessary as neighbouring developments are of similar or higher height. The proposal does not unreasonably effect the surrounding properties. Building totally within the controls would still have the same effect on neighbours.

An assessment of the request has been undertaken and it is considered that:

   a) It adequately addresses the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012; and

   b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and

   c) The Secretary's concurrence to the exception to the height of buildings development standard, as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per NSW Planning and Environment circular PS 18-003 of 21 February 2018; and
d) The proposed height departure is a result of attempting to resolve several design constraints associated with the site, including:

i. minimising the amount of excavation of the site due to geotechnical issues.

ii. maximising the floor height for the availability of views.

iii. maintenance of view corridors for adjoining properties.

iv. minimising the difference in the split levels of the floors.

v. provision of reasonable ceiling heights.

vi. provision of the concealed skillion roof to reinforce the architectural style.

e) The proposed height departure is considered to be a reasonable variation in the context of the topography of the site and it will have minimal impact on neighbouring properties in terms of bulk, scale, privacy, overshadowing and view loss. The proposed height and scale of the development is similar to other existing dwellings within Memorial Drive and the surrounding area; and

f) Given the constraints of the site, the height and scale of the proposed development is supported and it is considered that compliance with the standard is unreasonable and unnecessary in this case.

Floor space ratio

The application involves a proposed building that exceeds the maximum floor space ratio under Clause 4.4 of NLEP 2012.

The proposed development has an FSR of 0.69:1, exceeding the prescribed maximum FSR by 15.0% (ie. 59.0m² of gross floor area).

The objectives of clause 4.4 of NLEP 2012 are:

a) To provide an appropriate density of development consistent with the established centres hierarchy.

b) To ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.

Clause 4.6 of NLEP 2012 enables consent to be granted to a development even though the development would contravene a development standard. In assessing the proposal against the provisions of Clause 4.6, it is noted that:
1. Clause 4.4 of NLEP 2012 is not expressly excluded from the operation of this clause; and

2. The applicant has prepared a written request, requesting that Council vary the development standard and demonstrating that:
   a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
   b) There are sufficient environmental planning grounds to justify contravening the development standard.

The applicant's request to vary the development standard is as follows:

   i. Strict compliance is unreasonable/unnecessary as the density of dwellings in the immediate vicinity form the context for the urban development rather than the numerical control.

   ii. Strict compliance with the standard would hinder the development of the land to the social and economic benefit of the wider community. The development plans to enhance the amenity of the site.

   iii. Strict compliance would be unreasonable/unnecessary as neighbouring developments are of similar or higher density. The proposal does not unreasonably effect the surrounding properties. Building totally within the controls would still have the same effect on neighbours.

An assessment of the request has been undertaken and it is considered that:

   a) It adequately addresses the matters required to be demonstrated by Clause 4.6(3) of NLEP 2012; and

   b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and

   c) The Secretary's concurrence to the exception to the height of buildings development standard, as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per NSW Planning and Environment circular PS 18-003 of 21 February 2018; and

   d) The proposed FSR exceedance is considered to be a reasonable variation and it will have minimal impact on neighbouring properties in terms of bulk, scale, privacy, overshadowing and view loss. The proposed exceedance of the FSR does not add unnecessary bulk and scale to the development. The proposed scale of the development is generally similar to other existing dwellings within Memorial Drive and the wider surrounding area; and
e) The FSR of the proposed development is supported and it is considered that compliance with the development standard is unreasonable and unnecessary in this case.

Clause 6.1 - Acid Sulfate Soils

The site is affected by Class 5 acid sulfate soils and the proposed development is considered satisfactory in this regard.

Clause 6.2 - Earthworks

The proposed development is considered to be acceptable with regard to this clause. The applicant has submitted a geotechnical report that addresses mine subsidence risk, site suitability, slope stability and landslide potential. Subsidence Advisory NSW has granted conditional approval for the proposed development. The proposed earthworks are considered to be acceptable and will not have a detrimental impact on any environmental function or process, or on neighbouring properties.

Conditions have been included in the draft schedule of conditions (Attachment B) to require the implementation of recommendations of the geotechnical report in the structural design and construction of the proposed dwelling and associated structures.

