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 15 November 2016
TIME: Following the Briefing Committee
VENUE: Council Chambers
         2nd Floor
         City Hall
         290 King Street
         Newcastle NSW 2300

Peter Chrystal
Interim Chief Executive Officer

City Administration Centre
282 King Street
NEWCASTLE NSW 2300

4 November 2016

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*NOTE: ITEMS MAY NOT NECESSARILY BE DEALT WITH IN NUMERICAL ORDER*
DEVELOPMENT APPLICATIONS

ITEM-12 DA 2016/00159 - 46 KILGOUR AVENUE MEREWETHER - TWO STOREY DWELLING, ASSOCIATED SWIMMING POOL AND SITE WORKS

APPLICANT: F B D'ALTERIO
OWNER: F B D'ALTERIO & C M R D'ALTERIO
REPORT BY: PLANNING AND REGULATORY
CONTACT: DIRECTOR PLANNING AND REGULATORY / MANAGER DEVELOPMENT AND BUILDING

PART I

PURPOSE

An application has been received seeking consent to erect a two-storey dwelling, associated swimming pool and site works at 46 Kilgour Avenue Merewether.

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

The original proposal was notified to neighbouring properties for 14 days in accordance with the provisions of Newcastle DCP 2012 and eight public submissions were received objecting to the proposal.

It is noted three submissions were received from the same address. Details of the submissions received are summarised at Section 3.0 of Part II of this report and the concerns raised are addressed as part of the Environmental Planning Assessment at Section 4.0.

Issues

- Whether the proposed inconsistency with a building height restriction contained in the relevant Deposited Plan and Section 88b instrument for the site, is justified.

- Whether the proposal is an overdevelopment of the site with respect to the relevant single dwelling provisions of the Newcastle Development Control Plan 2012.

- Whether the view impacts to and from adjoining development are reasonable.
The application has been referred to Council's Development Applications Committee for determination due to Council Officers recommending approval of a development application that conflicts with Council’s adopted policies, where the conflict is considered to be more than minor.

Conclusion

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

RECOMMENDATION

a) The application for a two-storey dwelling house, associated swimming pool and site works at 46 Kilgour Avenue Merewether be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions appended at Attachment B.

b) That those persons who made submissions be advised of Council's determination.

Political Donation / Gift Declaration

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

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

PART II

1.0 THE SUBJECT SITE

The subject site comprises Lot 42 DP 1160807. The lot is an irregular battle-axe shaped allotment located at the end of Kilgour Avenue. The lot has a curved frontage to Kilgour Avenue; a maximum length (including battle axe handle) of approximately 85.8 metres; a maximum and diminished site width of 22.485 metres and a total site area of 625.8m². The useable site area (excluding battle axe handle) is considered to be 464.5m². The site slopes towards Kilgour Avenue from the western boundary.

The site is currently vacant. The site is bounded by medium density residential development to the west, and single residential development to the north.
The subject allotment is adjacent to a heritage item of local significance (I308 - Brynhfryd (residence)), is located in a Mine Subsidence area and is located in a sensitive coastal location (as per State Environmental Planning Policy 71 - Coastal Protection).

2.0 THE PROPOSAL

The applicant seeks consent to erect a two-storey dwelling house, associated swimming pool and site works.

A copy of the submitted plans is at Attachment A.

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

2.1 Background

The following provides a summary of an approved development application that is relevant to the subject allotment.

DA 1998/1375 – Subdivision of land into two lots

Development approval was obtained on 24 March 1999 for subdivision of land into two lots from Lot 22 DP220800 (44 Kilgour Avenue Merewether), following consideration by the Development Applications Committee on 23 March 1999 (item 33).

Condition 3 of the development consent reads as follows:

‘An appropriate restriction on the use of the land being registered against the title of proposed Lot 42 under Section 88b of the Conveyancing Act, restricting the building envelope within the lot generally to the area identified as (B) on the submitted plan and subject to the height not exceeding the existing eave height of the adjacent dwelling (Barrymore), such instrument is to be registered with the Land Titles Office and is to provide that the restriction on the use of the land is unable to be relinquished, varied or modified without the concurrence of the Newcastle City Council;

Reason: To minimise the possibility that any future building on the land may obscure the view of or unreasonably detract from the appearance of the existing historic dwelling (Barrymore).’

Proposed Lot 42 was registered (DP1160807) with the Land Titles Office on 4 March 2011, with the building height restriction noted on the Deposited Plan and further defined in the related Section 88b instrument, as follows:

‘No part of any building shall exceed a height of RL 28.22 on Australian Height Datum (A.H.D)’
Development Applications Committee 15 November 2016

It should be noted that, while the condition quoted above called for the creation of a ‘building envelope’, the combined effect of the Deposited Plan and the Section 88B instrument is only to establish a height restriction over a defined part of the site. The restriction does not limit development to the defined area, hence a building that falls outside of the defined area is not subject to the restriction.

The Section 88b instrument notes Newcastle City Council as the authority to release, vary or modify the restriction to user. Lot 41 DP1160807 (No. 44 Kilgour Avenue Merewether) is identified as the benefited lot for the restriction on the use of Lot 42.

3.0 PUBLIC NOTIFICATION

The application was publicly notified for a period of 14 days in accordance with Council’s Public Notification Policy. Eight submissions were received during the public notification period, with three submissions being received from the same address. Therefore, as per the provisions of the Public Participation element of the Newcastle Development Control Plan 2012, it is considered that six submissions were received during the public notification period. One application for public voice was received.

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

a) Setbacks  
b) Building envelope  
c) Impact on the adjoining local Heritage Item  
d) Height  
e) Development in the Coastal Zone  
f) Bulk and scale  
g) Landscaping  
h) View loss  
i) Air quality  
j) Noise  
k) Privacy  
l) Solar access  
m) Visual amenity  
n) Safety and security  
o) Impacts resulting from excavation  
p) Boundary fences  
q) Variations to the Section 88B instrument

The objectors’ concerns are addressed under the relevant matters for consideration in the following section of this report.
4.0 ENVIRONMENTAL PLANNING ASSESSMENT

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

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

4.1.1 State Environmental Planning Policies (SEPP)

With regard to SEPP 55 (Remediation of land), the proposed development is considered satisfactory as proposed.

With respect to SEPP 71 (Coastal Protection), it is considered the proposed development has suitably addressed the relevant matters of consideration for development within the coastal zone.

A BASIX Certificate has been provided for the proposed development - the proposed development is deemed satisfactory to SEPP (Building Sustainability Index: BASIX) 2004.

The proposed development is not contrary to the provisions of the any relevant State Environmental Planning Policy (SEPP).

4.1.2 Newcastle Local Environment Plan 2012

The subject property is located within the R2 Low Density Residential zone under the provisions of the Newcastle Local Environmental Plan 2012 (NLEP 2012). The proposed development is permissible in this zone with Council’s consent. The proposed development is also consistent with the zone objectives. The following summarises an assessment of the proposal against the principal development standards in NLEP 2012:

a) Clause 4.3 (Height of Buildings)

The maximum height of buildings for this allotment is 8.5m. The height of the proposed development is approximately 7.0m and is considered satisfactory in this regard.

b) Clause 4.4 (Floor Space Ratio)

The maximum floor space ratio (FSR) for this site is 0.75:1. The useable site area (excluding battle axe handle) is considered to be 464.5m². Based on this, the proposed development has a FSR of approximately 0.71:1 (328.1m²) and is considered satisfactory in this regard.

c) Clause 5.5 (Coastal Development)

The proposed development is considered satisfactory having regard to the relevant objectives for development within the coastal zone.
d) Clause 5.10 (Heritage Conservation)

The allotment is located in the vicinity of a local heritage item (Item no. I308 - Brynhfryd (residence)).

A Statement of Heritage Impact has been submitted by the applicant, and it is considered that the heritage significance of the adjoining local heritage item will be suitably conserved given the building form, proportion, setback and materiality of the proposed development.

e) Clause 6.1 (Acid Sulphate Soils)

The site is affected by Class 5 Acid Sulphate Soils and the proposed development is considered satisfactory in this regard.

f) Clause 6.2 (Earthworks)

The proposed development is considered satisfactory having regard to the relevant objectives regarding earthworks.

4.2 Merit Considerations

4.2.1 Relevant Strategic Policies

It is considered the proposed development complies with the overarching aims and specific density provisions of the Newcastle Urban Strategy.

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

a) Section 3.02 (Single Dwellings and Ancillary Development)

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

- Street frontage appearance (3.02.03)

It has been suitably demonstrated by the applicant that the proposed development will appropriately relate to the character and amenity of development within the immediate area. The width of the garage door (6.5m) has been assessed against the relevant performance criteria and, given its generous setback from Kilgour Avenue, it has been assessed that the proposed development will be compatible with the existing and desired character of development in the street.

- Side/Rear Setbacks (building envelope) (3.02.04)

The applicant has proposed a performance based solution for the setback of the development from the side and rear boundaries of the allotment, including the building envelope stipulated by this Section.
It has been assessed that the proposed development will not detrimentally impact the streetscape or amenity of the area. While noting the constraints of the size and shape of the site, it is considered that the proposed development will not be out of character in its location and has suitably responded to the attributes of the site, with its bulk, massing and scale being appropriate in the context of adjoining development. It is considered that the proposed development will not adversely impact on the amenity of adjoining development with respect to solar access, privacy or coastal breezes.

- **Landscaping (3.02.05)**

  The applicant has proposed a performance based solution for landscaping. Landscaping of Approximately 10% (45m²) of the site has been provided to the proposed development, where the landscaping area has a width 1.5m or greater.

  Given the unusual configuration of the allotment and site constraints, it has been assessed that the proposed development will provide for a suitable and useable area of both landscaped and open space areas to the occupants. It is considered this development has been designed to appropriately manage site constraints, is in the scale of development on adjoining lands and the percentage of soft landscaping will not detrimentally impact the amenity of the area.

- **View Sharing (3.02.09)**

  The proposed development is to have suitable regard to view sharing with neighbouring properties, and incorporate design attributes of sympathetic form, treatment and roofscape design to enhance view sharing opportunities.

  In support of the proposal and in particular the issue of view affectation, the applicants have submitted a comprehensive view analysis. This analysis, which is attached as Appendix D, examines the likely impact having regards to two important rulings from the NSW Land & Environment Court being:

  - Tenacity Consulting v Waringah Council (2004)
  - Arnott v City of Sydney Council (2015)

  The planning principle for assessing view impacts (Tenacity Consulting v Waringah Council (2004)) has been applied in this assessment and the four steps of the planning principle are stated and commented on as follows:
i. ‘The first step is the assessment of 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, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.’

Comment: It is acknowledged that the proposed development will impact views from existing development at No. 44 Kilgour Avenue and No. 2A Ocean Street including land and water views. It has been assessed the predominant views to be impacted by the proposed development will include Bathers Way, Bar Beach and Shepherds Hill, and include coastal views predominantly to the south-east, east and north-east across the subject allotment. It has also been assessed views to the city skyline may also be impacted by the proposed development. It is considered ‘whole’ views, that being an interface between land and water, will be impacted by the proposed development.

ii. ‘The second step is to 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: It has been assessed that coastal views are obtained from No. 44 Kilgour Avenue and No. 2A Ocean Street, which are located respectively to the north and west of the subject allotment.

It is considered that existing coastal views are obtained through the subject land across side boundaries. Given the relative compliance of the proposed development with Council’s relevant planning provisions, the expectation that no side views will be affected from No. 44 Kilgour Avenue and No. 2A Ocean Street is considered unrealistic in this instance.

It has been assessed that both sitting and standing views will be affect adjoining properties.

iii. ‘The third step is to 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 following views are considered to be available from adjoining properties:

- **No. 44 Kilgour Avenue.** Coastal views from the south to the north-east. Views of the city skyline from the north-east to the north-west.
- **No. 2A Ocean Street (Units 13, 17 and 21).** Coastal views predominantly from the north-east to the south-east. Views of the city skyline are available from the north-east to the north-west.
- **No. 2A Ocean Street (Units 14, 18 and 22).** Coastal views from the south-west to the north-east. Views of city skyline are predominantly available to the north-east.

Views are predominantly obtained from living areas and associated decks and balconies of adjoining properties.

Concerning 44 Kilgour Avenue, it is recognised that a building height restriction has been included on the Deposited Plan (DP 1160807) and that the impact of future development on the existing development at No. 44 Kilgour Avenue was considered when the subject allotment was created. While the proposed development exceeds the building height restriction by approximately 1.37m, it has been assessed that full compliance with the building height restriction would still impact view sharing from south-facing windows at No. 44 Kilgour Avenue. Given that coastal views will be predominantly retained from the south to the north-east and that views of the city skyline will be unaffected, the proposed development is considered to have a moderate impact on No. 44 Kilgour Avenue and is considered satisfactory having regard to the principles of view sharing.

Concerning 2A Ocean Street, the view study (**Attachment D**) that has been submitted by the applicant, demonstrates how view sharing will be achieved to No. 2A Ocean Street (Units 13, 14, 17, 18, 21 and 22). The impact is greatest in respect of eastern views from Units No. 13, No. 14 and No. 17. Existing indicative panoramic and proposed parametric perspective images for these units are included in the view study at **Attachment D**.

Coastal views available to Unit 13 will be impacted by the proposed development. It has been assessed that views of the city skyline will predominantly remain. It is considered that Unit 13 will sustain a severe impact to coastal views.

It has been assessed that available coastal views to the south of Unit 14 will remain unaffected by the proposed development. Coastal views to the east and views of the city skyline will be impacted by the proposed development. It is considered Unit 14 will sustain a moderate impact to views.
Unit 17, located to the second floor of the adjoining residential flat building directly above Unit 13, will be impacted by the proposed development. However, given the relative elevation of the finished floor level, it has been assessed Unit 17 will predominantly retain coastal views, and city skyline views will be unaffected. It is considered Unit 17 will sustain a moderate impact to views.

iv. ‘The fourth step is to assess the reasonableness of the proposed development 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: In terms of the fourth question of the planning principle and Arnott v City of Sydney, the applicant has argued the following:

‘Considering the fourth step of Tenacity v Warringah, it is concluded that a “more skilful design” could not provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. As per Arnott v City of Sydney Council: “the intent of the fourth step is to look for opportunities within the massing and form of the proposal to minimise the impact on views across the site, whilst maintaining the capacity to reasonably develop the site.” Whilst it would be possible to propose a lower building or one with a smaller footprint, it is not considered that this would be allowing the applicant to “reasonably” develop the site, since the current proposal is well within allowable height and Gross Floor Area restrictions. The proposal is noted to have non-compliances in terms of its side setbacks, however these are arguably justified due to the unusually tight site conditions…’

‘As per Arnott v City of Sydney Council, assessment is made of the impact on views of the proposal on the 2A Ocean Street apartment as a whole. The conclusion of this study finds that the apartment building will sustain minor impacts on its views, that being that one apartment out of 12 sustains moderate-to-severe impacts to one of its two view orientations, with all other apartments sustaining negligible or no impacts.’
'Similarly to paragraph 73 of Arnott v City of Sydney Council, it is fair to acknowledge that the potential objections of the occupants of the east facing apartments of 2A Ocean Street have some merit, but it is also only fair to weigh up these arguments against the “reasonableness” of the proposal. As described previously, the current proposal is well within allowable height and Gross Floor Area restrictions of the DCP, and is as such not “unreasonable” in its desire to provide amenity for the family residence.'

'Also similarly to paragraph 74 of Arnott v City of Sydney Council, it would be suggested that it would be reasonably expected by the occupants of residences adjacent to the site that the construction of a building would one day occur on the site, given that it has previously been subdivided specifically for the purpose of residential development.'

'The proposal has conditions alike to the subject building in Arnott v City of Sydney Council, where it’s location was justified in that “…the siting of the proposal is constrained by the form of the existing building.” In the case of our subject site, the position of any potential building is extremely constrained given the tight site conditions and unusual boundary shape. This leaves little room for an alternate arrangement of built forms of the site that would not unreasonably affect the amenity of the occupants. The overall height of the building is set at a justifiable level, which is well within the maximum height limit of the site as per the DCP. It is proposed that any reduction in height below the current proposed level would amount to an unreasonable loss of amenity for future occupants in terms of visual privacy, acoustic privacy and security…’

The proposed new dwelling generally complies with Council’s relevant planning provisions. As noted above, the applicant has proposed performance based solutions to Council’s side and rear setback provisions. It is considered that full compliance with side and rear setback numeric solutions would have a negligible impact on the quality of views to adjoining neighbours at No. 44 Kilgour Avenue and No. 2A Ocean Street.

The proposed development fully complies with Council’s LEP Development Standards relating to building height and floor space ratio.

Given site constraints and the limited scope for development location on the land, it is considered a more skilful design would not provide the applicant with the same development potential and amenity that is proposed under this application.
The location of views to be affected for No. 44 Kilgour Avenue and No. 2A Ocean Street are across side boundaries. Having regard to the planning principal, the expectation to retain views across side boundaries is considered unrealistic in this instance. While it is considered that there will be impact on the adjoining neighbours to coastal and city skyline views, it has been assessed the application has proposed a sympathetic form, treatment and roofscape which has sought to enhance view sharing opportunities. The proposed development is considered reasonable having regard for established principles for assessing view impacts and the provisions of Section 3.02.09.

- Ancillary development (3.02.12)

The applicant has proposed a performance based solution for the proposed swimming pool setback, given its elevation and setback from the rear property boundary.

It has been assessed that the proposed swimming pool will not be visually intrusive on the streetscape or adjoining public land. Subject to proposed conditions of development consent, the swimming pool will be able to be operated in a safe manner and it has been assessed that the proposed swimming pool will not generate unreasonable noise impacts.

The proposed development has been assessed having regard to the provisions of Section 3.02 (Single Dwellings and Ancillary Development) of the DCP and is considered to be compliant with the relevant objectives and performance criteria of the DCP.

b) Section 5.01 (Soil Management)

The application has suitably addressed the relevant objectives of soil management. A relevant condition will be included in any development consent to be issued, regarding development in close proximity to the allotment boundary / adjoining development.

c) Section 5.04 (Aboriginal Heritage)

It has been assessed that the proposed excavation for the new dwelling is unlikely to affect archaeological relics. A relevant condition will be included in any development consent to be issued, to address any instance of relics being uncovered.

d) Section 5.05 (Heritage items)

The proposed development has been assessed having regard to the provisions of Section 5.05.06, with respect to development in the vicinity of a heritage item.
A Statement of Heritage Impact has been submitted by the applicant, and it is considered that the heritage significance of the adjoining local heritage item (Item no. 1308 - Brynhfryd (residence)) will be suitably conserved given the building form, proportion, setback and materiality of the proposed development.

The significance of Brynhfryd (Barrymore) has been interpreted as ‘Associated with prominent local citizen. Demonstrating the development of social class and economic growth of the region. Has the potential to significantly contribute to the understanding of lifestyle, building techniques and architectural style of the period. Early house predating residential subdivision of the area. Interiors of interest.’

e) Section 7.03 (Traffic, Parking & Access)

Provision has been made for a minimum of two on-site car parking spaces for the proposed development. This complies with Council’s requirements.

f) Section 7.06 (Stormwater and water efficiency)

Stormwater will drain to the street gutter via existing stormwater infrastructure. A rainwater tank (total 4000L) has been provided for rainwater reuse purposes. In accordance with the submitted stormwater management plan, the proposed development is considered satisfactory in accordance with the relevant aims and objectives of Section 7.06.

g) Section 7.08 (Waste Management)

Demolition and waste management will be subject to conditions to be included in any development consent to be issued.

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

Due to the nature and extent of the proposed works, the design of the dwelling and the context of the area, it is considered the proposed development will not have any undue adverse impact on the surrounding natural or built environment.

a) Easements

There are several easements on the subject allotment, including right of access, easements for services and drainage of water. The proposed development will not affect or be affected by these easements and, as such, is considered satisfactory in this regard.
b) Variations to the Section 88B instrument

The proposal exceeds the building height restriction noted on the Deposited Plan and further defined in the Section 88b instrument, which was a condition of development consent for DA 1998/1375. The reason for the imposition of the condition was to mitigate the impact of any future building on the heritage significance of the adjoining Brynhfryd (Barrymore) residence.

The area of the site that is affected by the height restriction is the area designated as ‘(D)’ in Figure 1 below.

![Figure 1: Extract from DP 1160807](image)

The applicant is seeking to vary the Section 88b instrument by exceeding the building height restriction by approximately 1.37m (to RL 29.59).

Clause 1.9A(2)(a) (Suspension of covenants, agreements and instruments) of the Newcastle Local Environment Plan 2012 reads as follows:

1. For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.

2. This clause does not apply:
   a) to a covenant imposed by the Council or that the Council requires to be imposed...

Justification has been provided by the applicant for the proposed exceedance. The following comments are provided with respect to the applicant's submission:
The finished levels of the Bathers Way footway prevent suitable privacy being achieved along the south-east elevation of the proposed development – unless as the applicant has argued, a blank façade within no openings was proposed for the majority of the south-east elevation. The proposed development has a minimum 1200mm wall fronting the south-east boundary, which will permit suitable visual privacy and security from the public domain.

The first floor level is approximately 260mm above the existing ground level of the allotment, measured relative to the southern-most corner of the allotment. The development is considered to read as a single storey dwelling from Bathers Way (with basement under), and this height above natural ground level is considered reasonable for health and amenity purposes.

The north, east and part-south (forward of the eastern wall of the enclosed verandah) elevations of the Brynhfryd (Barrymore) residence are considered significant elevations that permit the heritage significance of the building to be interpreted when viewed from the public domain. The south elevation of the Brynhfryd (Barrymore) residence, behind the eastern wall of the enclosed verandah, is considered to be a former verandah that has been converted into a sunroom. It is understood that this elevation has been subject to significant change over many years, which has reduced the aesthetic contribution this elevation provides to the heritage significance of the building. It has been assessed that the additional 1.37m height exceedance will not adversely impact the heritage significance nor interpretation of the local heritage item when viewed from the public domain.

It has been assessed the setback of the proposed development will align with the eastern wall of the adjoining heritage item (that being, the enclosed verandah). It is considered this setback has sympathetically interpreted the form of the heritage item and will not impact the heritage item’s curtilage when viewed from the public domain.

It is recognised at time of subdivision, the Local Environment Plan 1987 did not have development standards relating to floor space ratio and height of buildings for this allotment (noting the DCP Guideline at the time prescribed a 9.0m height). The imposition of restrictions in connection with the 1999 approved subdivision of the land is understood to be a means to control the bulk and scale of any proposed development, so as to not impact the heritage significance of the adjoining heritage item.

It has been assessed that the proposed development has suitably interpreted the heritage significance of the Brynhfryd (Barrymore) residence, through a restrained bulk and scale and appropriate mass and form in the context of adjoining residential development. The proposed development generally complies with Council’s relevant planning provisions and it has been demonstrated that the exceedance to the height restriction on the land will not detrimentally impact on the heritage significance of the local heritage item.
Development Applications Committee 15 November 2016

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

The proposed development is unlikely to have any significant social or economic impacts in the locality.

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

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

The site may be subject to landslide risk, due to coastal zone risks. A landslide risk assessment prepared by a geotechnical engineer has been submitted by the applicant and has demonstrated that the proposed development is satisfactory in respect of landslide risk.

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

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

This report has addressed various concerns raised in the submissions received in respect of the application, along with the following matters:

a) Bulk and scale

The bulk and scale of the proposed development is considered to be consistent and comparable to existing single dwelling residential developments in Kilgour Avenue, Ocean Street and the surrounding area, in accordance with the relevant objectives and performance criteria of Council's single dwelling provisions (Section 3.02 of the DCP).

b) Air quality

The proposed development is considered satisfactory in this regard. Additional information supplied by the applicant has confirmed no solid fuel heaters will be installed.

c) Noise

It has been assessed that the proposed development will generate domestic levels of noise only and is considered satisfactory in the context of the location.
d) Privacy

Given the location of living areas, private open space, offset glazing and screening (including walls), it has been assessed that the proposed development will not unreasonably overlook living room windows or the private open space of neighbouring dwellings. As such, it is assessed that the proposal is satisfactory, in accordance with the relevant objectives and performance criteria of Section 3.02.07 (Privacy) of the DCP.

e) Solar access

Given the orientation of the allotment, it has been assessed that the proposed development will not significantly overshadow living rooms and the principal area of private open space of adjoining dwellings, in accordance with the relevant objectives and performance criteria of Section 3.02.08 of the DCP.

f) Visual amenity

It is considered that rooftop elements such as exhaust stacks and solar panels, that extend above the level of the parapet, will not adversely impact the visual amenity of the area.

g) Safety and security

It has been assessed that the proposed development has considered surveillance and security in its design, including achieving clear sightlines to public spaces. It is considered that the proposed development will not increase the opportunity for vandalism and crime in the area.

h) Boundary fences

Dividing fences are considered a private matter between adjoining land owners, in accordance with the relevant provisions of the Dividing Fences Act 1991.

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

- Sustainability

The proposed dwelling is considered to be satisfactory having regard to the principles of ecologically sustainable development. A BASIX certificate has been included which demonstrates compliance with the requirements stipulated by the Department of Planning and Environment.