5.2 Any draft environmental planning instrument that is or has been placed on public exhibition

There is no exhibited draft environmental planning instrument relevant to the application.

5.3 Any development control plan

Newcastle Development Control Plan 2012 (DCP)

The main planning requirements of relevance in the Newcastle Development Control Plan 2012 (DCP) are discussed below:

Single Dwellings and Ancillary Development - Section 3.02

The following comments are made concerning the proposed development and the relevant provisions of Section 3.02:

Density - floor space ratio (3.02.01)

The maximum permissible FSR for the site is 0.6:1. The proposed development has a nominated FSR of 0.69:1. Refer to Section 5.1 of this report for details of the applicant’s request for the proposed FSR variation and the assessment of that request.
Height of buildings (3.02.02)

The maximum permissible building height for the site is 8.5m. The proposed development has a nominated building height of 9.875m. Refer to Section 5.1 of this report for details of the applicant’s request for the proposed building height variation and the assessment of that request.

Street frontage appearance (3.02.03)

The proposed setback (4.43 metres) is consistent with the setback of adjacent development in this section of Memorial Drive and has a similar setback to that of the existing dwelling (4.24 metres).

The proposed development is considered to achieve the relevant performance criteria of Section 3.02.03.

The proposed development is considered to complement and harmonise with the positive elements of existing development in the street. It will result in a contemporary style of architecture that will complement other new dwellings in the vicinity as well as those that have been recently renovated.

The garage is integrated into the development and does not dominate the streetscape as it is located lower than street level and is partially obscured by the front fencing.

Side / rear setbacks (building envelope) (3.02.04)

The proposed development exceeds the numerical building envelope controls, as measured from side boundaries, and also the maximum height control, as discussed in Section 5.1 of this report.

The applicant has illustrated the encroachment on the elevation drawings and cross sectional drawings, as well as providing 3D perspectives. The drawings can be found at Attachment A.

The proposed development is considered to achieve the relevant performance criteria within this section of the DCP.

The bulk and scale of the proposed development:

1. Is consistent with that of the existing built form prevailing in the street and locality. The general form of development in the area consists of a mixture of original dwellings (typically 50-60 years old), newly renovated two-storey and three-storey dwellings and modern dwellings up to three stories in height.

2. Is considered to not create overbearing development for adjoining dwelling houses and their private open space. The site is to be partly excavated to reduce the height of the proposed dwelling and the floor
areas of each level are reasonable (approximately 220m²). The private open spaces of the adjoining dwellings are located to the rear of their properties and are sufficiently separated from the proposed dwelling.

3. Is considered to not unduly impact on the amenity of adjoining dwelling houses. The location of windows is considered to be sympathetic to the adjoining dwelling houses and satisfactorily protects the privacy of neighbours.

4. Does not result in the loss of significant views or outlook from adjoining premises. The reduction in views from 68 Memorial Drive is considered to be reasonable and the proposed development will allow for view sharing. Refer to further discussion under View sharing (3.02.09) section of the assessment of DCP provisions.

5. Provides for natural light, sunlight and breezes. It is acknowledged that the solar access to the adjoining neighbours will be reduced by the proposed development, however, it is considered that the extent of the impact is reasonable.

**Landscaping (3.02.05)**

The site area is 603.9m², generating a requirement for 30% (i.e. 181m²) of the site to be provided with landscaping. The total area of proposed landscaping is approximately 140m².

The proposed landscaping areas are considered to be satisfactory in respect of satisfying the DCP's requirements. A landscaping plan has been submitted with the application and it is considered to demonstrate that the landscaped areas provide suitable amenity for the proposed development and are of a usable size and proportion. The landscape plans are appended as part of Attachment A.

**Private open space (3.02.06)**

The proposed private open space areas are considered to be satisfactory and to meet the DCP's requirements.

**Privacy (3.02.07)**

The privacy of the proposed development and the adjoining neighbours is considered to be satisfactory and to meet the DCP's requirements.

The difference in floor levels and the physical separation between the proposed dwelling and the neighbours' living areas and principal areas of private open space is considered to be sufficient to create a reasonable level of privacy between those premises.
Solar access (3.02.08)

The proposed development is considered to be satisfactory and to meet the DCP's requirements as it does not significantly overshadow north facing living area windows and the principal area of private open space of adjacent dwellings.