The proposed development will not result in the disturbance of any endangered flora or fauna habitat or otherwise adversely impact on the natural environment.
Development Applications Committee 15 November 2016

• **General**

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

**ATTACHMENTS**

**Attachment A:** Copy of submitted plans - 46 Kilgour Avenue, Merewether - DA2016/00159.

**Attachment B:** Draft Schedule of Conditions - 46 Kilgour Avenue, Merewether - DA2016/00159.

**Attachment C:** Processing Chronology - 46 Kilgour Avenue, Merewether - DA2016/00159.

**Attachment D:** View Study (EJE Heritage) - 46 Kilgour Avenue, Merewether
ATTACHMENT B – DRAFT SCHEDULE OF CONDITIONS
DA 2016/00159 - 46 KILGOUR AVENUE MEREWETHER

REASONS FOR CONDITIONS

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

APPROVED DOCUMENTATION

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

<table>
<thead>
<tr>
<th>Plan No / Supporting Document</th>
<th>Reference / Version</th>
<th>Prepared by</th>
<th>Dated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Plan</td>
<td>PD 0.01 Revision 7</td>
<td>Fearon Hay Architects</td>
<td>06/11/2015</td>
</tr>
<tr>
<td>Ground Floor Level</td>
<td>PD 1.01 Revision 6</td>
<td>Fearon Hay Architects</td>
<td>06/11/2015</td>
</tr>
<tr>
<td>First Floor Level</td>
<td>PD 1.02 Revision 7</td>
<td>Fearon Hay Architects</td>
<td>08/07/2016</td>
</tr>
<tr>
<td>Roof Plan</td>
<td>PD 1.21 Revision 3</td>
<td>Fearon Hay Architects</td>
<td>06/11/2015</td>
</tr>
<tr>
<td>South Elevation</td>
<td>PD 2.01 Revision 8</td>
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</tr>
<tr>
<td>East Elevation</td>
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</tr>
<tr>
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<tr>
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<tr>
<td>Sedimentation and</td>
<td>16-180 Issue 0</td>
<td>MPC Consulting</td>
<td>09/12/2015</td>
</tr>
</tbody>
</table>
3. All proposed driveways, parking bays, loading bays and vehicular turning areas are to be constructed with a basecourse of adequate depth to suit design traffic, being sealed with either bitumen seal, asphaltic concrete, concrete or interlocking pavers and being properly maintained. Full details are to be included in documentation for a Construction Certificate application.

4. Roof water from the proposed new work is to be directed to the proposed water tank and being reticulated there from to any new toilet cisterns and cold water washing machine taps, with a mains water top up being installed to maintain between 10% and 15% of the tank capacity. Alternatively, an electronically activated mechanical valve device is to be installed to switch any new toilet cisterns and laundry taps to mains water when the tank falls below 10% capacity. The water tank and plumbing is to be installed in accordance with Australian Standard AS 3500, the relevant plumbing regulations and the requirements of the Hunter Water Corporation. Full details are to be included in documentation for a Construction Certificate application.
5. 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.

6. 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 approved stormwater management plan. Full details are to be included in documentation for a Construction Certificate application.

7. 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.

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

9. 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 (NSW) and Regulations. Full details are to be included in the documentation for a Construction Certificate application.

10. 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.

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

12. The proposed development is to comply with the approved geotechnical report throughout the course of excavation and building works. Full details are to be included in documentation for a Construction Certificate application.
CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK AND DURING THE CONSTRUCTION PHASE

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

Each toilet is to:

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

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

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

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

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

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

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

c) Appropriate provision is to be made to prevent 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/littering offences under the Protection of the Environment Operations Act 1997 (NSW).
16. 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.

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

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

19. 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.

20. If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person’s own expense:

   a) Protect and support the adjoining premises from possible damage from the excavation, and

   b) Where necessary, underpin the adjoining premises to prevent any such damage.

   The above requirements does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to the requirements not applying.
21. 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.

22. 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.

23. 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 ground 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.

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

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. 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.

27. 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 (NSW).

28. 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.

29. 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.

30. 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 (DECC) ‘Waste Classification Guidelines Part 1: Classifying Waste’.

31. 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.

32. 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.

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

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

The tree protection fencing must remain in place and maintained until all works have been completed, with no waste materials, washouts, equipment or machinery to be stored within the fenced area.
35. All downpipes discharging to the rainwater tanks are to have pre-storage insect, debris and vermin control (e.g. a rainwater head being leaf screened and vermin and insect proof) to minimise the contamination of captured roof water. A first flush device is to be provided for the inlet to the tank and a backflow prevention device is to be installed in the tank overflow outlet before connecting to the stormwater drainage system. If the roof downpipes are charged to the rainwater tank, all pipes are to be chemically welded and the stormwater system is to be designed such that the system is capable of being flushed in the event of pipe blockage (e.g. capped relief access points at the lowest level of stormwater drainage).

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

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 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.

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

39. 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.

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

The minimum numeral height shall be 75mm.

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

41. All vehicular movement to and from the site is to be in a forward direction.
ADVISORY MATTERS

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

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

44. 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.

45. 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.

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

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

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

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

   c) Council is to be given at least two days’ notice of the date intended for commencement of building works, in accordance with Section 81A(2)(c) of the Act.
Development Applications Committee 15 November 2016

48. Development applications are not assessed against the provisions of the Building Code of Australia. A Section 96 modification under the Environmental Planning and Assessment Act 1979 (NSW) will be required if design amendments that cause the proposal to be inconsistent with the development consent are necessary to comply with the provisions of the Building Code of Australia.

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

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

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

52. 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.

53. Should any relics be uncovered during the construction phase, works on site must stop immediately and the NSW Heritage Council be advised in accordance with the requirements of the Heritage Act 1977.

END OF CONDITIONS
ATTACHMENT C - PROCESSING CHRONOLOGY

DA 2016/00159 – 46 KILGOUR AVENUE MEREWETHER

11 November 2014 - Correspondence for Pre-DA application 2014/88 issued to applicant.

14 August 2015 - Correspondence for Pre-DA application 2015/60 issued to applicant.

15 February 2016 - Application lodged with Council.

22 February 2016 - Application notified to adjoining residents in accordance with Council's public notification policy (Section 8.00 of the DCP).

9 March 2016 - Notification period closes. Eight (8) submissions were received.

25 May 2016 - Preliminary correspondence issued to the applicant.

14 June 2016 - Additional submission received from adjoining neighbour (No. 44 Kilgour Avenue).

14 June 2016 - Request for additional information issued to applicant.

22 June 2016 - Meeting held with applicant at Council's administration building concerning the Section 88b instrument.

13 July 2016 - Additional information submitted to Council addressing Council's request for additional information dated 14 June 2016.

31 August 2016 - Additional information submitted to Council addressing the Section 88b instrument.

7 September 2016 - Applicant advised application would proceed to Public Voice and the Development Assessment Committee.

21 September 2016 - Applicant has submitted an appeal to the Land and Environment Court pursuant to section 82(1) of the Act for 'deemed refusal' of the application.

18 October 2016 - Application proceeded to Public Voice.
ATTACHMENT D - VIEW STUDY - FOLLOWS
VIEW STUDY

The Cliff – D’Alterio Residence

46 Kilgour Ave
MEREWETHER, NSW
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Appendix C – SITE SURVEY
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1. INTRODUCTION

1.1 PREAMBLE

EJE Heritage has been requested by Newcastle City Council to provide a View Study in relation to the submission of a Development Application for proposed works at 46 Kilgour Ave, Merewether. This report has been prepared on behalf of applicants and site owners Frank and Conny D’Alferio. The dwelling proposal is being designed by internationally award winning architects Fearon Hay of Auckland, New Zealand.

The subject Development Application proposes the construction of a new two storey family residence, including four bedrooms, 2 car garaging and a lap pool. The site is currently vacant land, with an existing concrete driveway extending towards the northeast to its “street front” address in Kilgour Ave.

The conditions of the subject site are unique; the property has an unusual elongated shape which predicates that only a certain area is available for building. The property is sharply overlooked from the west by the existing four storey apartment building at 2A Ocean St, which is separated from the site by a narrow accessway that links the residence of 1 Busby Close to the Bathers Way Reserve. The site is bordered to the south-east by the well trafficked Bathers Way public footpath for the length of its longest boundary, and to the north, the locally heritage listed “Brynffyn” Residence abuts the boundary at 44 Kilgour Ave.

The proposal has been prepared following Pre-DA meetings with Council Officers David Lamb and Brad McCarron 17 October 2014 (ref: Pre-DA2014/88) and 29 July 2015 (ref: Pre-DA2015/60). Feedback from the initial meeting was considered by the design architects and significant amendments made to the design to help alleviate noted issues.
Figure 1. The subject site is bordered in red. The site is separated from 2a Ocean Street by a narrow pedestrian accessway leading from Bathers Way to 1 Busby Close (highlighted in green). Spatial information Exchange

Figure 2. The subject site is a narrow triangle of land, situated between the Bathers Way reserve, the historic Brynffryd Residence, and the narrow accessway of 1 Busby Close with the four storey apartment building of 2A Ocean Street behind.
1.2 OBJECTIVES

The objectives of this report are as follows:

- To identify and describe the existing visual/landscape environment and to evaluate its current qualities.
- To consider the likely impacts development will have on the visual/landscape quality of the area.
- To determine the likely impacts of the development when considered against the “View Sharing” controls of the local planning authority.

1.3 TERMINOLOGY

The below meanings for the following terms shall apply to this report:

- The “subject site” (referred to also as “the site”) is defined as the land area directly affected by the proposal within its defined lot boundaries.
- The “study area” consists of the subject site plus the immediate surrounding land potentially affected by the proposal during its construction and operation phase; this focuses particularly on the views from adjacent east-facing apartment residences at 2A Ocean Street.
- The term “view” is defined as per the Newcastle DCP 2012 definition: “...an extensive or long range outlook towards a particular urban aspect or topographical feature of interest.”
- The term “view corridor” is defined as per the Newcastle DCP 2012 definition: (view corridor) “...generally take the form of cones of vision extending from a selected point towards the valued view.”

1.4 REFERENCE DATA

Where “Relative Levels” (RL’s) are referred to within this report, these are based on survey information issued 03/09/2015 by registered surveyors Monteath & Powys and are to the Australian Height Datum. This survey is included in Appendix C for reference.

Photographs and Images are credited where necessary. Uncredited photos are by EJE Heritage.
2. EXISTING VISUAL ENVIRONMENT

2.1 SITE LOCATION AND DESCRIPTION

2.1.1 Locality View Character

The site is located on the cliff top above Merewether Beach in the coastal suburb of Merewether. The site sits on a prominent rise in topography, the top of which is around 26m above sea level. Disregarding the presence of existing buildings, this height difference above the surrounding terrain provides the area with substantial access to views both inland across the suburb of Merewether to Newcastle and also seaward up and down the coastline to Shepherds Hill and Glenrock respectively. The cliff and coastline run along a northeast-southwest tangent in this area, meaning that the views to the north and north-west of the site are “inland” and the views to the south and south-east of the site are “seaward”. These general views are described in Figure 3 following.

![Site Satellite Photograph]

Figure 3. Site Satellite Photograph. General views & directions described.

Spatial Information Exchange

The nature of development in the area has of course meant that many view corridors are blocked by existing buildings from different viewpoints around the locality. The area surrounding the subject site is predominantly developed in a suburban character with single and two storey residential dwellings, but with the notable exception of two four storey apartment buildings located on the very crest of the hill adjacent to the site, described respectively as numbers 2 and 2A Ocean Street. Although only two storey, it is also noted that the historic residence Brynhydry has a substantially gabled roof, meaning that its height and presence near the top of the hill is more exaggerated than surrounding residences.

The presence of the beach to the southeast of the site is nearly irrelevant in terms of views, given that it cannot be seen unless standing at the very cliff edge and looking downward. The Bathers Way pathway, owned by Newcastle City Council, runs parallel to the cliff line across its top edge, and separating all built development from the beach and seascape beyond. The footpath itself allows many view opportunities for pedestrians, with dedicated seating bays for picnicking and whale watching recently constructed adjacent to the subject site.

These works to Bathers Way, which began construction in late 2014, also included the addition of several Norfolk Island Pine trees by Newcastle City Council within the reserve. Whilst they are currently small saplings, these trees have the potential (as precedent in nearby reserves) to reach considerable height and girth and will undoubtably have future impact on the “view sharing” conditions of the site and surrounds.
Figure 4. Aerial photograph looking southeast across the subject site.

Figure 5. Aerial photograph looking southwest across the subject site.
Figure 6. Aerial photograph looking north across the subject site.

Figure 7. Aerial photo looking northeast across the subject site.
2.1.2 Site View Character

The site itself is tucked in a small triangle of land between the Bathers Way Reserve to the southeast, Brynhyd to the north and the 2A Ocean Street apartments beyond the 1 Busby Lane accessway to the west. Views across the site (at eye level from the ground) are described variously as follows:

North
Looking north across the site from Bathers Way there are no long distance views, with the rear facade of Brynhyd filling the foreground of this outlook. As described in the proposal’s Statement of Heritage Impact, this rear facade is of little heritage importance, and loss of its public view would not be considered detrimental to the building’s heritage significance.

![Figure 8: Looking north to Brynhyd across the subject site. This rear elevation of the building is not in its original condition, and as such has little heritage significance.](image)

West
Looking west across the site, as viewed walking westward along Bathers Way from Kilgour Ave, there are no long distance views, as the rise of the hill and the presence of the 2A Ocean Street apartment building fill the foreground of this outlook.

![Figure 9: Looking west across the subject site, taken at eye level from Bathers Way.](image)
Development Applications Committee 15 November 2016

VIEW STUDY
THE CLIFF, 46 KILGOUR AVE, MEREWETHER, NSW

South
Views looking south across the site would only be able to be obtained from the enclosed rear balcony of Brynhydry (44 Kilgour Ave). No photograph is available that describes this view, however the current owners of this property are in support of the proposal, and do not consider its view sharing implications to be detrimental from their property.

East
Views looking across the site from the east are available from each of the east facing apartments of the 2A Ocean Street building, variously described as No’s 13, 14, 17, 18, 21 and 22. The ground level of the apartment is vehicle garaging, with no windows or openings facing the site. Situated variously one, two and three stories above the subject site, and located higher up the hill than the site, all of the adjacent apartment buildings look down onto the site, and have greater opportunity to look above obstacles to long distance views. These apartments have enjoyed a long period of uninterrupted views across the subject site while vacant, with east facing views along the coast towards Bar Beach and Shepherds Hill. It is noted however that each apartment occupies a corner of the building and hence has views in two cardinal directions, not solely across the subject site. No’s 14, 18 and 22 have views to the east and south, while No’s 13, 17 and 21 have views to the east and north, as described in Figure 11 below:

Figure 10. 2a Ocean St Apartment building, apartments with views to the east noted.

Figure 11. Satellite view to 2A Ocean Street. Apartment numbers and views noted.

Spatial Information Exchange

Prepared by EJE Heritage
T: 02 4983 0100 – F: 02 4983 0480
12017 VIEW STUDY NO 1 02-05-2001
3. PROPOSED DEVELOPMENT

3.1 BACKGROUND

The subject site was subdivided from the grounds of Brynhryd in 1998 and has been earmarked for the proposal of a single residential development since this time.

To accompany the application to Council for the site’s subdivision in 1998, the site’s then owner had generic plans prepared to indicate how a 2 storey detached dwelling house could be designed on the subject site, whilst respecting site conditions such as the heritage significance of Brynhryd and the views of the neighbouring apartment block.

3.2 CURRENT PROPOSAL

The current dwelling design, by Fearon Hay Architects of Auckland, NZ, loosely follows this previous design and responds to the contemporary site conditions such as the changes to Bathers Way Reserve on the unique site even more thoroughly. Fearon Hay Architects are an internationally award winning architectural firm specialising in residential dwellings with an emphasis on site specific and high quality design.

The proposed new dwelling is a two storey residence with four bedrooms and a double car garage accessed off Kilgour Ave. The building is distinctly contemporary in its design, a full set of Proposed Plans is included at the end of this document in Appendix E for reference.

The building is to be constructed of rendered concrete block masonry walls and concrete slabs, with a decorative steel fascia surmounting the roof parapet, and decorative timber screens and sandstone cladding covering parts of the building facade. The roof of the building, which will be seen by some occupants of the 2A Ocean St apartments, is considered aesthetically as a public facade. The roof is flat, and covered with parapets in a low reflectivity crushed rock ballast of a similar colour to the stone cliff face of the beach below. Roof penetrations will be grouped together and located as far from the adjacent apartment building as practicable.

The maximum level of the proposed roof parapet surmounting the building is RL 29.590. The maximum level of the proposed west boundary wall of the dwelling, facing the 2A Ocean Street building, is RL 28.990.

The floor levels of the balcony of each east facing apartment within the 2A Ocean Street building, and of its own roof parapet are as per the following table. The table also describes the Relative Level of the “eye level” of a standing occupant on the balcony, for the purpose of this study assumed to be 1600mm above the floor level. A relative difference (in metres) is given between the eye level, and the proposed roof parapet at 46 Kilgour Ave.

<table>
<thead>
<tr>
<th>2A Ocean Street Apartment</th>
<th>Balcony (RL)</th>
<th>Eye Level (RL)</th>
<th>Difference in Height between Eye Level &amp; Proposed Parapet (M)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1 – No. 13</td>
<td>28.78</td>
<td>30.38</td>
<td>+ 0.79</td>
</tr>
<tr>
<td>Level 1 – No. 14</td>
<td>28.78</td>
<td>30.39</td>
<td>+ 0.79</td>
</tr>
<tr>
<td>Level 2 – No. 17</td>
<td>31.58</td>
<td>33.18</td>
<td>+ 3.59</td>
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<tr>
<td>Level 2 – No. 18</td>
<td>31.58</td>
<td>33.18</td>
<td>+ 3.59</td>
</tr>
<tr>
<td>Level 3 – No. 21</td>
<td>34.34</td>
<td>34.94</td>
<td>+ 5.35</td>
</tr>
<tr>
<td>Level 3 – No. 22</td>
<td>34.34</td>
<td>34.94</td>
<td>+ 5.35</td>
</tr>
<tr>
<td>Roof Parapet</td>
<td>37.15</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

A section drawing showing the above Relative Levels is shown following in Figure 12.
Figure 32. Section drawing through the proposed residence, including finished levels of the balconies adjacent at 30 Ocean Street. Drawing not to scale.
4. PLANNING CONTROLS & VIEW STUDY PRECEDENTS

The planning controls of the consent authority provide the basis for the assessment of the proposal, in terms of its compliance with objectives relating to views. Land and Environment Court New South Wales case law precedents have also been studied and applied here to assess the impact of the proposal in terms of its effect on views. These documents are described following.

4.1 NEWCASTLE DEVELOPMENT CONTROL PLAN 2012

The most relevant consent authority control to the methodology of this report is the Newcastle Development Control Plan 2012 – 3.02 Single Dwellings, Part 3.02.12 View Sharing (NDCP2012 Part 3.02.12). This document provides the following:

Performance Criteria
1. Development is designed to allow view sharing with neighbouring properties.
2. Design plans identify existing views and demonstrate how view sharing is achieved.
3. Important public views and vistas are to be enhanced by the form and treatment of buildings including roofscapes.

Acceptable Solutions
1. The building height does not exceed 5m or if the building is over 5m adjoining properties do not have views or vistas to water, city skyline and iconic views obscured by the proposed development.3

4.2 TENACITY V WARRINGAH (2004) NSWLEC 140

In Pre-DA correspondence Council has nominated Tenacity v Warringah (2004) NSWLEC 140 as the test case regarding the concept of “view sharing”. This case establishes a four-step assessment process to determine whether view sharing is considered reasonable. This is described following:

26. The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views e.g. 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 waterfront view in which the interface of between land and water is visible is more valuable than one which is obscured.

27. The second step is to 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 obtained from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation of retaining side views and sitting views is often unrealistic.

28. The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view affected. The impact on views from a living area 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 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.

29. The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all the planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a

3 Newcastle Development Control Plan 2012 – 3.02 Single Dwellings, Part 3.02.12 View Sharing
4.3 ARNOTT v CITY OF SYDNEY COUNCIL [2015] NSWLEC 1052

The proponent also cites Arnott v City of Sydney Council [2015] NSWLEC 1052 as a relevant precedent in the analysis of the proposal’s impact on views. The case is particularly relevant in that it considers the view sharing impacts of a proposal as viewed from a nearby apartment building, rather than from a single dwelling, which is similar to our situation.

Regarding the fourth step of Tenacity v Warringah, the case establishes more succinctly how the “skillful design” test is applied:

69 In regard to the ‘skillful design’ test in the Tenacity planning principle, it was Mr Nash’s view that the upper bedroom level of the western apartment of the proposal could be removed and this would maintain a significant portion of the harbour views to Elizabeth Bay from the level 9 apartments in ‘Vorti’.

70 Ms Morish considered that carving out part of the proposal’s envelope is not the intent of the skillful design test in the Tenacity planning principle. In her opinion, the skillful design test is to look for opportunities within the massing and form of the proposal to minimise the impact on views across the site, whilst maintaining the capacity to reasonably develop the site. It is not the equivalent of the ‘design excellence’ test in DCP 2012. Taking into consideration the compliance of the proposal with the development standards in LEP 2012 and the controls in DCP 2012, Ms Morish considered that the removal of half of one apartment pays no heed to the reasonableness of the proposal and fails to meet the applicant’s brief, indeed it amounts to punishing the applicant. Ms Morish further stated that the applicant did explore other options for the massing of the proposal, however the significant side setbacks of the tower made the partial top two levels of the tower the most appropriate location for an addition. (…).

72. I accept and adopt Ms Morish’s interpretation of the skillful design test in the fourth step of the Tenacity planning principle. The skillful design test is not about whether a design is skillful, in the sense of the architect’s expertise in creating a successful architectural composition; instead the intent of the fourth step is to look for opportunities within the massing and form of the proposal to minimise the impact on views across the site, whilst maintaining the capacity to reasonably develop the site. This is evident in Dr Roseath’s own words at paragraph 29 of the Tenacity planning principle, whether a more skillful design could provide the applicant with the same development potential and amenity [bold added].

The case continues to describe that in the situation of assessing views from individual apartment buildings, it is important to also assess the view impact regarding the apartment building as a whole:

It is partly for this reason that the Tenacity planning principle is less helpfully applied to impacts on views from individual apartments within residential apartment buildings, as there are generally more limited opportunities to rearrange massing to preserve what is often a singular orientation to a view. For this reason, it is also appropriate to consider the residential apartment building as a whole in assessing view impacts.4

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The case makes the following further statements:

73. While I am satisfied that the resident objectors’ concern regarding the impact of the proposal on their harbour view is well founded, it is fair to weigh the detrimental impact of the proposal on their views against the reasonableness of the proposal.

74. I accept the evidence of Ms Marsh that the resident objectors should have had a reasonable expectation of the potential for an addition to the site, given the previous and now lapsed consents for additions to 40 Medley Street dating back to 1997 and more pertinently, the public consultation process leading to the making of LEP 2012. (…)

75. I accept Ms Marsh’s description of the site as being within a highly urbanised environment and her view that the siting of the proposal is constrained by the form of the existing building. The proposal has adopted tight floor to ceiling and structural depth dimensions to minimise the overall height of the proposal and the consequent impact on views across the site. I am satisfied that the proposal represents a fair balance between realising the reasonable development potential of the site and retaining as much as possible of the eastern harbour view gained across the site from the ‘Kin’ apartment building. Any further eroding of the proposed building envelope, as suggested by Council’s experts, would, in my view, impose an unreasonable constraint on the development potential of the site.\(^7\)

4.4 CONSULTATION WITH AFFECTED PARTIES

As requested by Council, the proponent made contact with neighbouring parties affected by the proposal, with the purpose of informing them of their intentions for the proposal, with the purpose of meeting with them in person to discuss the proposed plans, to request feedback on the design of the proposal, and, to request assistance in the preparation of an accurate view study by allowing a photographer to access these adjacent residences to take realistic and accurate images of the current views across the site.

These requests were made to the east facing apartments of 2A Ocean Street building (addressed variously as No’s 13, 14, 17, 18, 21 and 22) via hardcopy letter 24/09/2015, and 06/09/2015.

The proponent and coordinating architects from EJE met with representatives from Apartment’s No 13, 14, 22 and 23\(^8\) on several occasions to discuss the plans and receive feedback. These representatives informed us that they would act as proxy representatives for their neighbours that did not attend.

Regarding the request for a photographer to be allowed to access these apartments to enable an accurate view study to be undertaken, a response was only received from 21/ 2A Ocean Street. This response did not grant access to the site to allow further photographs to be taken, but provided several ground level context photographs of the site which were not relevant for the purpose of the view study. No other responses to this request were received, and hence no access to affected dwellings in the 2A Ocean Street apartments has been possible for the purposes of the view study.

The proponent has been in correspondence with the owners of 44 Kilgour Ave (Brynhyfdy) via email, telephone and in person at numerous times. The owners of this site are in full support of the proposal, and are satisfied with its design in terms of the “view sharing” impacts on their property. As such, no formal view study has been conducted regarding the views from 44 Kilgour Ave across the subject site in this report.

---

\(^7\) Amott v City of Sydney Council (2015) NSWLEC 1052, paragraphs 73-75.

\(^8\) Note that apartment No. 23 does not face over the subject site and will not have any existing views affected by the proposal.
4.5 METHODOLOGY

The methodology applied to this study as such has involved systematically evaluating the visual environment pertaining to the site, based on the four step process established in Tenacity v Warringah.

The relevant “visual environment” regarding our subject site is considered to be each of the east-facing apartments within 2A Ocean Street (No’s 13, 14, 17, 18, 21 and 22), and also as described in Arnott v City of Sydney Council, to be the residential building as a whole. Given that the current owners of Brynhydd are in support of the proposal, no further view study is made regarding this aspect.

Value judgements as described in the first step of Tenacity v Warringah are considered in terms of the “Visual Quality” and “Visual Sensitivity” of a view. These descriptions are based on community responses to scenery as outlined in Appendix A (Visual Quality Preference Table) and visual assessment criteria as outlined in Appendix B (Visual Assessment Criteria).

Where this process considers the “reasonableness” of the proposal in terms of its compliance with planning controls, this section considers the performance criteria and acceptable solutions of the NDCP2012 Part 3.02.12, as described previously.

---

5. VIEW STUDY

5.1 INTRODUCTION

As a photographer was not allowed access to apartments at 2A Ocean Street for the purpose of collecting accurate images for a view study, the applicant engaged Aerial Australia to collect equivalent aerial photographs with the use of an Unmanned Aerial Vehicle (UAV/Drone). The view study as such uses this aerial photography, combined with 3D modelling and photo-rendering software to predict the impact of the proposed building on views within the view study area.

Instructions to the photographer were to photograph the full panorama of views from the front of each apartment balcony at approximately 1.6m (nominal eye level) above its floor level. These photographs have formed the basis of all view study analysis following.

It is acknowledged that this method of photography has limits in its accuracy, and likely does not represent the exact view from eye level of each of the apartment balconies. These limits include privacy issues in the flight of the drone adjacent to private residences, and the subjectivity of the pilot’s assessment of the height of the drone above the floor level of the balcony. EJE Heritage has also not been able to determine the view sharing implications of the proposal when viewed from inside these adjacent premises without access to the properties.

With aerial photographs collected, an indicative panorama of the view from each apartment balcony was created by combining the images in Adobe Photoshop. The images have been manipulated in scale so that the panorama reads most accurately in terms of the horizon line and the scale of objects in the images, but the images have been in no other way edited or skewed in perspective.

A 3D model of the proposed development, generated in Trimble Sketchup, with post-production editing in Adobe Photoshop was then inserted into the panorama images to attempt to represent as closely as possible the built form of the proposed dwelling. The Sketchup model is based on the final Development Application designs for the proposal, but does involve some simplification of building elements. It is also noted that the photo editing process also involves some subjectivity on the part of the editor in attempting to ensure that levels and setbacks are accurate. It is apparent that as a panoramic image “bends” around an arc, an inserted building model must also be bent and manipulated to appear in the correct position as it would in a real-world view. The resulting images are as such the editor’s best efforts in representing an accurate photomontage of the finished proposal, but it cannot be guaranteed that the images represent an exact view of the development as it would appear in the real world.

As described previously, view studies are made using the four step analysis described in Tenacity v Warringah, with a whole building analysis made as per Amott v City of Sydney Council, and with assessment also made against NDPC2012 Part 3.02.12.
Development Applications Committee 15 November 2016

5.2 LEVEL 1 - 1406 OCEAN STREET

Refer to Figures 12 and Figures 14 following.

<table>
<thead>
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<th>Proposed Use Type</th>
<th>Value Amount</th>
<th>Value Quality</th>
<th>Visual Sensitivity</th>
<th>Position</th>
<th>Qualitative Value Loss</th>
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<tr>
<td>Toilet (South)</td>
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<td>High</td>
<td>Side (West)</td>
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</table>

Conclusion:
Following the four-step view study assessment process, the proposal does not significantly affect the existing views from 1406 Ocean Street. The proposal also complies with the DCP requirements for viewsharing, or that areas of the building which are over 10m high do not obscure views, control light spillage values.

*For the purposes of this assessment, the 'whole property' as quoted from Trinity v. Wentworth is considered to be the lot of the apartment, not the lot of the entirety of 14 Ocean Street.

*For the purposes of the above assessment, we have considered the 'view' boundary of the 14 Ocean Street site (the boundary obtained by the subject only time consistent with 'whole' boundary). With no exclusive street facing frontage, we have considered the south facade facing Battery Place to be the 'rear' of the building.

*In the case of future views from a location within an apartment on internal access not able to be obtained at the moment, the south facade facing Battery Place is the subject to the future views from within Battery Place and hence is the future views from within Battery Place.

*The views of the south facade facing Battery Place from within Battery Place reverse will in the future further improve over time, creating a 'partial' rather than 'whole' view.

---

*For the purposes of this assessment, the 'whole property' as quoted from Trinity v. Wentworth is considered to be the lot of the apartment, not the lot of the entirety of 14 Ocean Street.

*For the purposes of the above assessment, we have considered the 'view' boundary of the 14 Ocean Street site (the boundary obtained by the subject only time consistent with 'whole' boundary). With no exclusive street facing frontage, we have considered the south facade facing Battery Place to be the 'rear' of the building.

*In the case of future views from a location within an apartment on internal access not able to be obtained at the moment, the south facade facing Battery Place is the subject to the future views from within Battery Place and hence is the subject to the future views from within Battery Place.

*The views of the south facade facing Battery Place from within Battery Place reverse will in the future further improve over time, creating a 'partial' rather than 'whole' view.
Figure 15. Indicative existing east-north perspective view from eye level of hollow at 142c Crown Street.
Figure 11. Indicative east-west panoramic view from eye-level of clubhouse at 1619 Clovelly Street including proposed development at 1617 Clovelly Ave. Recently planted Portia's Island Five Trees within the Bullocks Way Reserve have been chosen at anticipating indomitable images.
### View Study

**The DCP Assessment Report**

**3.3 LEVEL 2 – 1603 OCEAN STREET**

Refer to Figure 10 and Figure 11 following.

<table>
<thead>
<tr>
<th>Procedure</th>
<th>View Assessment</th>
<th>View Assessment</th>
<th>View Assessment</th>
<th>View Assessment</th>
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</thead>
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<tr>
<td>Scored/View Type</td>
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<td>View Assessment</td>
<td>View Assessment</td>
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<td>Low</td>
<td>Low</td>
<td>Standing</td>
</tr>
</tbody>
</table>

**Conclusion**

Following the four step view study assessment process the proposal does not affect the existing views from 1603 Ocean Street. The proposal also complies with the DCP requirements for view obtrusion, so that areas of the building which are low for high do not obscure water views or any display screens.

---

*For the purposes of this assessment, the 'view property' as quoted from Tennyson V. Wellington is considered to be the kind of the apartment, not the kind of the utility of 1603 Ocean Street.
*For the purposes of the assessment with NCP 2012 and DCP 2012, see the Development Applications’ Statement of Environmental Effects.
*Refer Appendix A
*Refer Appendix B
*For the purposes of this assessment, we have considered the 'view property' the kind of the utility of the subject only (non compliance is 'subject' boundary) with no access street facing foreground, we have considered the south facade facing Balmain Bay to be the "view" of the building.
*In situations where areas are available from a building position within the apartment an essential access condition has been obtained.
*The terms of the view property are available from a building position within the apartment an essential access condition has been obtained.
*The terms of the view property are available from a building position within the apartment an essential access condition has been obtained.
*For the purposes of this assessment, the 'view property' as quoted from Tennyson V. Wellington is considered to be the kind of the apartment, not the kind of the utility of 1603 Ocean Street.
Figure 15. Indicative existing and proposed panoramic view from eye level of balcony at 10 Birchmore Street.
Figure 13. Indicative east north panoramic view from eye level of balcony of 156 Ocean Drive, including proposed development at 62 Hilgrove Ave. Risers will be planted Norfolk Island Pine trees within the Balmoral Way Reserve to obscure anticipated milestone heights.
**Development Applications Committee 15 November 2016**

**LEVEL 3 – 228A OCEAN STREET**

<table>
<thead>
<tr>
<th>View</th>
<th>Bracket Quality</th>
<th>Visual Impedance</th>
<th>Location</th>
<th>Position</th>
<th>Qualitative View Loss</th>
<th>Compliance with NOCP 2012</th>
<th>Compliance with NOCP 2012</th>
<th>Compliance with NOCP 2012</th>
<th>Compliance with NOCP 2012</th>
<th>Conclusion</th>
</tr>
</thead>
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<tr>
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<td>Front (South)</td>
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</table>

**Conclusion:**

Following the four step view study assessment process the proposal does not affect the existing views from 162A Ocean Street. The proposal also complies with the DCP requirements for view sharing. In that area of the building which are over the high do not obscure water, control of city skyline views.

---

1. For the purpose of this assessment, the "whole property" as quoted from Tenderly v Alphington, is considered to be the lot of the apartment, not the lot of the entirety of 24A Ocean Street.
2. For data regarding compliance with NOCP 2012 and NOCP 2019, see the Development Applications Statement of Environmental Effects.
3. Access Appendix A.
4. Access Appendix B.
5. Access Appendix D.
6. In this assessment, we have considered the "null boundary of the 24A Ocean Street site (the boundary governed by the subject only)" to be consistent with a "null boundary." With no obvious street facing Frontage, we have considered the south facade facing Battersea Road to be the "front" of the building.
7. In this assessment, the saleable rights are available from a 10th floor position within the apartment so internal access is not able to be obtained.
8. The growth of the canopy planted for the Saleable Rights within the Battersea Road reverse will in the future further access this view.
Figure 11: Indicative existing west-east panoramic view from east level of balconies at 223 DIY Street.
Figure 10: Indicative east-south-westerly view from eye-level of balcony at 1215 Ocean Street including proposed development at 46 Killoran Ave. Recently planted Norfolk Island Pine trees within the Botany Bay foreshore have been shown at anticipated mature heights.
### Development Applications Committee 15 November 2016

#### PREVIOUS

**LEVEL 1 - 1304 OXENSTREET**

Refer to Figure 1 and Figure 2A showing.

<table>
<thead>
<tr>
<th>STEP 1</th>
<th>ASSESS VIEWS TO BE AFFECTE</th>
<th>STEP 2</th>
<th>ASSESS FROM WHAT PART OF THE PROPOSAL THE VIEWS ARE AFFECTED</th>
<th>STEP 3</th>
<th>ASSESS EXTENT OF THE IMPACT ON THE WHOLE PROPERTY</th>
<th>STEP 4</th>
<th>ASSESS THE &quot;REASONABLENESS&quot; OF THE PROPOSAL?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposal: View Types</td>
<td>Year A</td>
<td>Back</td>
<td></td>
<td>Visual Access</td>
<td>Location</td>
<td>Height</td>
<td>Qualitative View Loss</td>
</tr>
<tr>
<td>Land (City Boundary to North)</td>
<td>High</td>
<td>High</td>
<td>High</td>
<td>Fair</td>
<td>Standing</td>
<td>None</td>
<td>Yes</td>
</tr>
<tr>
<td>Water</td>
<td>Parts*</td>
<td>High</td>
<td>High</td>
<td>Sick (c)</td>
<td>Standing</td>
<td>Moderate - Severe</td>
<td>No</td>
</tr>
</tbody>
</table>

**Conclusion:** Following the four-step case study assessment process it can be concluded that the proposal affects the existing water views from the boundary of 1304 Oxenstreet to a moderate to severe extent. It is believed that the notional line of the water would still be evident above the parapet of the roof of the proposal but at an level. However much of the water view is obscured with a result. The proposal in the case study complies with the DCP requirements for view sharing in that the facade of the building that bears the water is not more than one high above the existing ground level, however it is noted that part of the building further away from the water towards the eastern side comes above the 9.9m line.

---

1. For purposes of this assessment, the "whole property" is quoted from the City of Melbourne is considered to be the lot of the apartment, not the lot of the entirety of 1304 Oxenstreet.
2. For purposes of this assessment, the "relevant" portion of the road is considered to be the part of the road that is not in compliance with NCC2002.01 and NCC2002.02. See the Development Applications Statement of Environmental Effects for more details.
3. The term "notional line of the water" is identical with the rule of thumb that can be seen from a similar condition within the portion of the apartment that would be considered to be a "view" to another. With no other view sharing rules, we have considered the south facing building flanks with the notional line of the water.
4. The assessment criteria for the "prevailing" portion of the road is identical with the rule of thumb that can be seen from a similar condition within the portion of the apartment that would be considered to be a "view" to another. With no other view sharing rules, we have considered the south facing building flanks with the notional line of the water.
5. The term "notional line of the building" is identical with the rule of thumb that can be seen from a similar condition within the portion of the apartment that would be considered to be a "view" to another. With no other view sharing rules, we have considered the south facing building flanks with the notional line of the water.
6. The term "prevailing" portion of the road is identical with the rule of thumb that can be seen from a similar condition within the portion of the apartment that would be considered to be a "view" to another. With no other view sharing rules, we have considered the south facing building flanks with the notional line of the water.
Figure 13: Indicative existing north-east panoramic view from eye level of balcony at 150 Ocean Stree.
Figure 23: Indicative north-west perspective view from eaves level of balcony at 102ia. Ocean Street (excluding proposed development at 102b). Panoramic photograph from front yard珀斯树 at the Dunsborough Peninsula town titled wind turbines at expected mature heights.
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#### 5.6 LEVEL 2 – 1520 OCEAN STREET

Refer to Figure 21 and Figure 22 following.

<table>
<thead>
<tr>
<th>Step 1</th>
<th>Step 2</th>
<th>Step 3</th>
<th>Step 4</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Assess Views to be Affected</strong></td>
<td><strong>Assess Extent of the Property the Views are Accessible</strong></td>
<td><strong>Assess Extent of the Impact on the Whole Property</strong></td>
<td><strong>Assess the “Reasonableness” of the Proposal</strong></td>
</tr>
<tr>
<td>Property View Type</td>
<td>Visible/Invisible?</td>
<td>Scaled Quality*</td>
<td>Visual Quality*</td>
</tr>
<tr>
<td>Level 2 (City Skyline to North)</td>
<td>Yes/No</td>
<td>High</td>
<td>High</td>
</tr>
<tr>
<td>Rooftop</td>
<td>Yes/No</td>
<td>High</td>
<td>High</td>
</tr>
<tr>
<td>Rooftop (Additional View)</td>
<td>Yes/No</td>
<td>High</td>
<td>High</td>
</tr>
</tbody>
</table>

**Conclusion:**

Following the four step view impact assessment process, the proposal affects the existing water views from the topography of 1520 Ocean Street in a negligible sense. That being that the very lower edge of the course wall is partially obscured but the bulk of the water view being maintained. The proposal in this case partially complies with the DCP requirements for view clarity, in that the feature of the building that faces the views is not more than one (1) storey higher than the existing ground level. However, in somewhat part of the building (furthest away from the view), there is a slight 2 storey addition, which does not obstruct a view to the apartment’s views to the north towards the city skyline or the iconic views to Sheepcreek Hill.

---

* The acceptance of this assessment, the "whole property" (as quoted from Tenderly’s draft report is considered to be the lot of Ocean Street, not the lot of the entirety of 1520 Ocean Street.

* For more information on compliance with NOP2012 and RC 2012, see the Development Application Statement of Environmental Effects.

* For reference: A.

* For reference: B.

* For reference: C.

* The acceptance of this assessment, the "whole property" (as quoted from Tenderly’s draft report is considered to be the lot of Ocean Street, not the lot of the entirety of 1520 Ocean Street.

* The acceptance of this assessment, the "whole property" (as quoted from Tenderly’s draft report is considered to be the lot of Ocean Street, not the lot of the entirety of 1520 Ocean Street.

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* The acceptance of this assessment, the "whole property" (as quoted from Tenderly’s draft report is considered to be the lot of Ocean Street, not the lot of the entirety of 1520 Ocean Street.

* The acceptance of this assessment, the "whole property" (as quoted from Tenderly’s draft report is considered to be the lot of Ocean Street, not the lot of the entirety of 1520 Ocean Street.
Figure 31: Indicative existing south-west persistence view from eye level of building at 343 Daunay Road.
Figure 33: Indication north-west panoramic view from eye-level of balcony at 77-89 Station Street including proposed development at 80 Station St. Replanted buffalo Islands Four Trees at Site E. Pillars May forest trees have been shown at conclusions north.

SOUTH AFRICA
### Development Applications Committee 15 November 2016

**LEVEL 3 – 212 OCEAN STREET**
Refer to Figures 21 and Figure 22 following.

<table>
<thead>
<tr>
<th>View Location</th>
<th>View Quality*</th>
<th>Visual Impact*</th>
<th>Location</th>
<th>Position</th>
<th>Qualitative View Loss</th>
<th>Compliance with NOCP2012 Section 29.2 Height Restrictions</th>
<th>Compliance with NOCP2012 Section 6.3 Free Area Restrictions</th>
<th>Compliance with NOCP2012 Section 6.7 Obstructive Shading Standards</th>
<th>Compliance with NOCP2012 Section 6.7 Obstructive Shading “Acceptable”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lower (City Skyline to right)</td>
<td>High</td>
<td>High</td>
<td>New (2015)</td>
<td>Standing</td>
<td>None</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Middle (Upper Floor)</td>
<td>High</td>
<td>High</td>
<td>Side (East)</td>
<td>Standing</td>
<td>None</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Upper (12th Floor)</td>
<td>High</td>
<td>High</td>
<td>Side (East)</td>
<td>Standing</td>
<td>None</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

**Conclusion:**
Following the four step visual assessment process, the proposal does not affect the existing views from the balcony of 212 Ocean Street. The proposal also complies with the DCP requirements for view clearing, in that areas on the building which are over 8m high do not obscure water, iconic or city skyline views.

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* For the purposes of this assessment, the "whole property" as quoted from Trevor v. Whittington is considered to be the site of the apartment, not the site of the whole of 212 Ocean Street.
* For more information on compliance with NOCP 2012 and M, see the Development Applications’ Statement of Environmental Effects.
* Refer Appendix B.
* Refer Appendix D.

### Additional Notes:
- The proposal has been considered the "roof" boundary of the Site (120 Ocean Street) as (the boundary distance at the subject site is considered a "roof" boundary). With no obvious street facing frontage, we have considered the north facade facing Battersea Place to be the "roof" of the building.
- In accordance with above, any areas are available from a sitting position within the apartment or external access is able to be obtained.
- The growth of the nearby planted building front Plant trees within the Battersea Place reserve will in the future further obscure this view, creating a "partial" rather than "whole" view.
Figure 03: Indicative existing south-west periscopic view from eye level of balcony at 316 Esplanade Street.
INDICATIVE IMPACT OF PROPOSED DEVELOPMENT

Figure 24. Indicative north-west perspective view from eye-level of balcony at 271a St Clair Street including proposed development at 46 St Kilda Ave. Foliage planted in the proposed Free Zone on the St Kilda Way Reserve have been shown at full height and mature heights.
## ASSESSMENT OF IMPACT ON APARTMENT BUILDING AS A WHOLE

Refer to Figures 25 and 26 following.

<table>
<thead>
<tr>
<th>Pedestrian View Type</th>
<th>View Annual Quality</th>
<th>Social Sensitivity</th>
<th>Location</th>
<th>Position</th>
<th>Qualitative View Loss</th>
</tr>
</thead>
<tbody>
<tr>
<td>North - Lake Gardens</td>
<td>versus</td>
<td>High</td>
<td>High</td>
<td>Rear (North)</td>
<td>Stbounding None</td>
</tr>
<tr>
<td>South - Block B</td>
<td>versus</td>
<td>High</td>
<td>High</td>
<td>Rear (South)</td>
<td>Stbounding None</td>
</tr>
<tr>
<td>West - Block A</td>
<td>versus</td>
<td>High</td>
<td>High</td>
<td>Rear (West)</td>
<td>Stbounding None</td>
</tr>
</tbody>
</table>

### Conclusion

Considering the apartment building as a whole, which sits atop a prominent site in topography and enjoys 360-degree views across both land and water vistas, the four-step view-back assessment process concludes that the proposal has no visible impacts on only the west-facing views from the building.

---

For the purposes of this assessment, the "view property" is considered to be the group of apartments in the western side of the lake, directly opposite the apartment building:

- For assessment purposes, compliance with NDOF 2012 and NDOF 2014, and the Development Application is tabled in the table of Environmental Effects.

For the purposes of this assessment, we have considered the "view" boundary of the lake as the boundary that contains the subject view property and the "view" boundary with the north street facing the building. We have considered the south facade facing the lake as the north facade facing the lake.

It is important to note that there are no significant views from the western side of the lake due to the height and orientation of the adjacent buildings.

The western facade of the building, directly opposite the lake, is subject to strong parallax in the area. This allows the existing ground level, meaning that the proposal is in compliance with NDOF 2012 1.6.1.1. The topography of the site slopes away from this point, however, so the maximum height of the building above the existing ground level 1.7 times the setback, the view of the site, which is in compliance with NDOF 2012 1.6.1.
Figure 20: Indicative photomontage of the proposed development. The adjacent five-level raised floor is (above) Rapson Road. (b) elevated view of anticipated impact site.
6. CONCLUSION

This View Study has assessed the proposed construction of a two storey dwelling on the currently vacant site at 46 Kilgour Ave in terms of its visual impact on adjacent residences. The assessment process has followed the four-step process set out in Tenacity v Warringah (2004) NSWLEC 140, with elements also drawn from Arnott v City of Sydney Council (2015) NSWLEC 1052. Compliance or non-compliance with Newcastle Development Control Plan 2012 – 3.02 Single Dwelling, Part 3.02.12 View Sharing is highlighted as part of the above process. Given that the current owners of 44 Kilgour Ave (Brynhyfryd) are in support of the proposal, no view study is made regarding this aspect.

In terms of the Development Control Plan requirements regarding view sharing, the proposal is variably compliant and non-compliant depending on the position of the viewer around the site. The west boundary wall of the proposal, which sits adjacent to the 2A Ocean Street apartments, ranges in height between 3.19 and 4.74m in height, and hence is above the 5m threshold that requires further assessment. The site slopes away from this boundary however, and the north-east corner of the building is measured at 7.15m in height, above the 5m threshold. The proposal is fully compliant when viewed from apartment No. 14, 18, 21 and 22, as the area of the building over 5m in height does not obscure views or vistas to water, the city skyline or iconic views. The proposal is not fully compliant when viewed from Apartment No. 13 and 17, as the area of the building which is above 5m high partially obscures some existing water views.

Considering the first step of Tenacity v Warringah, the view study establishes that most of the east facing apartments at 2A Ocean Street have each of land, water and iconic views, either wholly or partially. It is noted that the existing water views that most of these apartments enjoy to their south and east, which are described as being highly valued in Tenacity v Warringah, will be impacted in the near future by recent planting of two Norfolk Island Pine trees within the Bathers Way Reserve adjacent to the site. As established by similar trees in nearby reserves, these trees will likely grow significantly higher than the maximum roof height of the proposed dwelling, and will likely break the horizon line and screen large portions of the existing water views from the 2A Ocean St apartments, downgrading these views from the "whole" to "partial" category (as per Tenacity v Warringah).

Considering the second step of Tenacity v Warringah, EJ Heritage was not granted access to the neighbouring apartments at 2A Ocean Street, which has limited the ability to accurately prepare the view study from different locations around and within the building. Sitting views within the property for example have not been able to be assessed, but standing photos from the exterior balconies have been approximated with the use of aerial photography by UAV.

As it does not directly address a streetfront, the "front" of the 2A Ocean Street building, is not easily defined. For the purpose of this study, the "front" of the building is considered to be the south facade, which addresses the building's car park, driveway access and the Bathers Way Footpath. No views from the "front" of the building as such are impacted on by the proposal. The east facade of the building, addressing the subject site, would in this case be considered a "side" boundary. This is logical considering that it is a shared boundary with its neighbouring site, rather than public land. This eastern "side" boundary is the only face of the building which has views affected in any way by the proposal, and as stated in Tenacity v Warringah, "The expectation of retaining side views and sitting views is often unrealistic."

Considering the third step of Tenacity v Warringah, assessment is made of the impact of the proposal from the views of the whole of each apartment. It is noted that each apartment in the 2A Ocean Street building occupies a corner of the building, and hence enjoys views in two cardinal directions from their interior spaces and balcony. The east facing apartments facing the subject site numbered 13, 17 and 21 have views both northward to the city skyline and eastward to the coastline. The proposal will not in any way disrupt the views of these apartments to the north. The east facing apartments facing the subject site numbered 14, 18

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and 22 have views both eastward to the coastline and southward to the ocean. The proposal will not in any way disrupt the views of these apartments to the south. Individually, apartment No. 13 will sustain moderate-to-severe impacts to its eastern views and No’s 14 and 17 will sustain negligible impacts to their eastern views. No other apartment buildings will incur impacts on their existing views to water, city skylines or iconic vistas.

Considering the fourth step of Tenacity v Warringah, it is concluded that a "more skillful design" could not provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. As per Arnott v City of Sydney Council, "the intent of the fourth step is to look for opportunities within the massing and form of the proposal to minimise the impact on views across the site, whilst maintaining the capacity to reasonably develop the site". Whilst it would be possible to propose a lower building or one with a smaller footprint, it is not considered that this would be allowing the applicant to "reasonably" develop the site, since the current proposal is well within allowable height and Gross Floor Area restrictions. The proposal is noted to have non-compliances in terms of its site setbacks, however these are arguably justified due to the unusually tight site conditions. More information is available regarding these issues in the application’s Statement of Environmental Effects.

As per Arnott v City of Sydney Council, assessment is made of the impact on views of the proposal on the 2A Ocean Street apartment as a whole. The conclusion of this study finds that the apartment building will sustain minor impacts on its views, that being that one apartment out of 12 sustains moderate-to-severe impacts to one of its two view orientations, with all other apartments sustaining negligible or no impacts.

Similarly to paragraph 73 of Arnott v City of Sydney Council, it is fair to acknowledge that the potential objections of the occupants of the east facing apartments of 2A Ocean Street have some merit, but it is also fair to weigh up these arguments against the "reasonableness" of the proposal. As described previously, the current proposal is well within allowable height and Gross Floor Area restrictions of the DCP, and is as such not "unreasonable" in its desire to provide amenity for the family residence.

Also similarly to paragraph 74 of Arnott v City of Sydney Council, it would be suggested that it would be reasonably expected by the occupants of residences adjacent to the site that the construction of a building would one day occur on the site, given that it has previously been subdivided specifically for the purpose of residential development.

The proposal has conditions alike to the subject building in Arnott v City of Sydney Council, where it's location was justified in that "... the siting of the proposal is constrained by the form of the existing building". In the case of our subject site, the position of any potential building is extremely constrained given the site conditions and unusual boundary shape. This leaves little room for an alternate arrangement of built forms of the site that would not unreasonably affect the amenity of the occupants. The overall height of the building is set at a justifiable level, which is well within the maximum height limit of the site as per the DCP. It is proposed that any reduction in height below the current proposed level would amount to an unreasonable loss of amenity for future occupants in terms of visual privacy, acoustic privacy and security, as detailed in the application’s Statement of Environmental Effects.