The applicant has provided shadow diagrams that illustrate the overshadowing by the existing dwelling and the proposed development. The shadow diagrams are appended as part of Attachment A.

View sharing (3.02.09)

The adjoining property (68 Memorial Drive) is considered to have views from within their property affected by the proposed development. The views from 68 Memorial Drive are of the ocean and shoreline, as well as district views to the west. The applicant has provided an analysis of the views from 68 Memorial Drive to demonstrate the extent to which the proposed development retains the subject views. The drawings are appended as part of Attachment A.

An assessment of the impact from the proposed development on the views from 68 Memorial Drive has been carried out on the basis of the relevant Planning Principle of the NSW Land and Environment Court (LEC).

It is a four step process, as follows:

1. **Assessment of the views to be affected.** Water views are valued more highly than land views. Iconic views (eg. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment:

The views available from 68 Memorial Drive are considered to be highly valuable as they provide extensive elevated views over the adjacent suburbs to the west and south-westerly to the shoreline and ocean. The views are considered to not include items of an iconic nature. The water views, despite being relatively distant are considered to be whole, in the context that the interface between land and water is visible.

2. **Consider from what part of the property the views are obtained.** For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.
Comment:

The views available from 68 Memorial Drive, over the adjacent suburbs to the west, are from the rear living area and deck of the dwelling, from either a sitting or standing position. Those views are considered to be reduced to a minor extent by the proposed development and they are only available across the common boundary with 70 Memorial Drive.

The views available from 68 Memorial Drive, south-westerly to the shoreline and ocean, are from the front living area of the dwelling, from either a sitting or standing position. The views of the open ocean, in a southerly direction out to the horizon are considered to not be diminished by the proposed development. The views of the shoreline, in a south-westerly direction are considered to be reduced by the proposed development, but they are only available across the common boundary with 70 Memorial Drive.

3. Assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Comment:

The impact on the views available from 68 Memorial Drive is considered to be minor.

The proposed development is estimated to obscure a small proportion of the view to the west. The intrinsic value of the views to the west, being the views over the adjacent suburbs, will not be lost.

Similarly, the intrinsic value of the views of the open ocean in a southerly direction will not be diminished by the proposed development. The south westerly views of the shoreline are only available across the common boundary with 70 Memorial Drive and the protection of those entire views is considered to be unrealistic and to have a significant impact on the applicant’s ability to reasonably develop the site. A considerable amount of the available views are maintained and the reduction is considered to be reasonable.

4. Assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development
potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Comment:

The proposed development involves an exceedance of two development standards prescribed under NLEP 2012, as reported in Section 5.1. The exceedances relate to the maximum height of buildings (Clause 4.3 NLEP 2012) and the floor space ratio (Clause 4.4 NLEP 2012). The proposed development generally complies with the DCP. It is considered that the impacts of the proposed variations to the controls, on the neighbouring properties, including 68 Memorial Drive, are reasonable and satisfactory.

It is considered that compliance with all of the planning controls would not permit the views from 68 Memorial Drive to be fully maintained, given the relative position of the two sites and the topography. Despite the non-compliances with the development standards, the proposed development is considered to be reasonable in the context of the topography of the site and it will have only minor impacts on neighbouring properties in terms of bulk, scale, privacy and overshadowing.

The proposed development is considered to be satisfactory and to meet the DCP's requirements for view sharing. The reduction in the views from 68 Memorial Drive is considered to be reasonable and the proposed development will allow for view sharing.

Car parking and vehicular access (3.02.10)

The proposed off-street car parking and vehicular access arrangements are considered to be satisfactory and to meet the DCP's requirements.

The development was amended, at the request of CN officers, to comply with CN's standards for the construction of the driveway crossover, replacement of the footpath and the height of the front fence adjacent to the driveway. The drawings are appended as part of Attachment A.

Ancillary development (3.02.12)

The proposed front fence is considered satisfactory with respect to this section of the DCP. A minor amendment was required to reduce the height of the fence adjacent to the driveway, to allow for pedestrian safety as vehicles exited the site.

The proposed swimming pool is considered satisfactory with respect to this section of the DCP.
Mines Subsidence - Section 4.03

The proposed development is considered to be acceptable with regard to this section of the DCP. The applicant has submitted a geotechnical report that has addressed mine subsidence risk, site suitability, slope stability and landslide potential. Subsidence Advisory NSW has granted conditional approval for the proposed development.

Soil Management - Section 5.01

The applicant has submitted a geotechnical report that has addressed mine subsidence risk, site suitability, slope stability and landslide potential. It is considered that the geotechnical report demonstrates that the site conditions are suitable for the proposed earthworks and construction methods. Conditions have been included in the draft schedule of conditions (Attachment B) to require the implementation of recommendations of the geotechnical report in the structural design and construction of the proposed dwelling.

Vegetation Management - Section 5.03

To facilitate the proposed works, there will be an impact on three trees. In support of the proposed works, the applicant has submitted an arborist's report that details species, location, size, health and retention value. The report is prepared generally in accordance with CN's tree assessment requirements and it is considered that the proposed tree removal is acceptable. A landscaping plan has been submitted with the application and is considered to propose adequate compensatory planting.

Traffic, Parking and Access - Section 7.03

The proposed off-street car parking and vehicular access arrangements are considered to be satisfactory and to meet the DCP’s requirements.

The development was amended, at the request of CN officers, to comply with CN's development standards for the construction of the driveway crossover, replacement of the footpath and the height of the front fence adjacent to the driveway. The drawings are appended as part of Attachment A.

Energy efficiency - Section 7.05

The applicant has submitted a BASIX report and has met the requirements for water and energy efficiency and thermal comfort.

Stormwater and Water Efficiency - Section 7.06

The proposed stormwater drainage system includes a 4,000 litre rainwater tank for water re-use within the dwelling, with the rainwater tank overflow connected to the street kerb and gutter. Given the slope of the site, a dispersion trench located adjacent to the rear boundary is proposed, to collect surface run-off. The proposed stormwater management plan is considered to be satisfactory and in accordance with the relevant aims and objectives of the DCP.
Waste Management - Section 7.08

Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued. Specifically, the proposed demolition works will be required to comply with the provisions of AS2601 – Demolition of Structures.

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 14 days in accordance with the provisions of DCP. No submissions were received.

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2000. In addition, compliance with AS2601 – Demolition of Structures is included in the recommended conditions of consent in respect of proposed demolition works.

5.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Impacts on the natural and built environment have been discussed in this report in the context of relevant policies, including NLEP 2012 and DCP considerations.

It is considered that the proposed development will not have undue adverse impact on the natural or built environment.

The proposal will not have negative social or economic impacts.

5.7 The suitability of the site for the development

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

The constraints of the site have been considered in respect of the proposed development, including subsidence, slope stability, slip, contamination and acid sulfate soils. The site is within a proclaimed Mine Subsidence District and conditional approval for the proposed development has been granted by Subsidence Advisory NSW. The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.
5.8 Any submissions made in accordance with this Act or the regulations

The application was publicly notified and no submissions were received.

5.9 The public interest

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

The development is in the public interest and will allow for the orderly and economic development of the site.

6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 and is supported on the basis that the recommended conditions in Attachment B are included in any consent issued.

ATTACHMENTS

Attachment A: Submitted Plans Under Separate Cover - 70 Memorial Drive Bar Beach
Attachment B: Draft Schedule of Conditions - 70 Memorial Drive Bar Beach
Attachment C: Processing Chronology - 70 Memorial Drive Bar Beach

Attachment A - Submitted Plans Under Separate Cover - 70 Memorial Drive Bar Beach
## DRAFT SCHEDULE OF CONDITIONS

<table>
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<th>DA2018/00592</th>
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<tr>
<td>Land:</td>
<td>Lot 8 DP 32622</td>
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<tr>
<td>Property Address:</td>
<td>70 Memorial Drive, Bar Beach, NSW 2300</td>
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<tr>
<td>Proposed Development:</td>
<td>Demolition of dwelling and outbuilding, erection of three-storey dwelling, associated pergola, swimming pool, fencing and retaining walls</td>
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## SCHEDULE 1

1. 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>
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<tr>
<th>Plan No / Supporting Document</th>
<th>Reference / Version</th>
<th>Prepared by</th>
<th>Dated</th>
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<td>Abacus Tree Services</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

2. Roof water from the proposed new work is to be directed to the proposed water tank and being reticulated 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 designed in accordance with the Plumbing Code of Australia (National Construction Code Volume 3). Full details are to be included in documentation for a Construction Certificate application.