The residents of east-facing apartments in the 2A Ocean Street building have enjoyed a long period of unimpeached views across the subject site while vacant, and hence it unavoidable that any development on the site will in some way impact their eastern views. The proposal however is not deemed to be unreasonably impactful on its neighbouring properties, and hence EJE Heritage recommends that the proposal satisfies the DCP’s performance criteria for view sharing, in that it “is designed to allow view sharing with neighbouring properties”.62

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63 Arnott v City of Sydney Council [2015] NSWLEC 1052, paragraph 75.
64 Newcastle Development Control Plan 2012 – 3.02 Single Dwellings, Part 3.02.12 View Sharing
## Appendix A – Visual Quality Preference Table: Scenic Quality

<table>
<thead>
<tr>
<th>LOW</th>
<th>MEDIUM</th>
<th>HIGH</th>
</tr>
</thead>
</table>
| RELIEF/LANDFORM  
Density & Contrast | Flat terrain dominant.  
Ridgeless not often seen. | Undulating terrain dominant.  
Ridgeless prominent in only half or less of landscape unit. | High hills in foreground and midground.  
Presence of cliffs, rocks and other geological features.  
High relief (eg steep slopes rising from water or plain).  
Ridgeless prominent in most of landscape unit. |
| VEGETATION  
Density & Contrast | One or two vegetation types present in foreground.  
Uniformity along slopes. | Patterned in only one or two areas.  
3 or more vegetation types in foreground.  
Few emergent or feature trees. | High degree of patterning in vegetation.  
4 or more distinct vegetation types.  
Emergent trees prominent and distinctive to region.  
Shrubs of specimen or accent vegetation (eg palms, pines etc.) |
| NATURALNESS | Dominance of development within many parts of a landscape unit.  
Some evidence of development but not dominant.  
Traditional built character.  
Development in background and/or partially concealed. | Absence of development or minimal disturbance within landscape unit.  
Presence of parkland or other open space including beach, lakeside etc. |
| WATER  
Presence, Edent & Character | Little or no view of water.  
Water in background without prominence.  
Presence of polluted water or stagnant water. | Moderate extent of water.  
Presence of calm water.  
No islands, channels meandering water.  
Intertidal streams, lakes, rivers etc. | Dominance of water in foreground and midground.  
Presence of flowing water, turbulence and permanent water.  
Intertidal shapes and river eddy etc. |
| DEVELOPMENT  
Form & Identity | Presence of commercial and industrial structures.  
Presence of large scale development (eg mining, infrastructure etc.)  
Nearer residential development prominent. | Presence of established residential development.  
Small scale industrial etc in midground.  
Presence of sports and recreational facilities. | Presence of rural structures (eg farm buildings, fences etc.)  
Heritage buildings and other structures prominent.  
Isolated domestic scale structures. |
| CULTURAL | No evidence present.  
Areas free of cultural landmarks.  
Presence of new development. | Presence of established, well-landscaped development esp in midground and background. | Presence of established, maintained landscapes (eg bennettias, forests, gardens etc), old towns and buildings etc. |

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APPENDIX B – VISUAL ASSESSMENT CRITERIA

Terminology
The below meanings for the following terms shall apply to this report:

- The subject site (referred to also as the site) is defined as the land area directly affected by the proposal within defined lot boundaries.
- The study area consists of the subject site plus the immediate surrounding land potentially affected by the proposal during its construction and operation phase and focuses particularly on the views from adjacent east-facing apartment residences at 2A Ocean Street.

Visual Assessment Principles - Visual Quality
Visual quality of an area is essentially an assessment of how viewers may respond to designated scenery. Scenes of high visual quality are those that are valued by a community for the enjoyment and improved amenity that they can create. Conversely, scenes of low visual quality are of little scenic value to the community with a preference that they be changed and improved, often through the introduction of landscape treatments (e.g. screen planting).

As visual quality relates to aesthetics, its assessment is largely subjective. There is evidence to suggest that certain landscapes are continually preferred over others with preferences related to the presence or absence of certain elements. The rating of visual quality of this study has been based on the following generally accepted conclusions arising from scientific research:

- Visual quality increases as relative relief and topographic ruggedness increases.
- Visual quality increases as vegetation pattern variations increase.
- Visual quality increases due to the presence of natural and/or agricultural landscapes.
- Visual quality increases owing to the presence of waterforms (without becoming common) and related to water quality and associated activity.
- Visual quality increases with increases in land use compatibility.

Appendix A contains a visual quality preference table that has a more detailed breakdown of the above elements and their impact on visual quality.

Visual Assessment Principles - Visual Sensitivity
Another aspect affecting visual assessments is visual sensitivity. This is the estimate of the significance that a change will have on a landscape and to those viewing it. For example, a significant change that is not frequently seen may result in a low visual sensitivity although its impact on a landscape may be high. Its assessment is based on a number of variables such as the number of people affected, viewer location including distance from the source, viewer position (i.e. inferior, neutral, superior), the surrounding land use and degree of change. Generally the following principles apply:

- Visual sensitivity decreases as the viewer distance increases.
- Visual sensitivity decreases as the viewing time decreases.
- Visual sensitivity can also be related to viewer activity (e.g. a person viewing an affected site while engaged in recreational activities will be more strongly affected by change than someone passing a scene in a car travelling to a desired destination).

The following table is a guide to visual sensitivity based on the above criteria. It describes general ratings; however, consideration also must be given to particular conditions that may modify the results for particular sites.

---

66 NSW Department of Planning, Rural Land Evaluation, Government Printer, 1988
### VISUAL SENSITIVITY TABLE

<table>
<thead>
<tr>
<th>Land Use</th>
<th>Foreground (0-1km)</th>
<th>Middleground (1-6km)</th>
<th>Background (&gt;6km)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential: Rural or Urban</td>
<td>High Sensitivity</td>
<td>High Sensitivity</td>
<td>Moderate Sensitivity</td>
</tr>
<tr>
<td>Tourist or Passive Recreation</td>
<td>High Sensitivity</td>
<td>High Sensitivity</td>
<td>Moderate Sensitivity</td>
</tr>
<tr>
<td>Major Travel Corridors</td>
<td>Moderate Sensitivity</td>
<td>Moderate Sensitivity</td>
<td>Low Sensitivity</td>
</tr>
<tr>
<td>Tourist Roads</td>
<td>High Sensitivity</td>
<td>Moderate Sensitivity</td>
<td>Low Sensitivity</td>
</tr>
<tr>
<td>Minor Roads</td>
<td>Moderate Sensitivity</td>
<td>Low Sensitivity</td>
<td>Low Sensitivity</td>
</tr>
<tr>
<td>Agricultural Areas</td>
<td>Moderate Sensitivity</td>
<td>Low Sensitivity</td>
<td>Low Sensitivity</td>
</tr>
<tr>
<td>Industrial Areas</td>
<td>Low Sensitivity</td>
<td>Low Sensitivity</td>
<td>Low Sensitivity</td>
</tr>
</tbody>
</table>

With respect to this proposal, there are multiple land uses adjacent to the site, including Residential and Tourist Passive Recreation.

#### APPENDIX C – SITE SURVEY, MONTEATH & POWYS 03/09/2015

#### APPENDIX D – PROPOSED PLANS
PART I

PURPOSE

An application has been received seeking consent to erect a three-storey dwelling at 18 Bond Street, Newcastle. Copies of the submitted plans for the proposed development are included, refer to Attachment A.

The proposed development has been notified twice in accordance with Council’s Public Notification policy. The proposal was notified to neighbouring properties for 14 days and 15 public submissions were received objecting to the proposal.

Subject Land: 18 Bond Street Newcastle
The application was re-notified/advertised as nominated integrated development for 30 days and two submissions were received in response. One Public Voice request was received during the notification period.

Council issued development consent for DA 2014/0296 under delegated authority, subject to conditions, on 4 March 2015. A Construction Certificate was issued on 28 January 2016 and construction commenced thereafter.

The validity of the development consent was the subject of a legal challenge under section 123 of the Environmental Planning and Assessment Act 1979 in the Land and Environment Court of NSW. The outcome of the proceedings within the judgement handed down 25 August 2016 was to declare the consent DA2014/0296 invalid and, consequently, where construction ceased immediately.

Further to the Land and Environment Court judgement the application has been referred to Council's Development Applications Committee for redetermination. This report presents an independent assessment prepared by Harris Planning Consultants reviewing the application, submissions received and Council Officers assessment, having regard to the relevant heads of consideration under Section 79C(1) of the Environmental Planning and Assessment Act, 1979 (as amended).

**Issues**

The application has been assessed and the key issues that have been raised in this assessment are summarised below, with particular reference to the Newcastle Development Control Plan 2012 (version 4):

- Street frontage appearance (Section 3.02.03)
- Side/Rear setbacks (building envelope) (Section 3.02.04)
- Landscaped Area (Section 3.02.05)
- Privacy (Section 3.02.07)
- View sharing (Section 3.02.09)
- Development in the vicinity of a heritage item (Section 5.05.06)
- Infill development in a Heritage Conservation Area (Section 5.07.07)

**Conclusion**

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

a) THAT The application for Erection of three storey dwelling at 18 Bond Street, Newcastle be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions appended at Attachment B; and

b) THAT those persons who made submissions be advised of Council's determination.

Political Donation / Gift Declaration

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

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

PART II

1.0 THE SUBJECT SITE

The subject site comprises Lot 4, DP 1156117. The lot is an irregular shape measuring 270.1m² total site area is located on south side of Bond Street. The lot has a frontage of 11.23 metres and a maximum depth of 24.32 metres. The site slopes with a change in elevation of approximately 2m from the rear southern boundary to the northern boundary fronting Bond Street.

The site was subdivided in 2010 (refer DA 2008/1155, section 2.1 below) and contains a dwelling house that is currently under construction (private certifier Construction Certificate issued 28 January 2016).

The site is bounded by:

- East: 16 Bond Street, the State Heritage Listed former Coutts Sailors’ home (SHR No. 01842), which is currently undergoing restoration works including the reinstatement of a double storey verandah with cast iron columns fronting Bond Street (refer DA2008/1157, section 2.1 below).
- West: Enterprise Park, the former Convict Lumber Yard, a heritage item of State significance (SHR No. 00570)
- South: 90 Scott Street, a two-storey heritage listed (Newcastle LEP) residence. Alterations and additions have been approved (DA2012/872) including a garage with roof terrace adjacent to common site boundary and a two storey addition directly to rear of existing residence.
- North: Bond Street
The subject allotment itself is a part of the greater heritage item of state significance (SHR No. 00570 - Convict Lumber Yard or Stockade Site), and is located in a coastal location (in accordance with the NSW Coastal Policy 1997). The subject site is also located within Newcastle East Heritage Conservation Area.

2.0 THE PROPOSAL

The proposed development consists of the erection of a three storey, three bedroom dwelling set into the site with retaining wall to the rear. At the basement level the proposed dwelling provides for a games room, bathroom, storage and double garage accessed from Bond Street. First floor level contains a rumpus room, and two bedrooms with wrap around northwest facing terrace, with pedestrian access via steps to Bond Street. The second floor incorporates the main living and kitchen space accessing the north facing deck, with master bedroom to the southern end of the dwelling. All three levels can be accessed by lift. The dwelling is proposed to be constructed of masonry, reinforced concrete and timber framing, with selected lightweight cladding and a low pitched skillion zincalume roof and parapet.

The proposal is an amendment to the originally submitted design following referral to the Heritage Council of NSW as nominated integrated development pursuant to Clause 91 of the EP&A Act 1979. The proposed development has been supported with General Terms of Approval (ref 14/IDA/029, dated 15 August 2014 and modification dated 7 January 2015) requiring the following modifications:

- The western wall facing the convict lumber yard is to have its materials modified to reference the former timber yard use, similar to the previously approved proposed (DA2008/1160);
- The garage frontage is to continue the materials used in the western wall;
- The size of the garage surrounds are to be reduced; and
- There are to be no privacy screens installed on the balcony.

3D perspective drawings are shown below. A copy of the submitted plans is at Attachment A.
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2.1 Background

In respect of public interest, the following provides a summary of development applications approved relevant to the subject proposal.

DA 2008/1155 – Greater Lot known as 88 Scott Street: Subdivision

Development approval was obtained for subdivision of one lot into four lots, demolition of garage fronting Bond Street and demolition of carport fronting Scott Street. The lots created are described as follows:

- Lot 1: 651.7sqm – Former Coutts Sailors Home (now 16 Bond Street, see DA2008/1157)
- Lot 2: 378.6sqm – Former Superintendents building attached to the rear of Coutts Sailors Home (now 88A Scott Street).
- Lot 3: 322.9sqm – now 88 Scott Street.
- Lot 4: 270.1sqm – 18 Bond Street. The site of the subject application and previously approved DA2008/1160 (see below).

An application was lodged 7th August 2008 (concurrently with DA2008/1160 for construction of a dwelling on Lot 4), with approval obtained 10th December 2009, following consideration by the Development Applications Committee of Council 1st December 2009 (item 44). The subdivision (and construction of a dwelling on Lot 4 under DA2008/1160) received Section 60 (Heritage Act 1977) approval issued 26th May 2009 from the Heritage Council of NSW as the principal authority on heritage matters, following various modifications.

It is also worthy of note that the creation of the subject lot required a s.88B instrument to be imposed regarding ‘restrictions on the use of the land’ (‘no building shall be occupied or erected on any lot burdened having a roof constructed of any material other than traditional silver corrugated iron sheeting’). However no requirements were imposed on the newly created lot as to restrict height, number of storeys, setbacks or design in relation to potential impacts on Coutts Sailors Home or former Convict Lumber Yard.

Accordingly, Council had regard for section 92 of the EP&A Act 1979 as NSW Heritage Council considered the Integrated Development and issued approval, where ‘a consent authority must not refuse development consent on heritage grounds if the same development is the subject of a heritage approval’.

DA 2008/1160 – 18 Bond Street: Three Storey Dwelling

DA 2008/1160 Erection of a two-storey dwelling with garage under and pool (on proposed Lot 4 – see DA2008/1155 subdivision above) was lodged 07 August 2008 and granted consent on 10 December 2009, following consideration by the Development Applications Committee of Council 1 December 2009 (item 44).
The construction of a dwelling on Lot 4 received Section 60 approval issued 26 May 2009 from the Heritage Council of NSW as the principal authority on heritage matters following various modifications. Having regard for section 92 of the EP&A Act 1979, as NSW Heritage Council had considered the Integrated Development and issued approval, the consent authority must not refuse consent on heritage grounds.

A s96 modification was obtained on 14th November 2014 allowing the development to be constructed in two stages (stage 1: construction of retaining wall on southern boundary and stage 2: construction of dwelling). A Construction Certificate was issued by a private certifier for Construction of footing for south boundary wall (Ref. CN14024617) on 17 November 2014, where the application was ‘physically commenced’. Site plan and relevant elevations of the approved dwelling are enclosed below.

A s96 modification for minor design amendments was approved by the Heritage Council on 20th June 2011 and by Council on 27 September 2011. A Construction Certificate was obtained from a private certifier on 4 April 2012. The proposed 1st floor balcony fronting Bond Street has not been constructed to date.

2.2 Issues

The application has been assessed and the issues that have been raised in this assessment are summarised below, with reference to the Newcastle Development Control Plan 2012:

- Street frontage appearance (Section 3.02.03)
- Side/Rear setbacks (building envelope) (Section 3.02.04)
- Landscaped Area (Section 3.02.05)
- Privacy (Section 3.02.07)
- View sharing (Section 3.02.09)
- Development in the vicinity of a heritage item (Section 5.05.06)
- Infill development in a Heritage Conservation Area (Section 5.07.07)
3.0 PUBLIC NOTIFICATION

The original proposal was notified to neighbouring properties for 14 days and 15 public submissions were received objecting to the proposal. The application was re-notified/advertised as nominated integrated development for 30 days and two submissions were received in response. One Public Voice request was received during the notification period.

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

1. Statutory and Policy Issues:
   a) **Setbacks** - the proposed development does not comply with front setback (north elevation), side boundary setback (east and west elevations) and rear setback (south elevation) provisions. There is concern the proposed development does not increase setback from property boundaries as the wall height increases.
   b) **Building envelope** - the proposed development has departures to the single dwelling building envelope provisions, to the east and west elevations.
   c) **Bulk, form and scale** - the proposed development is an overdevelopment of the site, and is incompatible with the relevant objectives of development in a medium density residential zone.
   d) **Landscaping** - the proposed development does not meet the minimum requirements of the DCP for landscaping, that being 10% of the site area.
   e) **Heritage significance** - the proposed development is unsuitable with respect to its location adjacent to the Convict Lumber Yard and the historical significance of the site. A Heritage Conservation Order is requested over site, in order for the site not to be developed.
   f) **Heritage Conservation Area** - the proposed development does not comply with relevant provisions concerning materials and details, vehicular accommodation and infill development in a heritage conservation area.
   g) **Archaeological Management** - the site has archaeological significance and excavation may disturb relics.
   h) **Impact on adjoining Heritage Items** - the proposed development has a visual impact on the curtilage and heritage significance of the adjoining local and state heritage items.

2. Amenity issues:
   a) **View loss** - the impact of the proposed development on views to and from adjoining residences, and noncompliance with view sharing principles.
   b) **Privacy** - potential privacy and overlooking concerns due to the plan layout and the location of private open space.
   c) **Light and solar access** - the proposed development overshadows adjoining residents, leading to reduction in natural warmth and light.
d) **Amenity and architectural design** - the proposed development is considered an unsympathetic contemporary development, which will have a detrimental impact on the character and streetscape of the area.

e) **Safety and security** - the proposed design will increase the opportunity for vandalism, particularly with respect to the masonry wall fronting Enterprise Park.

3. **Design and Aesthetic Issues:**

a) **Excavation** - impact of excavation on adjoining residences with respect to the proximity of the proposed development to adjoining development, foundation instability and possible building damage.

b) **Masonry wall** - the proposed masonry wall to Enterprise Park is considered too dominant.

4. **Miscellaneous**

a) **Newcastle Heritage Strategy and Heritage Policy** - the proposed development is inconsistent with Council's relevant heritage provisions.

b) **Burra Charter** - the proposed development is inconsistent with the principles of the Burra Charter.

c) **Previous approvals**: granted because of interrelationship with other DA’s.

4.0 **ENVIRONMENTAL PLANNING ASSESSMENT**

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

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

4.1.1 **Newcastle LEP 2012**

The site is zoned R3 Medium Density Residential under the LEP. Residential accommodation (Dwelling houses) is permissible in this zone and considered to be consistent with the zone objectives, which state:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To allow some diversity of activities and densities if:
  i. the scale and height of proposed buildings is compatible with the character of the locality, and
ii. there will be no significant adverse impact on the amenity of any existing nearby development.

• To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development:
  i. has regard to the desired future character of residential streets, and
  ii. does not significantly detract from the amenity of any existing nearby development.

Clause 4.3 – Height of Buildings: The allotment permits building heights to a maximum of 10m. The proposed development has a maximum building height of approximately 9.46m. The proposed development complies in this regard.

Clause 4.4 – Floor space ratio: The maximum permissible FSR for this site is 1.5:1. The proposed development’s FSR is approximately 0.78:1. The proposed development complies in this regard.

Clause 5.5 – Coastal Development: The proposed development is considered acceptable having regard to this clause.

Clause 5.10 – Heritage Conservation:

The proposed development is:

• within the Newcastle East Heritage Conservation Area
• is nominated as an archaeologically significant site
• is in the proximity of state and local heritage listed items
• is listed as a state item of heritage significance in Schedule 5 of the LEP (I452) and is listed on the state heritage register (SHR 00570 – Convict Lumber Yard or Stockade Site).

The proposed development was referred to the Heritage Council of NSW as nominated integrated development pursuant to Clause 91 of the EP&A Act 1979. The proposed development has been supported with General Terms of Approval (ref 14/IDA/029, dated 15 August 2014 and modification dated 7 January 2015).

Additionally it is noted that section 60 (Heritage Act 1977) approval was obtained for the original subdivision of Lot 4 under DA2008/1155 (and construction of a dwelling under DA2008/1160) issued 26 May 2009 from the Heritage Council of NSW as the principal authority on heritage matters.

Having regard for section 92 of the EP&A Act 1979, as NSW Heritage Council have considered the Integrated Development and issued approval, the consent authority must not refuse consent on heritage grounds. The proposed development is therefore considered satisfactory in this regard.
Clause 6.1 – Acid sulphate soils: The allotment has been classified as Class 3 Acid Sulphate Soils. An assessment for Acid Sulphate has been submitted by RCA Australia, dated 08/09/2014 given excavation will exceed 100m³, which concludes the proposed development is considered satisfactory. Accordingly the proposed development is considered satisfactory in this regard subject to conditions of consent.

Clause 6.2 – Earthworks. The proposed development is considered satisfactory in this regard subject to conditions of consent.

Clause 7.5 – Design excellence. The proposed development is located within the Newcastle City Centre (Part 7 of the LEP) and considered satisfactory in this regard. Other design considerations are discussed under 4.3.1 below.

4.1.2 State Environmental Planning Policies

Having regard to the relevant SEPPs, the proposed development is considered acceptable.

4.2 Merit Considerations

4.2.1 Relevant Strategic Policies

The proposal complies with the density provisions of the Newcastle Urban Strategy.

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

The predominant purpose of the Newcastle Development Control Plan (NDCP) 2012 is to outline both the administrative procedures and built form controls to guide development in the Newcastle Local Government area. The NDCP complements and is subservient to the requirements of NLEP 2012.

Section 79C of the Environmental Planning & Assessment Act (EPAA) 1979, requires the consent authority to take into consideration the relevant provisions of any applicable DCP in the assessment and determination of a development application.

It is noted that the amendments to the EPAA provisions in the 2013 Bill expressly require a consent authority to give less weight to DCP requirements, than the provisions of an environmental planning instrument (i.e. an LEP). Notwithstanding, the DCP provisions are important in ensuring that any new development is compatible with surrounding natural and built environment.

DCP Section 3.02 (Single Dwellings) Version 4 (09/05/2016)

Version 2 of Section 3.02 of the Newcastle Development Control Plan 2012 was applicable at the time of lodgement of the Development Application. Version 2 was superseded by version 3 on the 10th November 2014 and subsequently version 4 commenced 9th of March 2016.
The Savings Provisions of the DCP require that any development application lodged but not determined prior to this section (version 4) coming into effect will be determined taking into consideration the provisions of this section.

The DCP clarifies that the acceptable solutions provide a certain outcome of achieving compliance with Council controls regarding single dwellings. Any variation from the acceptable solution will mean the application will be required to meet the performance criteria for that section and the application will become a performance based assessment.

The performance criteria permit applicants to be flexible and innovative in responding to the DCP requirements. Applications which meet the performance criteria are assessed on merit where assessment of compliance with the performance criteria can be undertaken through the use of 3D montages, 3D models, constraints mapping and other forms of visual representation.

a) **Street frontage appearance (Section 3.02.03).**

The performance criteria for this control state:

**Performance criteria**

1. Development complements and harmonises with the positive elements of existing development in the street.
2. Setbacks are compatible with the existing or intended local streetscape.
3. Garages and carports are integrated into a development and do not dominate the streetscape.
4. Development provides passive surveillance of the street.
5. Dwellings address the street.

The acceptable solutions for this control are:

1. In established residential zones the proposed building is to be set back the average distance of buildings within 40m either side of the lot on the same primary road see Figure 1.
2. If there is no established setback the minimum front setback (building line) to a road is: (Lots less than 300m2) to a primary road: 3m.
3. Garages - Notwithstanding controls 1 and 2, the minimum setback for garages is 1m behind the building line or 5.5m from the property boundary of the road frontage, whichever is the greater.
4. A dwelling house, other than a dwelling house that has a setback from a primary road of less than 3m, may incorporate an articulation zone that extends from the building line to a distance of 1.5m into the required setback from the primary road.
5. The articulation zone is to be a maximum 25% of the width of the lot at the building line.
6. Dwellings have a front door and a window of a habitable room facing the primary road.
7. A new dwelling house on a corner lot must have a window to a habitable room that is at least 1m2 in area and that faces and is visible from a secondary road.
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8. **The maximum width of a garage or carport opening which faces the street is 6m in respect of each dwelling, or 50% of the frontage, whichever is less.**

The proposed development is setback a minimum of 5149mm from the Bond Street frontage boundary where it is considered the dwelling façade and garage will not be visually dominant in the Bond Street setting. Given the existing setback of development along Bond Street including 14 Bond Street and 8 – 14 Telford Street that have a nil setback to the street frontage boundary, it is considered the proposed setback of the proposed dwelling of 5149mm mm from the street frontage boundary is acceptable and will not adversely impact the local context and will be compatible with the existing and desired streetscape. As the streetscape of Bond Street contains a mixture of new modern buildings and heritage features it is considered that the proposed street frontage appearance meets the acceptable solutions of the controls and is consistent with performance criteria specifically no. 2 seeking that ‘setbacks are compatible with existing or intended local streetscape’.

Additionally, notwithstanding the proposed verandah to No. 16 Bond Street (Coutts Sailors Home, c.f. DA 2008/1157) as indicated in the above 3D perspectives has not been constructed to date, the proposed street frontage appearance is considered satisfactory on its merits having regard for the performance criteria and acceptable solutions of Section 3.02.03.

![Figure: Exponaire – Bond Street 2014 Aerial Image](image)

**b) Side / Rear setbacks (Building Envelope) (3.02.04).**

The performance criteria for this control state:

1. Development is of a bulk and scale that:
   (a) is consistent with and complements the built form prevailing in the street and local area;
   (b) does not create overbearing development for adjoining dwelling houses and their private open space;
   (c) does not impact on the amenity and privacy of residents in adjoining dwelling houses;
(d) does not result in the loss of significant views or outlook of adjoining residents;
(e) provides for natural light, sunlight and breezes.

The acceptable solutions for this control are:

Lots with a lot width measured at the building line of 10.5m or greater:
1. The building is contained in the building envelope defined by:
   (a) 900mm setback from each boundary up to a height of 4.5m then in at an angle of 4:1 up to the maximum height which is specified in the Newcastle Local Environmental Plan 2012
   (b) lots with a width of 10.5m to 12.5m can be built to one side boundary only.
   (c) lots over 12.5m are not built to side boundaries.

See Figure 7.

2. Where boundary walls are proposed each boundary wall is:
   (a) to be a maximum height of 3.3m or match an existing adjoining wall (whichever is greater)
   (b) to have a maximum length of 20m or 50% of the lot depth (whichever is the lesser)
   (c) be in accordance with the Building Code of Australia, maintenance free and attractive finish (e.g. face brick).

See Figure 7.

3. Notwithstanding controls 1 and 2, buildings are not built to the boundary if:
   (a) the wall of the building on the adjoining lot is not of masonry construction and is within 900mm of the boundary, or
   (b) the wall of the building on the adjoining lot has a window facing the boundary within 900mm of the boundary.