3. Overflows from the roof water tank and any additional discharge controls (if required) are to be directed to Council's drainage system by means of an interalotment drainage line or underground pipe directly to the street gutter. Full details are to be included in documentation for a Construction Certificate application.

4. The detailed design of the proposed development shall consider the geotechnical conditions of the site and have regard to the recommendations of the submitted geotechnical report (refer Condition 1) to achieve a *Low Risk* level in accordance with the Australian Geomechanics Society publication Practice Note Guidelines for Landslide Risk Management, 2007. Full details to be included in documentation for a
construction certificate application.

5. All retaining walls and stabilised fill/embankments indicated on the approved development plans are to be designed by a suitably qualified engineer. Proposed retaining walls, or other structures, adjacent to the boundaries shall be designed so that they will not place any load on neighbouring retaining walls and structures. All retaining walls are to be wholly contained within the property boundaries and be provided with adequate drainage. Full details are to be included in documentation for a Construction Certificate application.

6. 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/adjacent to 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.

7. The construction or erection of appropriate swimming pool safety fences and gates and all associated work is to be carried out in accordance with the Swimming Pool Act 1992 and Regulations. Full details are to be included in the documentation for a Construction Certificate application.

8. The swimming pool/spa water recirculation and filtration system installation shall comply with Australian Standard 1926.3:2010 - Swimming pool safety - Water recirculation systems. Full details are to be included in the documentation for a Construction Certificate application.

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

9. A rigid and durable sign is to be erected on any site on which building work, subdivision work or demolition work is being carried out, before the commencement of the work:
   a) showing the name, address and telephone number of the Principal Certifying Authority for building work and subdivision work, and
   b) showing the name, address and telephone number of the Principal Contractor for any building work and also including a telephone number on which the Principal Contractor may be contacted at any time for business purposes, and
   c) stating that unauthorised entry to the work site is prohibited, and
   d) being erected in a prominent position that can be read easily by anyone in any public road or other public place adjacent to the site.

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.

10. 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, or
   c) Be a temporary chemical closet approved under the Local Government Act 1993.
11. 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.

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

13. 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.

14. 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 SafeWork 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 SafeWork 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.

15. 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.

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

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

18. The following waste management 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 windblown 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/dumping offences under the Protection of the Environment Operations Act 1997.

19. In the case of residential building work for which the Home Building Act 1988 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.

20. All building work must be carried out in accordance with the provisions of the National Construction Code.

21. A Registered Surveyor's certificate detailing the setting out of the proposed building on the site, including the relationship of the set-out building to property boundaries, is to be submitted to the Principal Certifying Authority before construction is commenced.

22. Certification is to be prepared by a Registered Surveyor and submitted to the Principal Certifying Authority at the stages of construction indicated:
   a) On completion of the Lower Level floor construction, confirming that the floor levels are in accordance with the approved levels.
   b) On completion of each subsequent floor level, confirming that the floor levels are in accordance with the approved levels.
   c) When the roof has been completed, confirming that the building does not exceed the approved levels.

23. 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.

24. 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.

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. 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.

27. 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.

28. 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.

29. 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.

30. Pool plant and equipment is to be sited or enclosed in a sound absorbing enclosure to minimise any potential offensive noise impacts to adjoining neighbours as defined under the Protection of the Environment Operations Act 1997.

31. The swimming pool surrounds and/or paving is to be constructed in a manner so as to ensure water from the pool overflow does not discharge onto neighbouring properties. All backwash/pool waste water is to be piped/drained to the sewer of Hunter Water Corporation in accordance with the requirements of Hunter Water Corporation.