4. The setback to the rear boundary is to be at least the following:
   (a) for any part of the building up to 4.5m in height – a 3m setback.
   (b) any part of the building with a height greater than 4.5m either:
      i) if there are 2 adjoining dwellings with a height over 4.5m either a 6m setback or the average distance of those parts of the building over 4.5m, whichever is the lesser
      ii) if there are no adjoining dwellings over 4.5m in height - a 6m setback (see Figure 6)
   (c) On corner lots the boundary opposite the primary road frontage is taken to be the rear boundary for the purposes of applying setbacks. See Figure 2.
   (d) Exceptions to rear setbacks for ancillary structures are outlined under Section 3.02.12, Table 2.
Acceptable solution 1(a) stipulates the building envelope controls for single dwellings being ‘900mm set back from each boundary up to a height of 4.5m then in at an angle of 4:1 up to the maximum height which is specified in the Newcastle Local Environmental Plan 2012.’

The proposed development has building envelope encroachments through the eastern (approximately 3.1m), southern (approximately 3.1m) and western elevations (approximately 3.5m).

Acceptable solution 2 stipulates the controls for boundary wall construction, ‘(a) to be a maximum height of 3.3m’ and ‘(b) length not to exceed 20m or 50% of the lot depth, whichever is less’.

The height of the western boundary wall is approximately 2.8m (height) by 18.7m (length), representing approximately 78% of the western elevation lot depth. It is considered that high solid walls built to the boundary are a typical characteristic of the built form in Bond Street and adjoining Telford Street where the off-form concrete walls with rough sawn plank formwork (as specified by the heritage council) will present to the street and western façade.

Acceptable solution 4(b)(ii) stipulates the acceptable rear boundary setback for a building with a height over 4.5m if there are no adjoining dwellings over 4.5m in height - is 6m. The proposed development has an approximate 1.199m setback to the rear boundary, which results in a variation of 4.801m.

Currently there is no development on the south adjoining site to the rear, however a proposed development (DA2012/872, 90 Scott Street) has been approved for a terrace facing west and 5.4m solid garage wall with nil setback to the southern boundary, reducing any potential loss in privacy due to the reduced setback.

General comments regarding building envelope variations (3.02.04).

Whilst the proposal does exceed the specified building envelope controls in the DCP, there are no variations in the LEP’s principal development standards for maximum height or floor space ratio. It can be acknowledged that the variations arise as a result of the narrow nature of the allotment where a dwelling designed to fit the building envelope may have a form that could be inconsistent with the existing streetscape character and has the potential to limit potential floor space.

It is also worthy to examine the proposed built form against both modern and heritage buildings within the immediate vicinity of the site, where it is observed that most adjoining buildings would also exceed the current DCP building envelope requirements. This is due to the character of the surrounding built form being made up of many flat roofs and historic building patterns constructed to the boundary, typical along Bond Street, Telford Street and within the wider Newcastle East Heritage Conservation Area.
Given the bulk, scale and massing of development in the immediate vicinity, it is considered the proposed departures to building envelope, boundary wall and rear boundary provisions will not detrimentally impact the streetscape or amenity of the area, nor will it be out of character or context.

Shadow diagrams submitted with the application also demonstrate the proposed design does not have an unreasonable impact on the private open space of the adjoining dwelling at 16 Bond Street within the northern areas of the site. It is considered proposed departures to building envelope, boundary wall and rear setback provisions will not adversely impact adjoining development with respect to solar access, view loss or privacy.

Additionally it has been demonstrated that acceptable provision of natural light, direct sunlight and breezes can be maintained, where the proposed design is considered consistent with the prevailing built form within the area and does not unduly impact on the amenity of adjoining properties. It is therefore considered to satisfy the performance criteria supporting the control under Section 3.02.04.

Whilst the proposal presents departures to acceptable solutions of the building envelope controls, given the DCP is of a lower order than LEP controls, they should be more broadly considered with discretion being applied to suit the merits of each individual case. Furthermore interpretations of variations on a strict percentage basis can prove ‘unreasonable’ given the reasons discussed above, where the proposal adequately achieves the performance criteria of section 3.02.04.

c) **Landscaped Area (Section 3.02.05).**

The performance criteria for this control state:

1. Improve the amenity of developments and neighbourhoods through the retention and/or planting of large and medium size trees.
2. Landscaped areas are of a usable size and proportion.

The acceptable solutions for this control are:

1. Development has a minimum landscaped area of:
   a. if the lot has an area of less than 300m² - 10% of the area of the lot.
   2. Landscaped areas have a minimum dimension of 1.5m.
   3. A minimum 1.5m wide strip of landscaping is located along at least one boundary.
   4. Dwellings have a setback of at least 3m from the base of the trunk of each protected tree.

Acceptable solution 1(a) requires that if the lot has an area of less than 300m² a development has a minimum landscaped area of 10%, which is defined as ‘part of the site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area’. For the subject site, this equates to 27m² of the site area.
Whilst no landscape plan has been submitted, plans indicate compliance with the performance criteria can be achieved. The landscaped areas consist of approximately 42.1m² of available deep soil plantings in the front and rear yards and 9.6m² of entry and planter box gardens on the eastern boundary and adjoining the private open space terrace areas. The proposed landscaping arrangements are of a useable size and proportion having regard for the overall small size of the site and relationship with the proposed dwelling.

d) Privacy (Section 3.02.07).

The performance criteria for this control state:

1. Dwellings have adequate privacy to the principal area of private open space and the windows of habitable rooms.
2. Dwellings do not unreasonably overlook living room windows or the principal area of private open space of neighbouring dwellings.

The acceptable solutions for this control are:

1. A minimum 9m separation is provided between the windows of habitable rooms of facing dwellings that abut a public or communal street. This distance is increased to 12m for windows above the ground floor.
2. Direct views between living area windows of adjacent dwellings are screened or obscured where:
   a. ground floor windows are within an area described by taking a 9m radius from any part of the window of the adjacent dwelling. An area so defined is described as a ‘privacy sensitive zone’.
   b. windows above ground floor are within a privacy sensitive zone described by a 12m radius.
3. Direct views from living rooms into the principal area of private open space of other dwellings are screened or obscured within a privacy sensitive zone described by a 12m radius.
4. Direct views from the principal area of private open space of dwellings into the living area windows and/or principal area of private open space of adjacent dwellings are screened or obscured within a privacy sensitive zone described by a 12m radius; 5. Direct views described in controls 2 and 3 may be obscured by one of the following measures:
   a. 1.8m high solid fences and walls between ground floor level windows and adjoining open space where the slope is below 10%
   b. screening to a height of at least 1.7m but not more than 2.2m, above the finished floor level of the balcony, deck, verandah, etc., that has a maximum area of 25% openings, is permanently fixed and is made of durable materials
   c. Highlight windows with a minimum sill height of 1.5m above finished floor level.

Acceptable solution 4 requires views between the principal area of private open space of adjacent dwellings to be obscured or screened within a 12m radius (privacy sensitive zone).
Proposals to include a retractable privacy screen to the western elevation of the 1st floor front balcony were specifically removed by the modified approval issued by the Heritage Council of NSW (dated 7 January 2015) to ensure front views towards Coutts Sailors Home (16 Bond Street) would not be obscured.

Elevations submitted under development application DA2008/1157 for the renovation to the Coutts Sailors Home at 16 Bond Street approved a s96 modification showing the placement of two privacy screens on the eastern and western ends of the 1st floor balcony, plans date stamped approved by Heritage Council 20th June 2011 and by Council 27th September 2011. The proposed 1st floor balcony fronting has not been constructed to date, yet erection of the approved privacy screens in the future will afford the residents of the dwelling some privacy, as the Heritage Council specifically required the removal of the privacy screens from the subject dwelling at 18 Bond Street to preserve views towards the heritage item.

Additionally only two windows exist on the eastern elevation on level two of 18 Bond Street, being an obscured glazed bathroom window and a window serving the main living room circulation space (which faces an opposing window on the adjoining Coutts Home at 16 Bond Street). Both windows (0.8m2 in area each) have a minimum sill height 1.6m which avoids potential privacy conflicts between window openings.

It is likely that the bathroom window will be opaque glass and if considered appropriate, Council could require the window adjoining the rumpus room to also be of opaque glazing via an additional condition of consent.

Therefore the proposed development is considered satisfactory in regards to the relevant performance criteria of Section 3.02.07.

e) View Sharing (Section 3.02.09).

The performance criteria for this control state:

1. Development is designed to allow view sharing with neighbouring properties.
2. Design plans identify existing views and demonstrate how view sharing is achieved.
3. Important public views and vistas are to be enhanced by the form and treatment of buildings including roof scapes.

The acceptable solutions for this control are:

1. The building height does not exceed 5m or if the building is over 5m adjoining properties do not have views or vistas to water, city skyline and iconic views obscured by the proposed development.

Note: Merit based proposals (that do not meet acceptable solutions) must address the performance criteria having regards to the planning principle for view sharing established by the NSW Land and Environment Court (Tenacity Consulting Vs Warringah Council (2004)).
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It is recognised that the proposed development will result in a loss of views to Coutts Sailor’s Home (No. 16 Bond Street) from public places, and views from the existing western windows of Coutts Sailors Home. However it is worthy to note any development hypothetically constructed within the prevailing planning controls for the site (height, FSR, building envelope) would have equally had an impact on these views.

The main view however from the north ground floor and first floor balcony will not be impacted. Vegetation along Bond Street directly to the north currently permits only intermittent water views. However, the lifespan of this vegetation may be limited. The more significant view from Coutts Sailors Home is along Bond Street to the northwest towards the harbour, which is not affected by this proposal.

The proposal has been designed to allow for view sharing and the front balcony has been designed with large openings along both ends and its front to facilitate views to and from Coutts Sailors Home. As discussed above in relation to control 3.02.07, the amended Heritage Council General Terms of Approval requires that no privacy screens are installed on the balcony of no. 18 Bond Street to ensure the view is shared.

As included as a note to the acceptable solutions, the planning principle for assessing view impacts (Tenacity Consulting v Warringah [2004], NSWLEC 140) should also be addressed, where the four steps of the planning principle are stated and commented on as follows:

i. ‘The first step is the assessment of views to be affected’

Comments: The proposed development will impact side boundary views from existing and proposed development at No. 16 Bond Street. Views include Newcastle Train Station, the Convict Lumber Yard, Customs House and Newcastle Port.

It is considered some views to and from public places will be retained if the proposed development proceeds however the main view from the north ground floor and first floor balcony will not be impacted. It is recognised that no privacy screen will be installed to the eastern end of the balcony of the proposed development. Refer to comments above regarding Heritage Council requirements.

ii. ‘The second step is to consider from what part of the property the views are obtained’

Comments: It has been assessed that sitting and standing views will be affected by the proposed development from the side boundary of No. 16 Bond Street. The case law cited in this report makes the following comment in relation to views across side boundaries: ‘the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries...The expectation to retain side views and sitting views is often unrealistic’.

Given the relative compliance of the proposed development with Council’s planning controls, the expectation that no side views will be affected from No. 16 Bond Street across No. 18 Bond Street is considered unrealistic.
iii. ‘The third step is to assess the extent of the impact’

Comments: It has been assessed that side boundary views from living areas and the proposed balcony of No. 16 Bond Street will be impacted by the proposed development.

iv. ‘The fourth step is to assess the reasonableness of the proposed development that is causing the impact’

Comments: The proposed new dwelling generally complies with Council’s planning controls, although as noted above, the applicant has applied for a variation to Council’s building envelope provisions.

It is considered that full compliance with the building envelope provisions in this instance would have a negligible impact on the quality of views for any impacted development as the proposed development complies with Council’s LEP Development Standards relating to height and floor space ratio. It has been assessed full compliance with the building envelope provisions would not improve the quality of views for the adjoining neighbour at No. 16 Bond Street.

The case law associated with the planning principle cited in this report makes the following comment in relation to the suitability of a design and its impact on views:

‘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.’

It is considered that the proposed design demonstrates relative compliance with Council’s principal development standards. The location of views to be affected for No. 16 Bond Street is primarily across side boundaries. Whilst there will be impact on the adjoining neighbour, and views to the adjoining heritage item will be impacted, the proposed development is considered reasonable having regard for established principles for assessing view impacts and the provisions of Section 3.02.12 of the DCP.

Conclusion of assessment of Section 3.02 (Single Dwellings)

The departures to building envelope (side/rear setback) provisions (Section 3.02.04) have been assessed against the stated acceptable solutions of the DCP. Overall it is considered that given the established character of the surrounding built form which also reflects similar non-compliances and site constraints, the departures as proposed are deemed satisfactory having regard for the relevant performance criteria of Section 3.02 (Single Dwellings) of the Newcastle DCP 2012. There are no Clause 4.6 variations to the statutory LEP principal development standards in respect of maximum height or floor space ratio.
It is also worthy to note that within the historical context of the subdivision of Lot 4 under DA2008/1155, creation of the subject lot received approval from the Heritage Council of NSW. Whilst a s88B instrument required ‘traditional silver corrugated iron sheeting’, no requirements were imposed on the site at the time of subdivision as to restrict height, number of storeys, setbacks or design considerations.

Accordingly Council having regard for section 92 of the EP&A Act 1979 as NSW Heritage Council has considered the Integrated Development and issued approval. Therefore the consent authority must not refuse consent on heritage grounds. As such, the heritage Council has determined that the proposal is acceptable on heritage grounds and the development is suitable having regard for the performance criteria of section 3.02.

**DCP Section 5.01 – Soil Management.**

The proposed development is considered satisfactory with respect to the relevant soil management objectives.

**DCP Section 5.04 – Aboriginal Heritage.**

The proposal involves excavation for a new dwelling. The work is located within vicinity of a known Aboriginal site. A relevant condition has been provided from the Heritage Council of NSW (Ref 14/IDA/029, dated 07/01/2015) in the instance objects are uncovered. The proposed development is considered satisfactory in this regard.

**DCP Section 5.05 – Heritage Items.**

The site of the proposed development is listed in the state heritage register (SHR 00570 – Convict Lumber Yard or Stockade Site), and is located in the vicinity of adjoining heritage items.

In accordance with the general terms of approval from the Heritage Council of NSW (Ref 14/IDA/029, dated 07/01/2015 - refer attachment C), and having regard for section 92 of the EP&A Act 1979 as NSW Heritage Council have considered the Integrated Development and issued approval, the consent authority must not refuse consent on heritage grounds.

**DCP Section 5.06 – Archaeological Management.**

The allotment is nominated as a significant site of archaeological significance (SHI 00570 – Convict Lumber Yard or Stockade Site). The allotment is within the study area for the Newcastle Archaeological Management Plan (Suters, 1997). In accordance with general terms of approval from the Heritage Council of NSW (Ref 14/IDA/029, dated 07/01/2015), the proposed development is considered satisfactory as proposed. Relevant conditions will be included in any development consent issued.
DCP Section 5.07 – Heritage Conservation Areas.

The allotment is located in the Newcastle East Heritage Conservation Area where section 5.07.07 refers to infill development in a heritage conservation area. The commentary for this control indicates that ‘infill development should not copy or replicate its neighbouring traditional buildings. Rather, it is appropriate to interpret the features of the neighbouring buildings and design them in a way that reflects and respects them’.

Refer to section 4.3.1 below for a broader assessment of heritage considerations. Overall it is considered the proposal will not detrimentally impact the cultural heritage significance of the conservation area.

DCP Section 6.01 – Newcastle City Centre.

As infill development, the proposed single dwelling is considered satisfactory to the relevant aims and objectives of this Section. In accordance with Section A.06 (Heritage Building), it is considered the proposed development has responded to the scale, materials and massing of adjoining heritage items, with an appropriate scale, proportion and form.

The proposed colours, materials and finishes are considered satisfactory in accordance with the relevant Technical Manual, ‘Heritage’. In accordance with the relevant provisions of Sections 5.05 and 5.07, it is considered the proposed development suitably responds to heritage items, the historic streetscape, contributory buildings and the public domain. Refer to 4.3.1 below for heritage comments.

DCP Section 7.03 – Traffic, Parking & Access.

A minimum of two onsite car parking spaces have been proposed under this application. The proposed development is considered satisfactory as proposed.

DCP Section 7.06 – Stormwater and water efficiency.

The proposed stormwater system will drain to Council’s stormwater system (street gutter). A minimum rainwater tank size of 4540L has been provided for rainwater reuse. The proposed development is considered satisfactory as proposed.

DCP Section 7.08 – Waste Management.

Demolition and waste management will be conditioned in the development consent.

DCP Section 8.0 Public Participation

The proposal has been notified in accordance with this Section.
Submissions

The proposal has been notified twice in accordance with Council’s Public Notification Policy. Fifteen submissions were received in response to the first notification (14 day notification period), which commenced on 2 April 2014.

In accordance with Cl. 89 (3) (a) of the Environmental Planning and Assessment Regulations 2000, this nominated integrated development was notified/advertised a second time for a minimum of 30 days, which commenced on 22 September 2014. Two submissions were received in response to the second notification period. See Section 4.6 of this report for further information relating to the content of the submissions.

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

4.3.1 Heritage Issues Sec 79(c)(1)(b)&(e)

The subject property:

a) is listed as a heritage item on the State Heritage Register,

b) is located within the vicinity of a heritage item and

c) is located within a Heritage Conservation Area, under the Local Environmental Plan.

The proposed development is located within the Newcastle East Heritage Conservation Area, is nominated as an archaeologically significant site, is in the proximity of state and local heritage listed items and is listed on the state heritage register (SHR 00570 – Convict Lumber Yard or Stockade Site).

The proposed development was referred to the Heritage Council of NSW as nominated integrated development pursuant to Clause 91 of the EP&A Act 1979. The proposed development has been supported with General Terms of Approval (ref 14/IDA/029, dated 15 August 2014 and modification dated 7 January 2015). (Refer Attachment C)

Having regard to Section 92(2) of the Environmental Planning and Assessment Act 1979, a consent authority must not refuse development consent on heritage grounds if the same development is the subject of a heritage approval.

In accordance with the provided Statement of Heritage Impact (Kate Mountstephens, Issue B, dated 17 March 2014), the proposed development (infill single dwelling) is considered satisfactory having regard to the relevant provisions of the Newcastle Development Control Plan Sections 5.05 (Heritage Items) and 5.07 (Heritage Conservation Areas). The following are the key aspects justifying the proposal’s acceptability in regards to heritage:
Original subdivision approval: This area of land (Lot 4 DP 1156117) was approved by Council as a separate parcel of land (refer to subdivision file – DA 2008/1155). As such, it is not unreasonable for the applicant to propose infill development on this allotment. Whilst creation of the subject lot required a s88B instrument to be imposed regarding ‘restrictions requiring a roof constructed of traditional silver corrugated iron sheeting’) no requirements were imposed on the newly created lot as to restrict height, number of storeys, setbacks or design in relation to potential impacts on Coutts Sailors Home or former Convict Lumber Yard.

Building Envelope Departures: Whilst a departure to building envelope has been proposed to the provisions of Section 3.02 of the DCP, the infill development has been assessed as suitable in the context of adjoining heritage items, given its relative compliance with elements including proportion, setbacks, materials and details. Given the massing and form of heritage buildings in the immediate vicinity, the departure to building envelope provisions is considered acceptable in the context of relevant performance criteria of this section as discussed above.

Building materials compatibility: The proposed development’s materials, detail and articulation is considered compatible in the context of the Newcastle East Heritage Conservation Area. It is considered that elements including proposed cladding and fenestration have been designed sympathetically to the principles of infill development in a heritage setting.

The selected materials to the lower levels, masonry and off-form concrete, will suitably blend into this heritage setting; the light weight clad wall system with aluminium windows is considered to suitably contrast the development from adjoining contributory buildings.

Building Design compatibility: It is considered the proposed development has been designed sympathetically with respect to adjoining neighbouring sites, the character of the area and is considered to be complimentary to the amenity of the area.

Whilst the proposed development is distinctly modern in design, it is considered a pastiche infill development would have a more detrimental impact on the conservation area than the proposed development.

Furthermore, the practice note as companion to the Burra Charter, Article 22 — New Work, Practice Note Version 1: November 2013, page 2 highlights:

‘An important factor in the success of new work is the quality and sensitivity of the design response. New work should respect the context, strength, scale and character of the original, and should not overpower it. The key to success is carefully considered design that respects and supports the significance of the place. Imitative solutions should generally be avoided: they can mislead the onlooker and may diminish the strength and visual integrity of the original. Well-designed new work can have a positive role in the interpretation of a place.’
It is considered that the proposed development provides an appropriate response to site, and that the design is suitably differentiated from adjoining contributory heritage buildings and other examples of modern buildings in the immediate vicinity of the site within the Newcastle East Heritage Conservation area.

e) Street frontage: The proposed development will minimise the intervention of the new garage, maintain the relationship of the building to the street, maintain appropriate setbacks to vehicular accommodation and has regard for the historical character of the conservation area (Section 5.07.03 / Section 5.07.07 of the DCP).

f) Coutts Sailors Home: The proposed development is considered compatible in the context of Coutts Sailors Home and adjoining heritage items, with the following noted of specific relevance:

- The proposed development has matched floor levels of the proposed development to the existing development at No. 16 Bond Street,

- The proposed development is considered subservient and sympathetic with respect to its bulk and scale, given the current building envelope of Coutts Sailors Home, and the maximum parapet height of the dwelling being below the gutter line of Coutts Sailors Home.

- With comparison the form and massing of the proposed development has been simplified and provided increased curtilage to the eastern elevation to No. 16 Bond Street when compared to the previously approved dwelling design under DA2012/1160.

- The roof design (flat skillion roof with parapet) is considered sympathetic in this setting given the proposed maximum parapet height is below the gutter line of Coutts Sailors Home. This permits the roof of the adjoining heritage item to project above the roof of the proposed development and still be appreciated, in conjunction with the original chimney structures, from Enterprise Park to the west.

- The development has demonstrated due regard for the character of the area through an appropriately differentiated architectural expression, which is considered suitable in this context and in the streetscape (Section 5.07.07 of the DCP).

It is considered the proposed development is satisfactory in accordance with Council’s relevant heritage provisions and the proposed development has been assessed to comply with the relevant aims and objectives of Section 5.05 and Section 5.07 of the DCP.

In accordance with the general terms of approval from the Heritage Council of NSW (Ref 14/IDA/029, dated 07/01/2015), and having regard for section 92 of the EP&A Act 1979 as NSW Heritage Council have considered the Integrated Development and issued approval, the consent authority must not refuse consent on heritage grounds.
4.3.2 Privacy, Views Overshadowing Sec 79(c)(1)(b)

It is considered that the proposed development is satisfactory with respect to privacy, view and overshadowing impacts in accordance with the relevant objectives of the DCP as outlined above.

4.3.3 Orientation, solar access, energy efficiency Sec79(c)(1)(b)(c)&(e)

The proposal is orientated to receive adequate solar access. A BASIX Certificate for the development has been submitted with the application and meets the statutory requirements of SEPP (Building Sustainability Index: BASIX) 2004, in relation to mandatory water and energy reduction. Compliance with the submitted Basix Certificate will be conditioned.

4.3.4 Drainage and Traffic Sec79(c)(1)(b)&(c)

The proposal can comply with Council’s policies relating to stormwater management. Stormwater will drain to Council’s stormwater system (street gutter). A minimum rainwater tank size of 4540L has been provided for rainwater reuse. Appropriate conditions have been applied to ensure the development meets the specified standards. The proposed development is considered satisfactory in this regard in accordance with the relevant aims and objectives of Section 7.06 of the DCP.

Two on-site car parking spaces have been provided in accordance with Section 7.03 of the DCP; layback and driveway (including gradients, distances and transitions) can be achieved to the satisfaction of referral response from Council's development engineer. The development consent will condition driveway and crossover to comply with Council requirements.

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

The proposed development will not be likely to have any significant social or economic impacts in the locality.

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

The proposed development is considered satisfactory to Section 5.02 (Land Contamination) of Council’s DCP in accordance with a referral response from Council’s Environmental Protection Officer.

No other hazards are known to impact on the property. The proposal has been designed to minimise the impact of the above risks. Any consent issued will be conditioned to minimise any risk.

The proposed development will not impact on any remnant bushland, protected species or endangered species and is considered satisfactory in this regard. An assessment has revealed there are no trees, as per the relevant definition, within 5m of the development to the satisfaction of Section 5.03 of the DCP.
4.6 Submissions made in accordance with the Act or Regulations [Section 79C(1)(d)]

The application was referred to the following public authorities:

- The NSW Heritage Branch

As 'nominated integrated' development, pursuant to Clause 91 of the EP&A Act 1979, the proposed development has been supported with General Terms of Approval (ref 14/IDA/029, dated 15 August 2014 and modification dated 7 January 2015). Any required conditions have been included in recommended draft conditions of consent. No other referrals to public authorities were carried out or required.

The proposal has been notified twice in accordance with Council’s Public Notification Policy (Section 8.00 of the DCP). Fifteen submissions were received in response to the first notification (14 day notification period), which commenced on 2 April 2014. In accordance with Cl. 89 (3) (a) of the Environmental Planning and Assessment Regulation 2000, this nominated integrated development was notified/advertised a second time for a minimum of 30 days, which commenced on 22 September 2014. Two submissions were received in response to the second notification period.

The matters not addressed previously in this report are listed beneath:

- **Heritage Conservation Order is requested over site.** The land is listed on the State Heritage Register and general terms of approval have been issued by the NSW Heritage Branch.

- **Disruption to light and ventilation (Coutts Sailor’s Home).** It has been assessed that the proposed development does not detrimentally impact light and ventilation to adjoining development.

- **Dominant masonry wall to Enterprise Park.** The proposed development is considered satisfactory in this regard, to the relevant objectives of Section 3.02 of the DCP. With reference to the general terms of approval issued 15 August 2014 (ref 14/IDA/029), the masonry wall has been amended to reflect the approved western wall as per a previously approved dwelling (DA 2008/1160) on the site.

- **Impact of construction works to adjoining properties.** With respect to the setback of the approved dwelling, it has been assessed the proposed development has been designed to have a reduced impact on adjoining properties. The development consent will suitably condition construction works.

- **Inconsistent with the Burra Charter.** As infill development, the proposed development is considered satisfactory as discussed in section 4.3.1 above.
Newcastle Heritage Strategy and Heritage Policy. As discussed above, it is considered the proposed development is satisfactory with respect to Council’s relevant planning provisions.

Previous approvals only granted because of interrelationship with other DA’s: All previously approved developments including the original subdivision DA2012/1155 and Dwelling on Lot 4 DA2008/1160, underwent a detailed and thorough assessment as required under s79C. No staging of DA’s under section 83B of the EP&A Act were required, therefore each DA stands on its individual merits.

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

• Sustainability

The proposed dwelling is considered to be satisfactory having regard to the principles of ecologically sustainable development. A BASIX certificate has been included which demonstrates compliance with the requirements stipulated by the Department of Planning and Environment.

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

• General

This assessment notes DP1156117 (S88) regarding ‘Restrictions on the use of the land’. Regarding restrictions numbered 3 in the plan (‘No building shall be occupied or erected on any lot burdened having a roof constructed of any material other than traditional silver corrugated iron sheeting’), this assessment notes Cl. 1.9A of the Newcastle Local Environment Plan 2012 (Suspension of covenants, agreements and instruments). For the purposes of this assessment, the proposed roof (low pitched skillion zincalume roof with parapet) is considered satisfactory.

Considering the matters that have been discussed in this report, there are no other matters that are of relevance to this application.

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

ATTACHMENTS

Attachment A: Plans and elevations of proposed development
Attachment B: Draft Schedule of Conditions
Attachment C: Processing Chronology
Attachment D: General terms of approval from the Heritage Council of NSW Ref 14/IDA/029, DOC 14/208906 dated 07/01/2015
ATTACHMENT B - DRAFT SCHEDULE OF CONDITIONS

DA 2014/0296 – 18 BOND STREET NEWCASTLE

REASONS FOR CONDITIONS

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

APPROVED DOCUMENTATION

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

<table>
<thead>
<tr>
<th>Plan No./Supporting Document</th>
<th>Reference/Version</th>
<th>Prepared by</th>
<th>Dated</th>
</tr>
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<td>Bourne + Blue Architecture</td>
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<tr>
<td>Level 1 Plan</td>
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<td>Kate Mountstephens</td>
<td>17/03/2014</td>
</tr>
</tbody>
</table>
In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

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

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

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

5 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. Full details are to be included in documentation for a Construction Certificate application.

6 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.

7 A full colour schedule for the development, including colours, materials, finishes and details, is to be completed by a suitably qualified person and be included in documentation for a Construction Certificate application. The schedule is to be completed in accordance with the performance criteria and provisions of the Newcastle Development Control Plan 2012 (Element 5.07) and the accompanying technical manual, ‘Heritage’. The colour schedule is to be implemented during the building phase prior to completion of the development.

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

9 Overflows from the roof water tank for the proposed dwelling are to be directed to Council’s drainage system by means of an inter allotment drainage line or underground pipe directly to the street gutter in Bond Street. Full details are to be provided with the Construction Certificate application.

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

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 (NSW), or

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

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

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

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

b) stating that unauthorised entry to the work site is prohibited.

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

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

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

14 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.
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.

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

a) Constructed in accordance with Council’s A1300 – Driveway Crossings Standard Design Details.

b) In the case of a single car garage/parking space, the driveway crossing, within the road reserve, shall be a maximum of 3 metres wide.

c) In the case of a double car garage/parking space, the driveway crossing, within the road reserve, shall be a maximum of 4.5 metres wide.

d) Letterboxes, landscaping and any other obstructions to visibility should be kept clear of or limited in height to 1.2 metre, in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance.

e) The proposed driveway shall be a minimum of 3 metres clear of the trunk of any tree within the public reserve.

f) The proposed driveway shall be a minimum of 750mm clear of any pole or obstruction within the public reserve and 1 metre clear of any drainage pit.

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

Any proposed work within the public road reserve, including driveway works, reinstatement of a kerb or installation of drainage, is to be the subject of the separate approval of Council prior to commencement.

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

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.
19 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.

20 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.

21 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.

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

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

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

24 The following waste management measures are to be implemented during construction:

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

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

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

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

Note: Fines may be issued for pollution/littering offences under the Protection of the Environment Operations Act 1997 (NSW).
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 If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

a) protect and support the adjoining premises from possible damage from the excavation, and

b) where necessary, underpin the adjoining premises to prevent any such damage.

The above requirements does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to the requirements not applying.

27 Compliance with the general modified terms of approval of the NSW Heritage Council, as outlined in their correspondence dated 7 January 2015 (reference 14/IDA/029) a copy of which is attached to this consent.

a) There are to be no privacy screens installed on the balcony.

Further Information required at S60 stage for the approval of the Heritage Council or its delegate:

b) The name of a suitably qualified archaeologist and an appropriate monitoring strategy to ensure the State significant archaeology is protected.

Site Protection & Works:

c) The remnant pillar fence must be repaired and reconstructed in its current form. The form style and/or location of this fence are not to be modified.

d) A 500mm buffer zone is to be applied around all known or suspected archaeological relics;

e) Approval does not cover any excavation or the removal of any State significant relics; this approval covers archaeological monitoring of works only.

f) The Applicant must ensure that if substantial intact archaeological deposits and/or State significant relics are discovered, work must cease in the affected area(s) and the Heritage Council of NSW must be notified. Additional assessment and approval may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

g) Should any Aboriginal objects be uncovered by the work, excavation or disturbance of the area is to stop immediately and the Office of Environment & Heritage (Enviroline 131 555) is to be notified in accordance with Section 89A of the National Parks and Wildlife Act, 1974 (NPW Act). Aboriginal objects in NSW are protected under the NPW Act. Unless the objects are subject to a valid Aboriginal Heritage Impact Permit, work must not recommence until approval to do so has been
Compliance:

h) Following the determination of the development application by the Newcastle City Council, an application under Section 60 of the NSW Heritage Act 1977 must be submitted to and approved by the NSW Heritage Council prior to works commencing.

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

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

30 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.

31 If acid sulfate soils are found to be present during construction works, soils are to be treated in accordance with the New South Wales Acid Sulfate Soil Management Advisory Committee’s ‘Acid Sulfate Soil Manual’.

32 All downpipes discharging to the rainwater tanks are to have pre-storage insect, debris and vermin control (e.g. a rainwater head being leaf screened and vermin and insect proof) to minimise the contamination of captured roof water. A first flush device is to be provided for the inlet to the tank and a backflow prevention device is to be installed in the tank overflow outlet before connecting to the stormwater drainage system. If the roof downpipes are charged to the rainwater tank, all pipes are to be chemically welded and the stormwater system is to be designed such that the system is capable of being flushed in the event of pipe blockage (e.g. capped relief access points at the lowest level of stormwater drainage).

33 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 ground 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 ridge/roof has been completed, confirming that the building does not exceed the approved levels.
Development Applications Committee 15 November 2016

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

34 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.

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

37 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.

38 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.

39 Any redundant existing vehicular crossing is to be removed at no cost to Council and the public footway and kerb being restored to match the existing infrastructure and be completed prior to the issuing of an Occupation Certificate for the proposed development.

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

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

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

42 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.

43 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.

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

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

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

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

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

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

47 It is an offence under the provisions of the Protection of the Environment Operations Act 1997 (NSW) to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.
48 Failure to comply with the conditions of consent constitutes a breach of the Environmental Planning and Assessment Act 1979 (NSW), which may be subject to a penalty infringement notice (‘on-the-spot fine’) or prosecution.

49 Development applications are not assessed against the provisions of the Building Code of Australia. A Section 96 modification under the Environmental Planning and Assessment Act 1979 (NSW) will be required if design amendments that cause the proposal to be inconsistent with the development consent are necessary to comply with the provisions of the Building Code of Australia.

End of conditions
## ATTACHMENT C - PROCESSING CHRONOLOGY

**DA 2014/0296 – 18 BOND STREET NEWCASTLE**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>25 March 2014</td>
<td>Application lodged with Council.</td>
</tr>
<tr>
<td>2 April 2014</td>
<td>Application notified to adjoining residents. The notification period was extended (commencing 22 April).</td>
</tr>
<tr>
<td>8 April 2014</td>
<td>Preliminary correspondence issued to the applicant.</td>
</tr>
<tr>
<td>15 April 2014</td>
<td>Additional information received.</td>
</tr>
<tr>
<td>16 April 2014</td>
<td>Referral sent to the Heritage Council of NSW (Integrated Development).</td>
</tr>
<tr>
<td>7 May 2014</td>
<td>Fifteen (15) submissions were received in response to the notification period.</td>
</tr>
<tr>
<td>28 May 2014</td>
<td>Request for additional information issued to the applicant.</td>
</tr>
<tr>
<td>15 August 2014</td>
<td>General terms of approval issued by the Heritage Council of NSW.</td>
</tr>
<tr>
<td>12 September 2014</td>
<td>Additional information response submitted by the applicant.</td>
</tr>
<tr>
<td>22 September 2014</td>
<td>Application was re-notified as nominated integrated development.</td>
</tr>
<tr>
<td>23 October 2014</td>
<td>Two (2) submissions were received in response to the notification period.</td>
</tr>
<tr>
<td>7 January 2015</td>
<td>Amended general terms of approval issued by the Heritage Council of NSW.</td>
</tr>
<tr>
<td>4 March 2015</td>
<td>Notice of determination issued under delegated staff authority by way of approval.</td>
</tr>
<tr>
<td>4 March 2015</td>
<td>Advice letters sent to all submitters advising of approval decision.</td>
</tr>
<tr>
<td>18 May 2015</td>
<td>Adjoining neighbour files summons with Land and Environment Court.</td>
</tr>
<tr>
<td>24 July 2015</td>
<td>Amended summons filed with the Land and Environment Court.</td>
</tr>
</tbody>
</table>
Development Applications Committee 15 November 2016

11 January 2016 - Section 60 Application issued by the Heritage Council of NSW.


24 March 2016 - Land and Environment Court hearing.

25 August 2016 - Land and Environment Court decision.

29 September 2016 - Advice letter sent to persons with an interest in the application that previously lodged submissions. Letter outlined LEC decision and advised that determination of the application would be made by Council's Development Applications Committee 15 November 2016.

18 October 2016 - Application subject of a report to Public Voice. Meeting.
Dear Sir/Madam

RE: S96 (2) REFERRAL - PROPOSED MODIFICATION TO IDA NO. 14/IDA/029 (NEWCASTLE COUNCIL D.A. NO. 2014/296) FOR NEW DWELLING AT 18 BOND STREET-ENTERPRISE PARK AND COUTT’S SAILORS HOME, SHR NO. 01842, BOND STREET, NEWCASTLE

Thank you for your letter dated 18 September 2014 referring this application to the Heritage Council of NSW (the Heritage Council) for comment under section 96(2) of the Environmental Planning and Assessment Act. The application involves a modification to IDA No. 14/IDA/029. IDA No. 14/IDA/029 was considered by Heritage Council Approvals Committee, as delegate of the Heritage Council of NSW, at its meeting on 6 August 2014.

The modifications are described in the following drawings and documents:

- Proposed drawings by Bourne + Blue:
  - Site Plan (Dwg. No. DA-01C)
  - Level 1 Plan (Dwg. No. DA-02F)
  - Level 2 Plan (Dwg. No. DA-03E)
  - Level 3 Plan (Dwg. No. DA-04F)
  - Elevations (Dwg. No. DA-05E)
  - Elevations (Dwg. No. DA-06E)
  - Approved DA overlay (Dwg. No. DA-07E)
  - Sections (Dwg. No. DA-08C)
  - Stormwater plan (Dwg. No. DA-09B)
  - Shadow Diagrams (Dwg. No. DA-10B)
  - Shadow Diagrams (Dwg. No. DA-11B)

- Report by City Plan Services dated 10 September 2014.

The modifications involve:

- Providing an off-form concrete finish to western and northern fence boundary walls, using rough sawn timber planks as formwork.
- Reducing the height of the level 2 parapet by lowering and chamfering the sill and increasing garage opening height.
- Removing the balcony privacy screens. Providing retractable blinds on the eastern elevation.
1. as delegate of the Heritage Council of NSW, an approval body for the application, have considered the proposed modifications in accordance with the required matters for consideration under section 62 of the Heritage Act 1977. Newcastle City Council is advised that proposed modification of the Western and Northern boundary walls and the garage surrounds comply with the following General Terms of Approval resolved by the Heritage Council Approvals Committee at its meeting on 6 August 2014.

2) The western wall facing the Convict Lumber Yard is to have its materials modified to reference the former timber yard use, similar to the previously approved proposal.

3) The garage frontage is to continue the materials used on the western wall.

4) The size of the garage surrounds are to be reduced.

The modification for the balcony retractable blinds, instead of the privacy screens, does not comply with the following General Terms of Approval. Despite being retractable, the blinds will still obstruct the views to the adjacent Coutts building from Bond Street.

5) There are to be no privacy screens installed on the balcony.

Accordingly, the following revised General Terms of Approval are issued to include the amended drawings and reports and the amendments listed above.

1) All work shall be carried out in accordance with the following documentation:

a) Drawings prepared by Bourne + Blue Architecture:
   - Site Plan (Dwg. No. DA-01C)
   - Level 1 Plan (Dwg. No. DA-02F)
   - Level 2 Plan (Dwg. No. DA-03E)
   - Level 3 Plan (Dwg. No. DA-04F)
   - Elevations (Dwg. No. DA-05E)
   - Elevations (Dwg. No. DA-06E)
   - Approved DA overlay (Dwg. No. DA-07E)
   - Sections (Dwg. No. DA-08C)
   - Stormwater plan (Dwg. No. DA-09B)
   - Shadow Diagrams (Dwg. No. DA-10B)
   - Shadow Diagrams (Dwg. No. DA-11B)

b) Report by City Plan Services dated 10 September 2014;

c) Statement of Heritage Impact Issue B dated 17 March 2014, prepared by Kate Mountstevens Architecture and Heritage; and


EXCEPT AS AMENDED by the conditions of this consent.

2) There are to be no privacy screens installed on the balcony.

Further information required at S50 stage for the approval of the Heritage Council or its delegate:

3) The name of a suitably qualified archaeologist and an appropriate monitoring strategy to ensure the State significant archaeology is protected.

Site Protection & Works:

4) The remnant pillar fence must be repaired and reconstructed in its current form. The form style and/or location of this fence are not to be modified.
5) A 500mm buffer zone is to be applied around all known or suspected archaeological relics;

6) Approval does not cover any excavation or the removal of any State significant relics; this approval covers archaeological monitoring of works only.

7) The Applicant must ensure that if substantial intact archaeological deposits and/or State significant relics are discovered, work must cease in the affected area(s) and the Heritage Council of NSW must be notified. Additional assessment and approval may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

8) Should any Aboriginal objects be uncovered by the work, excavation or disturbance of the area is to stop immediately and the Office of Environment & Heritage (Enviroline 131 555) is to be notified in accordance with Section 89A of the National Parks and Wildlife Act, 1974 (NPW Act). Aboriginal objects in NSW are protected under the NPW Act. Unless the objects are subject to a valid Aboriginal Heritage Impact Permit, work must not recommence until approval to do so has been provided by the Office of Environment & Heritage.

Compliance:

9) Following the determination of the development application by the Newcastle City Council, an application under Section 60 of the NSW Heritage Act 1977 must be submitted to and approved by the NSW Heritage Council prior to works commencing.

If you have any questions regarding the above matter please contact Rajat Chaudhary, Heritage Architect, at the Heritage Division, Office of Environment and Heritage on (02) 9873 8521.

Yours sincerely

7 January 2016

ED BEEBE
AV/Manager Conservation
Heritage Division
Office of Environment & Heritage

As Delegate of the Heritage Council of NSW
ITEM-14 DA2015/10390 - 77 JUBILEE ROAD ELERMORE VALE - DEMOLITION OF DWELLING AND OUTBUILDINGS ERECTION OF FIVE TWO STOREY DWELLINGS ASSOCIATED RETAINING WALLS AND FENCING

APPLICANT: PETER FISHLOCK
OWNER: PETER FISHLOCK
REPORT BY: PLANNING AND REGULATORY
CONTACT: DIRECTOR PLANNING AND REGULATORY / MANAGER DEVELOPMENT AND BUILDING

PART I

PURPOSE

The purpose of the report is to present a development application to the Development Applications Committee for determination. The application been 'called-in' by two Councillors. A request for Public Voice was scheduled for the 18 October 2016. However, this request has been since been withdrawn.

The proposed development seeks consent for the demolition of the existing dwelling and associated outbuildings, erection of five, two storey dwellings and strata title subdivision.

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

The proposal was notified to neighbouring properties for 14 days in accordance with the provisions of the Newcastle DCP and four public submissions were received objecting to the proposal.

The submissions raised the following concerns:

- Overshadowing
- Amenity
- Character and visual impact
Development Applications Committee 15 November 2016

- Stormwater
- Waste management
- Parking
- Traffic impacts
- Construction impacts
- Loss of property value

Following consideration of the submissions and an initial assessment of the application, the applicant was requested to undertake amendments to the design to address these issues.

Issues

- Amenity impacts of the development, specifically overshadowing.
- Stormwater and flooding impacts.
- Parking and traffic impacts.

Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under Section 79C(1) of the *Environmental Planning and Assessment Act 1979* (as amended) and is acceptable subject to the inclusion of the nominated conditions of consent.

RECOMMENDATION

a) THAT the application for the demolition of the existing dwelling and outbuildings, erection of five, two storey dwellings, strata title subdivision and associated site works be approved, subject to compliance with the conditions set out in the Draft Schedule of Conditions (refer to Attachment B); and

b) THAT those persons who made submissions be advised of the Council determination.

Political Donation / Gift Declaration

Under Section 147 of the Environmental Planning and Assessment Act 1979, the applicant, and any person related to this Development Application must report any political donation and/or gift to a Councillor and/or any gift to a Council employee within a two year period before the date of this application.
The applicant has answered **NO** to the following question on the application form: *Have you, or are you aware of any person having a financial interest in the application, made a 'reportable political donation' or 'gift' to a Councillor or Council employee within a two year period before the date of this application?*

**PART II**

### 1.0 THE SUBJECT SITE

The subject site is formally known as 77 Jubilee Road Elermore Vale and is an irregular shaped allotment located on the eastern side of Jubilee Road. The lot has a frontage of 15.24m, a maximum depth of 103.734m and a total area of 1454m².

The site is bounded by residential dwellings to the north and south. The eastern side of the subject site is affected by a large electricity transmission line and a large concrete drainage channel. Approval has recently been granted for four new dwellings on 1 Watkins Road which lies directly north of the subject site. This approval was issued on 7 July 2016 (DA2015/10119).

The site has a downward slope of approximately 8.1m towards the rear eastern boundary where the large concrete drainage channel is located. The site is largely devoid of vegetation with the exception of a small shrub at the street front and a covering of grass. The land constraints on the site include potential bushfire, flooding, mine subsidence and acid sulphate soils.

The property at 77 Jubilee Road currently contains a single storey dwelling, a garage and associated detached outbuildings. The proposal seeks consent to demolish all of the existing buildings currently on the site.

### 2.0 THE PROPOSAL

The application seeks consent for:

- the demolition of the existing dwelling and associated outbuildings;
- the erection of five, two storey dwellings and associated retaining walls and fencing; and
- five lot strata title subdivision.

The proposal includes parking for six resident vehicles (garages) and one visitor space. The development also proposes seven medium sized trees as part of the landscape concept plan.

A copy of the amended plans is included in **Attachment A**. The various steps in the processing of the application to date are outlined in the Processing Chronology included in **Attachment C**.
The development application was notified to neighbouring properties for 14 days in accordance with the provisions of the Newcastle DCP. Four public submissions were received objecting to the proposal, including a Public Voice request. The proposal was subsequently amended to address the issues raised in the submissions and Council's concerns with the development. The amended plans were not re-notified due to the nature of the changes.

The request for Public Voice and associated objection has subsequently been withdrawn.

The concerns raised by the objectors are summarised below:

i) **Amenity Issues**
   a) **Overshadowing** - The proposal will have unreasonable overshadowing impacts on the neighbouring property. The submitted shadow diagrams are incorrect not showing all the neighbouring buildings and the limited outdoor area currently enjoying solar access.
   b) **Amenity** - The proposal will result in amenity impacts on neighbouring properties including noise, odours, fumes and moulds.

ii) **Design and Aesthetic Issues**
   a) **Character & Visual Impact** - The proposal results in a visual impact on the neighbouring property and is out of character with the area.
   b) **Stormwater** - The proposal will have stormwater impacts.

iii) **Traffic and Infrastructure Issues**
   a) **Waste Management** - The position of the bins is unreasonable due to its likely impacts on amenity of neighbouring property.
   b) **Parking** - The proposal does not have enough parking.
   c) **Traffic Impacts** - The proposal will result in traffic accidents on Jubilee Road.

iv) **Miscellaneous**
   a) **Construction Impacts** - There will be impacts on the neighbours from the construction process including the removal of asbestos.
   b) **Property Value** - The proposal will result in devaluation of surrounding properties.

The issues raised in the submissions have been addressed in Section 4.2.5 of the report below.
4.0 ENVIRONMENTAL PLANNING ASSESSMENT

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

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

Newcastle Local Environmental Plan 2012

Clause 2.1, 2.2 & 2.3 - Land Use Zones & Zone Objectives

The subject property is located within the R2 Low Density Residential zone under the provisions of the Newcastle Local Environmental Plan, 2012. The use is defined as multi dwelling housing which is permissible with consent in the zone. The proposed development is consistent with the zone objectives as it will provide for the housing needs of the community within a low density residential environment.

Clause 2.6 Subdivision

The proposal seeks consent for the strata subdivision of the development as part of this application.

Clause 2.7 Demolition

The proposal seeks consent for the demolition of the existing dwelling and outbuildings on the site as part of this application.

Clause 4.1 Minimum Subdivision Lot Size

This clause does not restrict the size of strata lots.

Clause 4.3 Height of Buildings

The subject site has a maximum height limit of 8.5m. The proposal complies with this requirement, with a maximum height of approximately 7.8m.

Clause 4.4 Floor Space Ratio

A maximum floor space ratio (FSR) of 0.6:1 applies to the site. The proposed development has an FSR of 0.34:1, which complies with this requirement.

Clause 4.6 Exception to development standards

The development does not propose any variations to development standards.
Clause 5.9 Preservation of trees or vegetation

The proposal does not impact on any significant trees. The site is predominately grassed with a small shrub at the south western corner.

Clause 5.10 Heritage Conservation

The subject site does not contain any heritage items and is not within a heritage conservation area. There are no heritage items or heritage conservation areas near the subject site.

Clause 6.1 Acid Sulfate Soil

The subject site is listed as Class 5 under the Acid Sulfate Soil Map and the proposed works will not trigger the need for an acid sulfate soils management plan.

Clause 6.2 Earthworks

The proposed earthworks are not likely to have any significant impacts on environmental functions or on the neighbouring properties.

State Environmental Planning Policies

State Environmental Planning Policy No 55 - Remediation of Land

The proposed site is not known to be affected by land contamination. The proposal does not involve any change of use that would warrant further investigation on land contamination.

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

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

4.2 Merit Considerations

4.2.1 Relevant Strategic Policies

The broader strategic policies, including the Newcastle Urban Strategy and the Lower Hunter Regional Strategy (LHRS) identify the site as a Limited Growth precinct. The application is consistent with the objectives of the LHRS, which include ensuring that there is adequate land available and appropriately located to accommodate the projected housing and employment needs of the Region's population over the next 25 years.
4.2.2 Newcastle Development Control Plan [Section 79C(1)(a)(iii)]

Section 3.01 – Subdivision

The proposal does not involve any Torrens title subdivision. This section does not include provisions affecting strata subdivisions.

Section 3.03 Dual Occupancy and Semi-Detached Dwellings, Attached Dwellings and Multi Dwelling Housing, Residential Flat Buildings

The proposal complies with the provisions under the relevant sections above as detailed throughout this report.

Section 4.01 Flood Management

The development has been assessed by Council's Senior Development Officer (Engineering) and is acceptable subject to conditions of consent included within Attachment B.

The detailed engineering advice is included below:

‘Building Levels

The site is subject to flooding at the rear and is defined as a Floodway. A Flood Certificate FL2015/199 has been obtained from Council with recommended minimum floor level of 15.10m AHD. Unit 5 is closest to the floodway easement and the floor level has been set at 15.50m which is above the required minimum floor level.

The proposed development floor levels are therefore acceptable.

Easement for Drainage

The rear of the property has an easement for stormwater drainage. The revised plans have indicated the drainage easement. The applicants have confirmed that the rear of the property will be allocated to Unit 5 and access for maintenance will be provided via a gate.

The applicants have also confirmed that a maintenance plan will be developed at construction certificate stage and signage will be developed to indicate that the rear of the property is flood affected.

The applicants have addressed Council concerns and conditions are recommended.’

Section 4.02 Bush Fire Protection

The subject site is affected by bushfire prone lands (ie Vegetation Buffer).
The proposal has been assessed by the NSW Rural Fire Service and is considered to be acceptable subject to their General Terms of Approval which have been included within the recommended conditions of consent at Attachment B.

Section 4.03 Mine Subsidence

The subject site is affected by Mine Subsidence and the proposal is considered acceptable subject to recommended conditions of consent included within Attachment B.

Section 4.04 Safety & Security

The development is considered to be consistent with the principles of Crime Prevention Through Environmental Design (CPTED) as follows:
- surveillance
- access control
- territorial reinforcement
- space management

Section 4.05 Social Impact

The development is consistent with the zone objectives and will have a positive social impact through the provision of additional housing in a residential area.

Section 5.01 Soil Management

The proposal is acceptable subject to the inclusion of conditions of consent regarding soil and sediment control, which is included in Attachment B.

Section 5.02 Land Contamination

The proposal is acceptable in terms of land contamination as detailed under the discussion on SEPP 55 within Section 4.1.

Section 5.03 Tree Management

The proposal is acceptable in terms of tree management as detailed within Section 4.1 - Clause 5.9.

Section 5.04 Aboriginal Heritage, Section 5.05 Heritage Items & Section 5.07 Heritage Conservation Areas

The proposal does not have any heritage impacts as detailed within Section 4.1 - Clause 5.10.