32. 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) The driveway crossing, within the road reserve, shall be a maximum of 4.5 metres wide.
   c) 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.
   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 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 has been granted by Council. An application under Section 138 is to be applied for and approved before the commencement of any construction works on the site the subject of this development application.

33. 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, before the commencement of works.
34. All roof and surface waters are to be managed in accordance with Element 7.06 ‘Stormwater’ of Newcastle Development Control Plan 2012.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

35. 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.

36. 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.

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

38. 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.

39. 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.

40. Prior to the issue of an Occupation Certificate, written confirmation is to be provided from a geotechnical engineer that the as-constructed development has been completed in accordance with the recommendations of the submitted geotechnical report (refer Condition 1) to achieve a ‘Low Risk’ level in accordance with the Australian Geomechanics Society publication Practice Note Guidelines for Landslide Risk Management, 2007.

41. Prior to the issuing of a Final Occupation Certificate, the existing vehicular crossing is to be removed, at no cost to Council, and the kerb and gutter being restored to match the existing infrastructure. The existing public footway for the entire frontage of the development site shall also be removed, at no cost to Council, and restored in accordance with the approved plans.

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, before the commencement of works.

ADVISORY MATTERS

- 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.

- 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.

- It is an offence under the provisions of the Protection of the Environment Operations Act 1997 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.

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

- The owner of the premises on which a swimming pool/spa is situated must ensure that the pool details are entered into the State Swimming Pool Register. The register is accessible at www.swimmingpoolregister.nsw.gov.au.

- 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.

- Prior to commencing any building works, the following provisions of Division 6.2 of the Environmental Planning and Assessment Act 1979 are to be complied with:

  a) A Construction Certificate is to be obtained; and

  b) A Principal Certifier is to be appointed for the building works and Council is to be notified of the appointment; and

  c) Council is to be given at least two days notice of the date intended for commencement of building works.

- 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 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.

- 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.

END OF CONDITIONS
SCHEDULE 2

REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS
The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; Newcastle Local Environmental Plan 2012 and applicable State Environmental Planning Policies.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Newcastle Development Control Plan 2012.
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development has appropriate management and mitigation of impacts through conditions of consent.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- Council has considered and accepted the variation to the building height development standard under Clause 4.6 of the Newcastle Local Environmental Plan 2012. The proposed variation is considered acceptable in the particular circumstances of this case as the variation will not significantly impact the neighbouring properties in terms of bulk, scale, privacy, overshadowing and view loss.
- Council has considered and accepted the variation to the floor space ratio development standard under Clause 4.6 of the Newcastle Local Environmental Plan 2012. The proposed variation is considered acceptable in the particular circumstances of this case as the variation will not significantly impact the neighbouring properties in terms of bulk, scale, privacy, overshadowing, view loss.
- No objections were received and no negative neighbour impacts are anticipated.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED
The following conditions are applied to:

- Confirm and clarify the terms of Council’s determination;
- Identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;
- Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- Set standards and measures for acceptable environmental performance; and
- Provide for the ongoing management of the development.
### PROCESSING CHRONOLOGY

**DA2018/00592 - 70 Memorial Drive Bar Beach**

<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>12 June 2018</td>
<td>Application lodged</td>
</tr>
<tr>
<td>14 June 2018</td>
<td>Application referred to Ausgrid</td>
</tr>
<tr>
<td>19 June 2018</td>
<td>Public notification of application</td>
</tr>
<tr>
<td>3 July 2018</td>
<td>Response from Ausgrid received</td>
</tr>
<tr>
<td>30 August 2018</td>
<td>Additional information requested regarding building height, floor space ratio, building envelope, view sharing, driveway crossover and footpath, front fence, geotechnical report and arborist's report</td>
</tr>
<tr>
<td>5 September 2018</td>
<td>Response time extended</td>
</tr>
<tr>
<td>2 October 2018</td>
<td>Additional information and amended plans received</td>
</tr>
<tr>
<td>9 October 2018</td>
<td>Additional information requested regarding floor space ratio, driveway crossover and footpath</td>
</tr>
<tr>
<td>15 October 2018</td>
<td>Additional information and amended plans received</td>
</tr>
</tbody>
</table>