Section 5.06 Archaeological Management

It is unlikely that the proposal would have any archaeological impacts as detailed within Section 4.1 - Clause 5.10.
Section 7.01 – Building Design Criteria

The following design criteria have been considered in detail during the assessment of the application:

- Height
- FSR
- Setbacks and building height envelopes - it is noted that the amended design has relocated the majority of the upper floor building bulk as far north as possible and relocated the visitor parking space to the area between Units one and two, to reduce the visual appearance and overshadowing impacts on the neighbouring property to the south.
- Private open space - the proposal provides suitable private open spaces for each dwelling.
- Building appearance/streetscape
- Solar access/overshadowing - see Section 4.2.3 for further discussion.
- Views and privacy - see Section 4.2.3 for further discussion.
- Fencing and walls
- Utilities and services

Section 7.02 – Landscape Open Space & Visual Amenity

The proposal is considered to be acceptable having regard to:

- Landscape concept plan
- Landscape Areas - 25% of the site area has been provided as a landscape area which is acceptable.
- Deep Soil Areas - 15% of the site area has been provided as a deep soil zone which is acceptable.

Section 7.03 - Traffic, Parking & Access

The proposal has been assessed by Council’s Senior Development Engineer and is acceptable subject to appropriate conditions of consent.

The development is required to have one parking space per dwelling and one visitor parking space. The proposed parking on the site meets these requirements.
Development Applications Committee 15 November 2016

Section 7.05 Energy Efficiency

It is considered that the submitted proposal is adequate in terms of its solar access.

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

The flooding, stormwater and water management aspects of the proposal have been assessed by Council’s Senior Development Engineer and are acceptable having regard to the requirements of the DCP. A number of conditions have been placed on the consent to address these issues (refer to Attachment B).

Section 7.08 – Waste Management

The proposal has been assessed in terms of waste management and is acceptable subject to conditions of consent as recommended at Attachment B.

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

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

The proposed development complies with the maximum height and density (ie floor space ratio) standards under the Newcastle LEP 2012. Furthermore, the proposed setbacks are acceptable with the proposal meeting the required building envelopes. The proposed front setback is relatively consistent with the existing building line considering the angled alignment of the front boundaries.

The development does not have a significant impact on the character of the area and the streetscape. The surrounding housing consists of predominately single storey dwellings. However, the height limit which applies to the area is 8.5m effectively allowing two storey developments. The proposal is consistent with the urban design standards under the Newcastle LEP 2012 and Newcastle DCP 2012.

The proposed development includes a combination of materials including cladding, colourbond roofing and face brick construction. The proposal was amended to increase the level of architectural relief and articulation and the revised design is acceptable in terms of the external appearance and impact on the streetscape.

The proposal is consistent with the strategic outcomes envisioned by the current planning controls and has regard to the height, bulk and scale of the surrounding developments.

b) Traffic Access & Parking

The proposal has been assessed by Council’s Senior Development Engineer and is acceptable subject to conditions of consent recommended at Attachment B.

The detailed engineering advice is included below:
Road Safety Concerns and Driveway Design

A review of the objections, discussions with adjoining neighbours, a meeting with Council’s Traffic Sections and obtained documents have revealed that the section of Jubilee Rd fronting the site and at the intersection of Watkins Rd has speeding concerns. A number of minor accidents have been noted and numerous concerned residents raising the question in relation to the safety and speeding.

The applicants have redesigned the existing driveway to allow for a passing bay in the front of Unit 1 within the site. This will allow for additional sightlines when exiting the driveway and two vehicles to pass. A longitudinal section has been provided indicating the grades along the driveway and seems to have been designed to allow for good access.

c) Stormwater & Flooding

The proposal has been assessed by Council's Senior Development Engineer and is acceptable subject to conditions of consent recommended at Attachment B. Further details of the assessment are outlined within section 4.2.2 of this report.

d) Amenity (Privacy, Overshadowing, Views & Construction Impacts)

The proposal is acceptable in terms of privacy, views and overshadowing.

Privacy

The proposed development is acceptable in terms of privacy impacts. Consideration has been made to the position of windows in regards to their location relative to neighbouring properties/

Potential privacy impacts from the lower floor windows, including living, dining and kitchen areas, will predominately be addressed by the provision of a 1.8m high boundary fence and highlight windows with a minimum 1.5m sill height from the finished floor. On the southern boundary this fence will need to be partly extended with a 300mm lattice screen to 2.1m in height due to the relative differences between the finished fence height compared to the windows.

The upper floor of the amended proposal consists solely of bedrooms and bathrooms which will have acceptable privacy impacts on the neighboring dwellings.

Overshadowing

The shadows from the proposed development predominately fall onto the adjoining property to the south (ie 79 Jubilee Road) as the subject site is aligned east-west. The amendments to the design were partly generated due to overshadowing issues arising from the assessment of the application and the public objections to the proposal.
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The shadowing impacts of the original design are shown on sheet B03 'Existing Design'. The 3D shadows demonstrate that the existing neighbouring house to the south would receive a significant and unreasonable shadowing impact from the original design.

The applicant's architects, when redesigning the proposal, considered several options with the aim of reducing the shadowing impacts of the proposal before finalising the amended design. In this respect the architects have submitted three further shadow diagrams as detailed below:

i) Existing Situation (sheet B02) - the 3D shadows show that from 1pm the windows of the neighbouring house already receive significant overshadowing.

ii) Mirror Reversed Design (sheet B02) - the applicant was requested to 'mirror reverse' the design of the proposal to address shadowing impacts. The applicant's architects were able to demonstrate that the shadowing outcomes from this option were less than the final amendment.

iii) Revised Design (sheet B01) - The final amended design shows that the shadows generated by the proposal (ie 3D view) result in the best outcome of the three proposed designs (ie original, mirror-reversed and final amendment). This design maintains the greatest amount of solar access to the windows to the neighbouring dwelling for the longest portion of the day during 9am to 3pm on the 21 June. Furthermore, this design maintains the greatest solar access to the rear large window/sliding door which was requested by the adjoining resident.

Overall it is considered, on balance, that the overshadowing impacts of the proposal are acceptable and the best solution for the site has been achieved with the amended plans.

Views

The proposal will result in a change to the general outlook of the area due to the height and scale of the proposal (ie several of the properties including the subject site have relatively large vacant rear yards). This change is consistent with the strategic outcomes for the area and the planning controls which encourage suitable development in residential areas. The design and form of the development as multiple separate buildings rather than a continuous bulk, reduce the visual impact of the development on the streetscape.

The overall impacts in terms of views and outlook are acceptable in this instance.

Construction Impacts

Appropriate conditions of consent have been included at Attachment B to address potential construction impacts such as noise and dust.
4.2.3 **Social and Economic Impacts in the Locality [Section 79C(1)(b)]**

The proposed development will have a positive social and economic impact through the provision of alternative housing accommodation. The impacts on property values, as raised within public objections, are not a valid planning consideration and it is unlikely that the proposal will detract from current market values.

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

The site is suitable for the development as it is located in a residential area, close to services and facilities. The site is constrained by mine subsidence and bushfire and these constraints have been addressed in the conditions of consent (refer to Attachment B).

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

The concerns raised in the submissions have previously been addressed in this report and are summarised below:

a) **Amenity** - The proposal will result in amenity impacts on neighbouring properties including noise, odours/fumes and moulds.

   **Comment:** The proposal is acceptable in terms of noise and odour/fume generation. The design has been amended to minimise shadowing impacts and overall is acceptable having regards to causing mould on the adjacent properties.

b) **Waste Management** - The position of the bins is unreasonable due to the likely impact on the amenity of neighbouring properties.

   **Comment:** The design has been amended relocating the bins to the rear of each dwelling's garage to address this issue.

4.2.6 **Public Interest [Section 79C(1)(e)]**

- **Sustainability**

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

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

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

The proposed development is in the public interest as it will provide for additional housing opportunities in a residential environment.

ATTACHMENTS

Attachment A: Copy of submitted plans - 77 Jubilee Road, Elermore Vale - DA 2015/10390
Attachment B: Draft Schedule of Conditions - 77 Jubilee Road, Elermore Vale - DA 2015/10390
Attachment C: Processing Chronology - 77 Jubilee Road, Elermore Vale - DA 2015/10390
ATTACHMENT B – DRAFT SCHEDULE OF CONDITIONS
DA 2015/10390 - 77 JUBILEE ROAD ELERMORE VALE

SCHEDULE 1

REASONS FOR CONDITIONS

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

APPROVED DOCUMENTATION

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

<table>
<thead>
<tr>
<th>Plan No / Supporting Document</th>
<th>Reference / Version</th>
<th>Prepared by</th>
<th>Dated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plans</td>
<td>Job No 11883</td>
<td>The Plan Centre</td>
<td>25/08/16</td>
</tr>
<tr>
<td></td>
<td>Dwg No A01, A02, A03 &amp; A04 of 04 Rev 3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Statement of Environmental Effects</td>
<td></td>
<td>The Plan Centre</td>
<td>3/12/16</td>
</tr>
</tbody>
</table>

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

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

3. A total monetary contribution of $12,600.70 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:

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

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

4. On-site parking accommodation is to be provided for a minimum of 1 visitor vehicle, and 5 Bicycles and such be set out generally in accordance with the minimum parking layout standards indicated in Element 7.03 ‘Traffic, Parking and Access' of Council’s adopted Newcastle DCP 2012. Full details are to be included in documentation for a Construction Certificate application.

5. The proposed car park openings are to be a minimum width of 2.7m for single garage and 4.8m clear for double garages. Full details are to be included in documentation for a Construction Certificate application.

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

7. The visitor parking bays are to be constructed in paving bricks or in a suitable alternative visually unobtrusive paving material which contrasts in colour and texture with that used in the construction of the driveway. Full details are to be included in documentation for a Construction Certificate application.
8. Kerbing or dwarf walls having a minimum height of 100mm are to be constructed along the edge of all garden or lawn areas adjacent to driveways and parking bays sufficient to discourage the encroachment of vehicles thereon. Full details are to be included in documentation for a Construction Certificate application.

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

10. Roof water from the proposed new work is to be directed to the proposed water tank (minimum size 4000L for each Unit) and being reticulated there from to any new toilet cisterns and cold water washing machine taps, with a mains water top up being installed to maintain between 10% and 15% of the tank capacity. Alternatively, an electronically activated mechanical valve device is to be installed to switch any new toilet cisterns and laundry taps to mains water when the tank falls below 10% capacity. The water tank and plumbing is to be installed in accordance with Australian Standard AS 3500, the relevant plumbing regulations and the requirements of the Hunter Water Corporation. Full details are to be provided with the Construction Certificate application.

11. Overflows from the On Site Retention/Detention, WSUD structures 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 nominated Drainage System. Full details are to be provided with the Construction Certificate application.

12. All stormwater runoff from the proposed development being managed in accordance with the requirements of Section 7.06 ‘Stormwater’ of Newcastle Development Control Plan 2012, as indicated on the concept stormwater management plan prepared by Michael Fitzgerald Job No. 15-4919 Dwg. No's C2 & C3 Issue 0 dated 02/12/2015. Full details are to be included in documentation for a Construction Certificate application.

13. 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.

14. The easement to drain water within the site is to be shaped to contain any overland stormwater flow along the course of the easement and is to be kept clear of obstruction at all times. Full details are to be included in documentation for a Construction Certificate application.
15. The floor level of proposed dwellings is not to be below 15.10m AHD (excluding the garage) 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.

16. The whole of the proposed structure below 15.10m AHD is to be constructed in materials and finishes that are resistant to damage from floodwaters/tidal waters. Any new machinery or equipment, electrical fixtures (such as power points, light fittings and switches), storage units 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.

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

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

19. Adequate facilities are to be provided within the proposed individual garages for the storage of garbage. Full details are to be included in documentation for a Construction Certificate application.

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

21. 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.

22. The proposed lighting including car park lighting of the premises is to be designed, positioned, and installed, including appropriate shielding and orientation of the lighting fixture, as to not give rise to obtrusive light, interfere with traffic safety or detract from the amenity of surrounding properties in accordance with Australian Standard AS 4282: 1997 Control of the obtrusive effects of outdoor lighting. Full details are to be included in the documentation for a Construction Certificate application.

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

24. All downpipes discharging to the rainwater tanks are to have pre-storage insect, debris and vermin control (e.g. a rainwater head being leaf screened and vermin and insect proof) to minimise the contamination of captured roof water. A first flush device is to be provided for the inlet to the tank and a backflow prevention device is to be installed in the tank overflow outlet before connecting to the stormwater drainage system. If the roof downpipes are charged to the rainwater tank, all pipes are to be chemically welded and the stormwater system is to be designed such that the system is capable of being flushed in the event of pipe blockage (e.g. capped relief access points at the lowest level of stormwater drainage). Full details are to be submitted with the required Construction Certificate.
25. A structural engineer is to determine the location and depth of the proposed underground tank and certify that it will not adversely affect any building foundation footings or slabs when the tank is empty. Stormwater Management Plan is to be designed in accordance with current NDCP Section 7.06 Stormwater Management and The City of Newcastle’s Stormwater and Water Efficiency Technical Manual. Full details are to be included with documentation for a construction certificate.

26. Compliance in full with the General Terms of Approval under the Rural Fires Act, 1997, as stipulated by the NSW Rural Fire Service (dated 8 July 2016 Ref: DA 16/0588 DA 16022600891 JM) and detailed below. Full details are to be submitted to the Accredited Certifier prior to the issue of the Construction Certificate:

‘Asset Protection Zones

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

1. At the commencement of building works, and in perpetuity, the entire property shall be managed as an Inner Protection Area (IPA) as outlined within section 4.1.3 and Appendix 5 of ‘Planning for Bush Fire Protection 2006’ and the NSW Rural Fire Service’s document ‘Standards for asset protection zones’.

Water and Utilities

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

2. Water, electricity and gas are to comply with section 4.1.3 of ‘Planning for Bush Fire Protection 2006’.

Design and Construction

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

3. New construction shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.
27. The proposal being modified as marked up in yellow and annotated on the elevations (The Plan Centre, Job No 11883 Dwg No A03 of 04 Issue 3) to provide highlight windows with a minimum window sill of 1500mm from the finished floor and 300mm lattice extension to the proposed fence. Full details are to be submitted with the required Construction Certificate.

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

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

Each toilet is to:

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

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

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

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

30. 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.

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

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

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

c) A copy of all waste disposal receipts are to be kept on-site for the duration of the proposed development and made available to authorised Council Officers upon request
d) Seven working days' notice in writing is to be given to Council and the owners/occupiers of neighbouring premises prior to the commencement of any demolition works. Such written notice is to include the date demolition will commence and details of the name, address, contact telephone number(s) and licence details (type of licences held and licence numbers) of any asbestos removal contractor and demolition contractor. Notification to owners/occupiers of neighbouring premises shall also include Council’s contact telephone number (49742000) and the Workcover Authority of NSW telephone number (49212900) and

e) On sites where asbestos materials are to be removed, a standard commercially manufactured sign containing the words ‘DANGER ASBESTOS REMOVAL IN PROGRESS’ measuring not less than 400mm x 300mm is to be erected in a prominent position during asbestos removal works.

32. 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.

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

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

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

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

36. A waste management plan shall be prepared and implemented in accordance with the provisions of the Newcastle DCP 2012. At a minimum, the following measures shall be implemented during the construction phase:

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

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

c) Appropriate provision is to be made to prevent 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/littering offences under the Protection of the Environment Operations Act 1997 (NSW).

37. 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.

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

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

40. 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.

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

42. 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.
43. A survey certificate prepared by a Registered Surveyor is to be submitted to the Principal Certifying Authority upon completion of the floor slab formwork, before concrete is poured, to ensure that the siting of the building in relation to adjacent boundaries is in accordance with the development consent.

44. A domestic type vehicular crossing is to be constructed across the road reserve, in accordance with the following criteria:

a) Constructed in accordance with Council’s A374 - Driveway Crossings Standard Design Details.
b) 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.
c) The proposed driveway shall be a minimum of 3 metres clear of the trunk of any tree within the public reserve.
d) 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.
e) Driveway cross-fall is to be maximum of 2.5%.

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

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

46. Any proposed paving works within the Jubilee Road public footway are to be in accordance with the requirements of Council’s specification (Form PLE/SOO9).

Note: It will be necessary for the Developer to notify water, telecommunications, gas and electricity authorities of the proposed paving works in order to enable the various authorities to carry out and complete any necessary repairs and/or amplification to their respective services before such works are commenced.

47. 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.

48. 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.
49. 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.

50. All roof and surface waters are to be conveyed to the drainage system by way
of a sealed pipe system, in accordance with Element 7.06 ‘Stormwater’ of
Newcastle Development Control Plan 2012.

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

52. 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.

53. 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.

54. 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 (DECC) ‘Waste Classification Guidelines
Part 1: Classifying Waste’.

55. 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.

56. 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.
Development Applications Committee 15 November 2016

57. 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 Managing Urban Stormwater: Soils and Construction 4th Edition - Vol. 1 (the ‘Blue Book’) published by Landcom, 2004.

58. 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.

59. 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.

60. A 1.8 m high, lapped timber paling fence, or equivalent, is to be erected along the side boundaries of the site in consultation with the adjoining owners involved.

   Note: Any disputation which may arise between the developer and the adjoining property owners in respect of this matter is to be resolved in accordance with the provisions of the Dividing Fences Act 1991 (NSW).

61. Where the proposed development involves the destruction or disturbance of any existing survey monuments, those monuments affected are to be relocated at no cost to Council by a Surveyor registered under the Surveying and Spatial Information Act 2002 (NSW).
CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE, A SUBDIVISION CERTIFICATE OR A STRATA CERTIFICATE

62. 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.

63. 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.

64. The developer is to design the following works on Jubilee Rd frontage generally based on the Concept Public Domain Plan prepared by The Plan Centre Job No. 11883 Dwg No. A01 of 04 Rev 3 dated 25/08/2016 adjacent to the site at no cost to Council and in accordance with Council’s guidelines, design specifications and Australian Standards:

i) Public Domain Works
   a) New footpath, retain/install kerb and gutter. The scope of footpath works to extend 3-5m beyond the property boundary at either side of the property.
   b) Remove all redundant driveways, install new kerb and gutter and repair any road works.
   c) Install the any signage.
   d) Repair any damages caused during construction and ensure the survey mark is protected at all times.

   Detailed public domain plan including civil design & details, survey, cross sections and longitudinal are to be submitted to Council for review and approval as part of the S138 Road Act Type 2 application prior to the issue of any construction certificate.

The Public Domain works are to be implemented and construction works are to be completed to Council satisfaction prior to the issue of any Occupation Certificate.

In this regard the separate approval from Council must be obtained for all works within the public road reserve, pursuant to Section 138 of the Roads Act 1993, prior to any construction certificate. Engineering design plans and specifications for the works being undertaken in the public road reserve are required to be prepared by a suitably qualified practising civil engineer with
experience and competence in the related field and submitted to Council for approval with the Section 138 application.

Note: An additional fee will be required by Council for the assessment of engineering plans submitted for the public road works. In this regard the developer is advised to confer with Council’s Development & Building Services Section in order to confirm this fee.

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

66. 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.

67. 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.

68. 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.

69. An appropriate notation is to be placed on the plan of subdivision and an instrument under Section 88B of the Conveyancing Act 1919 (NSW) being submitted to Council setting out the terms of easements as required by this consent. Council in addition to the owner of the land benefited by the easement is to be a party whose consent is needed to release or vary easements.

70. An application is to be made for a Strata Certificate in accordance with the requirements of Division 4 of the Strata Scheme (Freehold Development) Act 1973 (NSW).
71. The premises are to be identified by the provision of house and street numbers on the building exterior and mailbox, respectively, such that they are clearly visible from the road frontage.

The minimum numeral heights shall be:

a) Exterior of the building = 75mm and

b) Group mailbox - street number = 150mm
   house number = 50mm

72. A Maintenance Manual for all water quality devices is to be prepared in accordance with Council's Stormwater and Water Efficiency for Development Technical Manual (Updated 2013). The Maintenance Manual is to address maintenance issues concerning the water quality devices including routine monitoring and regular maintenance and be kept on site at all times. Establishment and maintenance of the water quality devices in accordance with the Maintenance Manual prepared by the applicant is to be completed prior to occupation of this site for the intended use.

73. Signs are to be installed at the rear of the property of Unit 5. The sign is to inform that the rear area adjacent to the canal is subject to flooding, high velocity of floodwaters and should be evacuated during storms and flooding. The sign is to be located at a visible and accessible location and is to be installed prior to the issue of any occupation certificate.

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

74. The landscaped areas are to be kept free of parked vehicles, stored goods, garbage or waste material and being permanently maintained.

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

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

77. 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.
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78. The premises are to be identified by the provision of house and street numbers on the building exterior and mailbox, respectively, such that they are clearly visible from the road frontage.

The minimum numeral heights shall be:
   a) exterior of the building = 75mm and
   b) group mailbox - street number = 150mm
      - house number = 50mm

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

<table>
<thead>
<tr>
<th>Lot/ Unit Number on plan</th>
<th>Council Allocated Street Address(es)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>House Number</td>
</tr>
<tr>
<td>1</td>
<td>1/77</td>
</tr>
<tr>
<td>2</td>
<td>2/77</td>
</tr>
<tr>
<td>3</td>
<td>3/77</td>
</tr>
<tr>
<td>4</td>
<td>4/77</td>
</tr>
<tr>
<td>5</td>
<td>5/77</td>
</tr>
</tbody>
</table>

**ADVISORY MATTERS**

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

ii) 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.

iii) 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.

iv) Any approval for fences on side boundaries, common to other private properties, is independent of any consent or agreement which may be required of any adjoining owner under the provisions of the *Dividing Fences Act 1991* (NSW).
v) Prior to commencing any construction works, the following provisions of the *Environmental Planning and Assessment Act 1979* (NSW) (the ‘Act’) are to be complied with:

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

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

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

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

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

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

**END OF CONDITIONS**
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**ATTACHMENT C - PROCESSING CHRONOLOGY**

**DA 2015/10390 – 77 JUBILEE ROAD ELMORE VALE**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>18 December 2015</td>
<td>Application lodged.</td>
</tr>
<tr>
<td>27 May 2016</td>
<td>Further information requested</td>
</tr>
<tr>
<td>30 August 2016</td>
<td>Additional information submitted</td>
</tr>
<tr>
<td>29 September 2016</td>
<td>Request for Public Voice withdrawn (DA was scheduled for Public Voice on 18 October 2016)</td>
</tr>
</tbody>
</table>
ITEM-15 DA2016/00351 - 5-11 WICKHAM STREET WICKHAM - DEMOLITION OF BUILDINGS, ERECTION OF EIGHT STOREY MIXED USE DEVELOPMENT INCLUDING 40 RESIDENTIAL APARTMENTS, TWO GROUND FLOOR COMMERCIAL UNITS, TWO FLOORS OF PARKING, 42 BAYS AND ASSOCIATED SITE WORKS

APPLICANT: WICKHAM GREEN PTY LTD
OWNER: WICKHAM GREEN PTY LTD
REPORT BY: PLANNING AND REGULATORY
CONTACT: DIRECTOR PLANNING AND REGULATORY / MANAGER DEVELOPMENT AND BUILDING

PART I

PURPOSE

An application has been received seeking consent to demolish existing buildings and erect an eight storey mixed-use development comprising 40 x residential apartments; two x separate ground floor commercial units; two levels of parking with 42 car parking bays and associated site works at 5-11 Wickham Street, Wickham.

A copy of the submitted plans for the proposed development is appended as Attachment A.

The original proposal was notified to neighbouring properties for 14 days in accordance with the provisions of the Newcastle DCP 2012 and one public submission was received objecting to the proposal.
The submission raised concerns regarding:

- Parking impacts from inadequate parking within the development
- Privacy and noise impacts from the car parking areas and open communal areas.
- Noise from vehicles accessing the carpark
- Variation to height control
- Scale of proposed development being inconsistent with existing area

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

The application has been referred to Council's Development Applications Committee for determination due to the value of the development, being $11.198 million.

**Issues**

- Character, Design and Streetscape
- Height
- Privacy / Noise Impacts
- Flooding
- Parking and traffic

**Conclusion**

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

**RECOMMENDATION**

i) THAT Council note and support the clause 4.6 variation to clause 4.3 (Height of buildings) of the Newcastle Local Environmental Plan 2012; and

ii) THAT the application for the demolition of buildings, erection of eight-storey mixed use development including 40 residential apartments, two ground floor commercial units, two levels of parking and associated site works be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions (refer to Attachment B); and

iii) THAT those persons who made submissions be advised of Council determination.
Political Donation / Gift Declaration

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

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

PART II

1.0 THE SUBJECT SITE

The site, being 5 - 11 Wickham Street Wickham, formally known as Lot 1 D999145 and Lot 42 DP1015486, has an overall area of 1,091m². The site consists of two rectangular shaped lots fronting onto Wickham Street. The site is presently occupied by two single-storey light industrial buildings and is relatively flat, with a marginal fall to Wickham Street.

The surrounding area is of mixed residential, light industrial and commercial character.

To the north of the site, three two-storey 19th century residential terrace buildings exist, as well as a single-storey commercial office building.

To the west of the site is a single-storey light industrial building and to the south-east of the site there are two two-storey 19th century residential terrace buildings. In May 2014 Council granted consent (DA2014/1316) for the erection of seven three-storey attached dwellings on No.6 Wickham Street, a currently vacant property located directly east of the site.

Further to the south-east of the site, there are currently three single-storey light industrial buildings. Consent (DA2015/10123) is in place for the replacement of the existing structures with a 10-storey mixed use development comprising ground floor commercial and 122 residential units above. The approved development encompasses a three-storey podium and two towers above. The maximum height of the approved building is 38m, with a zero setback from Wickham Street for the west tower and a zero setback from Charles Street for the east tower.

2.0 THE PROPOSAL

The applicant describes the proposal as:

- Demolish existing structures on the site (two single storey light industrial buildings);
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- Preparatory earthworks, excavation and site preparation;
- Construction of a new 8 storey building comprising two commercial premises at ground level (47m² and 111.2m²) and 40 residential units (1 x 1 bedroom and 39 x 2 bedroom);
- Off-street parking for 42 vehicles;
- The provision of landscaping including street trees and ground level planting, landscaping at the level 2 rear setback and within front, side and rear setbacks of Level 5.
- The provision associated services, drainage infrastructure, etc.

Specifically the following is proposed:

- Ground Level – Two commercial units, parking for 21 vehicles incorporating 2 disabled parking spaces, services / switch room and bin storage area located on Ground Level. A pedestrian ramp and stairs provide access from the street to the commercial units, forecourt and residential lobby, while secure access is also available from the parking area.
- Level 1 – Four residential units (1 x 1-bedroom and 3 x 2-bedroom units), 21 parking spaces and 4 motorcycle parking spaces are located on Level 1. Secure access to the residential lobby and lift are available from the parking area.
- Level 2 – 8 x 2-bedroom residential units and landscaped gardens.
- Level 3 – 8 x 2-bedroom residential units.
- Level 4 – 8 x 2-bedroom residential units.
- Level 5 – 4 x 2-bedroom residential units, communal BBQ, terrace and garden, and extensive landscape treatments.
- Level 6 – 4 x 2-bedroom residential units.
- Level 7 – 4 x 2-bedroom residential units.

Pedestrian and vehicle access (single driveway) to the development will be off Wickham Street. The development is serviced via a single lift core and stairs.

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

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

3.0 PUBLIC NOTIFICATION

The proposal was notified to neighbouring properties for 14 days in accordance with the provisions of Newcastle DCP 2012, with one (1) submission being received objecting to the proposal.
The submission raised concerns regarding:

- Parking impacts from inadequate parking within the development
- Privacy and noise impacts from the car parking areas and open communal areas
- Noise from vehicles accessing the carpark
- Variation to height control
- Scale of proposed development being inconsistent with existing area

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

4.0 ENVIRONMENTAL PLANNING ASSESSMENT

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

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

4.1.1 State Environmental Planning Policies

State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (SEPP65)

A statement has been submitted with the application which addresses the nine design quality principles as set out in SEPP65.

The scheme was also subject to comment from the Urban Design Consultative Group (UDCG) with excerpts and commentary of the main points provided below:

<table>
<thead>
<tr>
<th>1. Context and Neighbourhood Character</th>
<th>Council officer comments:</th>
</tr>
</thead>
<tbody>
<tr>
<td>The site is in a central location in an area where regeneration in now well underway, with older industrial activities in rapid decline. It is already a convenient place to live and will almost certainly in future have excellent access to transport and other amenities, making it ideally suited for medium to high density residential development. The applicant has also noted that commercial activities are permissible on the subject site and is particularly suitable for the adjacent site to the south in close proximity to the proposed transport interchange and adjoining rail line.</td>
<td>Noted</td>
</tr>
</tbody>
</table>
## 2. Built Form and Scale

Within this context there are challenges in resolving the interface between existing and new lower scale residential buildings, and future new high rise development, at the same time creating an attractive human-scale streetscape. The amended design retains the previous form of a five level street frontage extending full width of the site with a further three levels set back from the side and rear boundaries. The street elevation to the upper floors remains partially in line with the lower building floors, utilizing a central glazed recess to break up the form and provide visual continuity with the lower floors.

The street elevation to the lower five floors is articulated as a piano noble of face brick to ground and first floor frames set below a visually recessed dark coloured floor. Above, but in the same plane, two floors of light coloured spandrels and balustrades appear as a floating element due to the minimal expression of the second floor. The dark finish of the second floor elevation is continued about the outer ends of the third and fourth floors leaving the expressed light coloured exterior of these levels floating and divided at centre by a deep glazed recess rising in common detail from the second to the eight floors.

An extensive podium above level five supports landscaped terraces and garden beds on a common deck extending about sides and the rear of the central tower. The heavily articulated upper three floors have dark coloured exteriors with cantilevered metal balustraded balconies and wide cantilevered eaves over the top floor decks.

The group agreed that a setback at ground floor was not required given the complexity of the street elevation. The angled plan form of the street awning would be improved by provision of the greatest width to the awning at the pedestrian entry to the building.

| **Applicant's response** | **Street awning revised to be less visually dominant & more inviting, whilst also providing more shelter.** |
| **Overhanging planter added to street facade (approx. 0.6m deep) to increase the perceived street setback to the floor levels above street wall height.** |
| **Level 3-5 overhanging planters added to ‘soften’ the facade through increased landscaping, whilst also increasing the perceived street wall setback on the floor levels above**; |
| **Council officer comments:** |
| It is noted that the amendments made by the applicant address the concerns raised by the UDCG. |
The group noted the articulation of the building mitigated the forward alignment of the upper floor balconies and bedrooms but recommended that further provisions are required to establish a distinct visual setback of the upper floors. Devices such as a ‘green’ [planting] line across the junction of the fifth and upper floors or other forms of visual separation would assist, but a physical setback, even of comparatively limited dimension, is highly desirable. This would not appear unreasonable when the controls would call for the façade above L5 to be set back from the street by 9.5m.

3. Density
Acceptable

Council officer comments:
Noted

4. Sustainability

Previous comments as to sustainability remain with the recommendation that rain water runoff be collected for irrigation of the communal garden at the Level 5 podium.

Council officer comments:
Noted

5. Landscape

The group noted the apparent sparseness of proposed street trees and recommended the provision of street trees, new paving and furniture consistent with Council’s Strategy for the street.

Applicant's response
Planters added at street level to ‘soften’ the transition from inside to outside through increased landscaping.

Commercial suite #01 setback from front boundary to allow for a new planter along the street edge.

Forecourt in front of Commercial suite #02 removed; entrance door to suite relocated; and adjoining ramp relocated to allow for new planters at street level with built-in seating area.

Council officer comments:
Street tree planting has been considered by Council’s engineer. Conditions of consent requiring consideration of plantings during a
| 6. Amenity                                                                 | Applicant's response                                                                 | Council officer comments:                                                                 
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>The group noted the treatment of ‘snorkel’ windows to bedrooms could be</td>
<td>internal walls to ‘snorkel’ bedroom window alcoves revised to be splayed to open-up</td>
<td>It is noted that the amendments made by the applicant address the concerns raised by the UDCG.</td>
</tr>
<tr>
<td>improved through angling of recesses, provision of window seats set into</td>
<td>up more to internal bedroom space (note: typical to all 2-Bed units).</td>
<td></td>
</tr>
<tr>
<td>the recess or tapering of walls adjoining the deep returns. A small</td>
<td></td>
<td></td>
</tr>
<tr>
<td>increase in the width of the windows would particularly be of benefit.</td>
<td></td>
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<tr>
<td>Applicant's response</td>
<td></td>
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</tr>
<tr>
<td>Internal walls to ‘snorkel’ bedroom window alcoves revised to be splayed</td>
<td></td>
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<td>units).</td>
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<tr>
<td>Council officer comments:</td>
<td></td>
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<tr>
<td>It is noted that the amendments made by the applicant address the</td>
<td></td>
<td></td>
</tr>
<tr>
<td>concerns raised by the UDCG.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 7. Safety                                                                 | Applicant's response                                                                 | Council officer comments:                                                                 
| The recessed front lobby would be a potential safety issue after hours,  | Alcove off fire stair well removed to improve ‘after-hours’ security.                   | It is noted that the amendments made by the applicant address the concerns raised by the UDCG. |
| particularly given the additional recess to the entry to the fire stair. |                                                                                       |                                                                                           |
| Applicant's response                                                      |                                                                                       |                                                                                           |
| Alcove off fire stair well removed to improve ‘after-hours’ security.     |                                                                                       |                                                                                           |
| Council officer comments:                                                |                                                                                       |                                                                                           |
| It is noted that the amendments made by the applicant address the        |                                                                                       |                                                                                           |
| concerns raised by the UDCG.                                             |                                                                                       |                                                                                           |
| 8. Housing Diversity and Social Interaction                               | Applicant's response                                                                 | Council officer comments:                                                                 
| The predominantly 2 bed apartments are considered responsive to current  | Additional screen added along the northern edge of the ‘Communal Terrace’.             | Noted                                                                                      |
| market expectations.                                                     |                                                                                       |                                                                                           |
| The provision of a small enclosed area at the communal terrace –        |                                                                                       |                                                                                           |
| possibly within the proposed trellis would facilitate use of this area   |                                                                                       |                                                                                           |
| as a venue for social interaction.                                       |                                                                                       |                                                                                           |
| Applicant's response                                                      |                                                                                       |                                                                                           |
| Additional screen added along the northern edge of the ‘Communal         |                                                                                       |                                                                                           |
| Terrace’.                                                                |                                                                                       |                                                                                           |
| Council officer comments:                                                |                                                                                       |                                                                                           |
| Noted                                                                    |                                                                                       |                                                                                           |
| 9. Aesthetics                                                            | Applicant's response                                                                 |                                                                                           |
| The group discussed means of defining the main and upper floors of the   | Lower street level masonry facade revised from ‘clay’ brickwork to concrete brickwork|                                                                                           |
| building at length. In addition to the proposed visual break discussed    | to reduce the intensity and contrast of the building’s material colour palette;        |                                                                                           |
| above, it was considered that more subdued colours in the external       | Level 3-5 overhanging planters added to ‘soften’ the facade through increased         |                                                                                           |
| elevations would achieve the proposed enhancement of the facade with a    | landscaping, whilst also increasing the perceived street wall setback on the floor   |                                                                                           |
| reduced visual impact on the setting. The use of vertical louvered       | levels above;                                                                         |                                                                                           |
| blades rather than projecting sun hoods was also recommended in providing  | The ‘darker’ grey colours have been toned down to again reduce the extent of         |                                                                                           |
| window shading to the upper floors set to the street frontage.           | contrast in the colour palette.                                                        |                                                                                           |
| Applicant's response                                                      |                                                                                       |                                                                                           |
| Lower street level masonry facade revised from ‘clay’ brickwork to       |                                                                                       |                                                                                           |
| concrete brickwork to reduce the intensity and contrast of the building’s |                                                                                       |                                                                                           |
| material colour palette;                                                  |                                                                                       |                                                                                           |
| Level 3-5 overhanging planters added to ‘soften’ the facade through      |                                                                                       |                                                                                           |
| increased landscaping, whilst also increasing the perceived street wall  |                                                                                       |                                                                                           |
| setback on the floor levels above;                                       |                                                                                       |                                                                                           |
| The ‘darker’ grey colours have been toned down to again reduce the extent |                                                                                       |                                                                                           |
| of contrast in the colour palette.                                       |                                                                                       |                                                                                           |
The metal balustrade detailing was noted as cohesive to the building with the proviso that further concealment of deck areas to the upper floors be included to shield drying areas.

Council officer comments:
It is noted that the amendments made by the applicant address the concerns raised by the UDCG.

A condition of consent requiring further screening of the drying areas of upper floors to be imposed.

UDCG concluding comments:

Amendments Required to Achieve Design Quality
In order to achieve design quality provisions within SEPP65 the group found the following to require amendment and or change:

- Provision of a modest setback and visual break between the main podium form and the upper three floors.
- Reduction in the intensity and contrast of external colours.
- Amendment of the deep main entry to improve after hours security.
- Provision of street tree planting.
- Provision of an enclosed area at podium level for social interaction.
- Modified planning of windows to ‘snorkel’ bedroom floor plans to improve outlook and sense of enclosure.
- Amendment of the street awning to provided greatest shelter at the building entry.

Summary Recommendation
The group acknowledged the amended design had addressed most previous concerns. Refinement of the design as summarized above is further recommended to achieve comprehensive compliance with SEPP65. These issues should be resolved to the satisfaction of Council.

Council officer comments:
As detailed in the above table, the applicant has amended the design to address the comments raised by the UDCG.

Street tree planting has been considered by Council's engineer. Conditions of consent requiring consideration of plantings during the required Roads Act application process have been recommended.

SEPP65 Apartment Design Guide - Key "Rule of Thumb" Numerical Compliances:

i) Separation Distances

“For buildings over three storeys, it is recommended that building separation increase in proportion to building height to ensure appropriate urban form, adequate amenity and privacy for building occupants. Suggested dimensions within a development, for internal courtyards and between adjoining sites are:
Development Applications Committee 15 November 2016

Separation up to four storeys/12 metres
- 12 metres between habitable rooms/balconies
- 9 metres between habitable/balconies and non-habitable rooms
- 6 metres between non-habitable rooms

Separation up five to eight storeys/25 metres
- 18 metres between habitable rooms/balconies
- 12 metres between habitable/balconies and non-habitable rooms
- 9 metres between non-habitable rooms

Council officer comments:
It is considered that the proposed separations are appropriate having regard to the future development potential of the adjoining land. However, in an area of transition such as this, it is also relevant to consider the proposed separation and privacy impacts to the other surrounding residential developments.

To the north of the site, there are no openings facing this boundary from the ground floor to level 4. Level 5 has a communal terrace located one metre from the boundary. However, the privacy impacts from this component are mitigated through the use of screening and planter boxes. There are no level 5 windows facing the northern boundary, and private decks are 8.7 metres from the common boundary.

Levels 6 and 7 have windows and balconies located 8.7 metres and 7.3 metres respectively from the northern common boundary. These setbacks do not comply with the 18 metre setback requirement to the adjoining terraces to the north. However, given the difference in elevation between proposed setbacks and existing adjoining buildings (i.e. above level 5 compared to a 2 storey dwelling) it is considered that the proposal will sufficiently avoid privacy impacts. A condition requiring screening of the northern side of the balustrade has been recommended so as to further mitigate potential privacy impacts and

To the south, the proposed setbacks are similar to that on the northern side. Level 5 has communal gardens located 1.4 metres from the common boundary. There are no proposed windows or private decks that face the southern boundary.

Level 6 and 7 decks are set back 7.5 - 7.8 metres from the southern boundary and windows are set back 8.6 - 9 metres. As with the northern boundary, the proposal is acceptable subject to a condition requiring solid balustrading and such a condition has been recommended.

To the west, there is currently a commercial / industrial development for much of the adjoining common boundary. The site adjoins existing residential dwellings to the north-west. A setback of over 6 metres is provided to windows and private open space areas that face this boundary. Privacy to this boundary is further managed through the use of adjustable louvre screens and planter boxes. As with the northern and southern boundary, the use of solid balustrading would further mitigate any impacts to the adjoining existing dwellings and such a condition has been recommended.
ii) Size of Units

"Apartments are required to have the following minimum internal areas:

- studio apartment 35m²
- 1 bedroom apartment 50m²
- 2 bedroom apartment 70m²
- 3 bedroom apartment 95m²

Additional bathrooms increase the internal area by 5m²."

Council officer comments:
Many of the two bedroom apartments are less than 70m², in the range of 66.8m² to 69m². The average apartment size is 68.9m². This is considered to be a minor variation, justified in this instance based on the overall quality of the design of the development, the configuration of the floor plan and useability of the individual units.

iii) Unit Configuration

<table>
<thead>
<tr>
<th>'Rule of thumb'</th>
<th>Officer comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;Provide primary balconies for all apartments with a minimum depth of 2 metres for 1-2 bedroom and 2.4 metres for 3 bedroom.&quot;</td>
<td>Complies.</td>
</tr>
<tr>
<td>&quot;In mixed use buildings: 3.3 metre minimum for ground floor retail or commercial and for first floor residential, retail or commercial to promote future flexibility of use&quot;</td>
<td>The ground floor commercial and first floor residential have floor to ceiling heights of 3.25m and 3m respectively. It is noted that this design to facilitate flexibility, rather than being essential for amenity or useability.</td>
</tr>
<tr>
<td>&quot;Measured from finished floor level to finished ceiling level, minimum ceiling heights are 2.7m for habitable rooms&quot;</td>
<td>Complies.</td>
</tr>
<tr>
<td>&quot;The back of a kitchen should be no more than 8 metres from a window.&quot;</td>
<td>Complies.</td>
</tr>
<tr>
<td>The width of cross-over or cross-through apartments over 15 metres deep should be 4 metres or greater to avoid deep narrow apartment layouts&quot;</td>
<td>Complies.</td>
</tr>
<tr>
<td>&quot;Every habitable room must have a windows in an external wall with a total minimum glass area of not less than 10% of the floor area of the room&quot;</td>
<td>Complies.</td>
</tr>
</tbody>
</table>
iv) Solar Access

"Living rooms and private open spaces for at least 70 percent of apartments in a development should receive a minimum of two hours direct sunlight between 9 am and 3 pm in mid-winter."

"A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter"

Council officer comments:
The applicant has demonstrated that all apartments receive at least 2hrs solar access in mid-winter.

v) Storage

"In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:

1 bedroom apartments 6m³
2 bedroom apartments 8m³
3 bedroom apartments 10m³

At least 50% of the required storage is to be located within the apartment"

Council officer comments:
The proposal complies with this requirement.

vi) Natural Ventilation

"At least 60% of apartments are naturally cross ventilated"

"Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line"

Council officer comments:
The proposal complies with this requirement.

vii) Private Open Space

"1 bedroom apartments 8m² with 2m minimum depth
2 bedroom apartments 10m² with 2m minimum depth
3 bedroom apartments 12m² with 2.4m minimum depth"

Council officer comments:
12 of the two-bedroom units do not comply with this requirement. Nine of these 12 decks provide 9.9m², which is considered to be a very minor variation. The remaining three decks range from 7.9 - 8.4m². It is considered that the variations are acceptable in the context of this proposal, which provides significant communal landscaped areas.

viii) Communal and Public Open Space

"communal landscaping 25% of the site"

"communal open space receives 50% direct sunlight in mid-winter"
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Council officer comments:
The level 5 podium provides communal landscaping and terrace facilities. While not strictly providing 25% of the site, it is considered that the design and quality of these areas achieves the intent of the guidelines.

ix) Deep Soil Zones
"7% deep soil zones for areas 650m²-1,500m², with a minimum dimension of 3 metres"

The applicant has advised:

"In general, primarily due to the 'small' footprint of the proposed consolidated site, 'deep soil zones' for substantial tree planting generally aren't achievable. To compensate for any deficiency in landscaped areas, considerable 'roof-top' landscaping has been proposed on Level 2 private terrace areas, and the communal terrace and garden areas on Level 5".

Council officer comments:
It is considered that the proposal is acceptable noting the constraints of the smaller size of the site and the compensatory landscape plantings provided at different levels throughout the development.

x). Common Circulation Spaces
"the maximum number of apartments off a circulation core to a single level is eight"

Council officer comments:
The proposal complies with this requirement.

Council officer concluding comment regarding SEPP65 assessment:

It is considered that the proposal is acceptable with respect to the requirements of SEPP65, having regard for the Apartment Design Guide and the comments received from the UDCG.

State Environmental Planning Policy (Urban Renewal) 2010
This policy aims to facilitate the orderly and economic development of sites in and around urban renewal precincts. The site is identified in the 'Newcastle Potential Precinct Map' and the development has a capital investment value of over $5 million. As such, development consent cannot be granted unless the consent authority is satisfied that the development is consistent with the objectives of developing the precinct for urban renewal and does not restrict or prevent:

- higher density housing or commercial or mixed development;
- future amalgamation of sites; or
- access to future public transport in the precinct.
The proposed development will meet the objectives of the SEPP as it will provide for higher density mixed use development in an area that will have easy access to a good range of public transport options in the near future. The proposed development is not likely to unduly inhibit or compromise future development opportunities in the area, and in particular the adjoining lands.

State Environmental Planning Policy (Infrastructure) 2007

The proposal is considered to not be 'traffic generating development', as identified by this policy.

Clause 87 'Impact of rail noise or vibration on non-rail development' requires consideration of whether a residential building is likely to be adversely affected by rail noise or vibration. The site is located over 40 metres from the rail corridor. The proposal has been assessed by Council's Environmental Protection Officer and no objections have been raised in relation to the proposal.

State Environmental Planning Policy 55 – Remediation of Land (‘SEPP55’)

Clause 7(1)(b) and (c) of SEPP55 require that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

The proposal has been considered by Council's Environmental Protection Officer, who has provided the following comments:

"The Remedial Action Plan (RAP) prepared by RCA Australia dated September 2016 identified lead contamination above ecological investigation levels on site when compared against the health investigation levels D (Commercial and Industrial). The RAP detailed that a cap and contain strategy has been chosen as the method to address contamination for the site. Council officers requested that, due to a cap and contain strategy not being in accordance with Council's DCP, the RAP be subject to a review by an accredited Site Auditor to establish appropriateness of the remedial strategy.

The applicant has requested that this Site Audit Statement be addressed as a condition of consent. Given the risk of exposure to the contamination is unlikely due to the entire site being covered by hardstand with no access to the soil, Council officers will look to address this with an appropriate condition of consent. The applicant will be required to submit a Site Audit Statement in accordance with appropriate NSW EPA Guidelines along with a site management plan and a validation certificate upon completion of work. These documents will be required to be submitted prior to an Occupation Certificate being issued."
The proposal is considered to be acceptable in relation to contamination considerations, subject to conditions of consent in accordance with the Environmental Protection Officer's comments.

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

The application has been submitted with a BASIX certificate, and is satisfactory having regard to this policy.

4.1.2 Newcastle Local Environmental Plan 2012 (LEP)

The subject property is included within the B4 Mixed Use zone under the provisions of the Newcastle Local Environmental Plan 2012. The proposal is permissible within this zone with Council's consent. The objectives of the B4 zone are:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.

The proposed development is also considered to be consistent with the zone objectives.

Clause 2.7 - Demolition

The application seeks consent for the demolition of the existing buildings, which is considered to be acceptable.

Clause 4.3 - Height of Building

In accordance with the 'Height of Buildings Map', 11 Wickham Street has a height limit of 35 metres, and 5 Wickham Street has a height limit of 24 metres.

The applicant is seeking a variation to the 24 metre control. The height of the proposed development is 26 metres. This is a variation of 2 metres for 5 Wickham Street and 9 metres below the maximum permissible building height for 11 Wickham Street.

A formal request for a variation to clause 4.3 has been submitted with the application in accordance with clause 4.6 of the LEP. This request is considered later in this report.

Clause 4.4 - Floor Space Ratio (FSR)

This clause prescribes a maximum FSR of 4:1. However, it is noted that clause 7.10A of the LEP further restricts this control to 3:1 as the site has an area of less than 1500m².

The proposed development has a floor space ratio of 2.7:1, which complies with this requirement.
Clause 4.6 - Exceptions to development standards
This clause enables consent to be granted to a proposal even though it may contravene a development standard. As noted above, the proposed development does not strictly conform to the maximum building heights development standard applicable under clause 4.3.

The subject site comprises two separate parcels of land, each of which as a different maximum building height, being:

- No. 5 - 9 Wickham Street = 24.0m; and
- No. 7 - 11 Wickham Street = 35.0m.

- The application seeks consent for a building that will straddle both parcels of land with a maximum height of 26.0m, the result being that:
  - No. 5 - 9 Wickham Street exceeds the maximum building height by 2.0m; and
  - No. 7 - 11 Wickham Street will be 9.0m below the maximum building height.

- In support of the proposed variation, the applicants have lodged a formal request for an exception to the 'Height of buildings' development standard. In assessing the proposal against the provisions of clause 4.6, it is noted that:
  - Clause 4.3 is not expressly excluded from the operation of this clause; and
  - The applicant has prepared a written request seeking Council vary the development standard and demonstrating that:
    - compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
    - there are sufficient environmental planning grounds to justify contravening the development standard.

The following provides an extract of the applicant's request:

'it is submitted that compliance with the 24m height development standard is unreasonable and unnecessary in the circumstances for the following reasons: The site is subject of two separate height controls: 24 metres and 35 metres. The encroachment is minor considering the southern part of the site is some 9 metres less than the maximum permitted height. The area of encroachment relates to the proposed massing on the northern part of the consolidated site. This represents a very small proportion of the development.
The non-compliance will not result in significant overshadowing, view loss or visual impact. Considerable design effort has been made to ensure the development makes a positive contribution to the streetscape and offers a high level of amenity to future residents of the site and adjoining sites. Wickham is undergoing transformation with increases in density and height and consolidation of landholdings to enable development. It is likely that the area immediately surrounding the site will be the subject of redevelopment projects of similar scale and form.

'...there are sufficient environmental planning grounds to justify contravening the development standard in this instance. In addition to the height non-compliance not affecting the amenity of adjoining properties, or having a significant visual impact when viewing the development from the street, the proposal in its current form represents a considered solution to the opportunities and constraints presented by the site and will reinforce Wickham as a high amenity, sought after suburb in which to live and work.'

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

i) It adequately addresses the matters required to be demonstrated by clause 4.6(3); and

ii) 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 B4 Mixed Use zone in which the development is proposed to be carried out.

iii) The Secretary's concurrence to the exception to the height of buildings development standard, as required by clause 4.6(4)(b) of the Newcastle LEP 2012, is assumed, as per Department of Planning circular PS 08-003 of 9 May 2008.

Based on the written justification provided by the applicant, and the comments received from the UDCG, it is considered that 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 zone in which the development is proposed to be carried out.

It is considered that 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 zone in which the development is proposed to be carried out.

Clause 5.5 Development within the Coastal Zone

The proposed development will not impact on access to the foreshore. It also will not impact on the amenity of the foreshore through overshadowing or loss of views from a public place. The site is currently devoid of vegetation and therefore the development will not have a negative impact on existing ecosystems or biodiversity in the area. An adequate stormwater management system has been proposed as part of the development to minimise any impacts from stormwater disposal.
Clause 5.10 - Heritage Conservation
The subject site is identified as not containing any heritage items, and is not within a heritage conservation area. It is considered that the proposal will not have any detrimental impacts to nearby heritage items, noting that the nearest item is located at 15 Charles Street Wickham, approximately 50 metres from the site. In this regard, it is considered that a Statement of Heritage Impact is not required.

Clause 6.1 - Acid Sulfate Soils
The subject site is identified as containing Class 3 Acid Sulphate Soils. Accordingly, the LEP requires consideration of:

*Works more than 1 metre below the natural ground surface.*
*Works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface.*

The applicant has provided an Acid Sulfate Soils report, which recommended that the future works be managed in accordance with an Acid Sulfate Soil Management Plan. This requirement will be imposed as a condition of consent.

Clause 6.2 - Earthworks
Due to the nature of the construction, its location and the physical attributes of the land, the proposal will require substantial earthworks. The applicants have outlined appropriate methods and practices to manage the excavations and they are considered to be satisfactory having regard to the considerations in this clause.

Part 7 Newcastle City Centre
The site is located within the Newcastle City Centre. There are a number of requirements and objectives for development within the City Centre, which includes promoting the economic revitalisation of the City Centre, facilitating design excellence and protecting the natural and cultural heritage of Newcastle. The proposed development will meet the objectives of Part 7 of the LEP.

Clause 7.5 Design Excellence
This clause applies to the site, and specifies that consent must not be granted unless the development exhibits design excellence.

The proposal was reviewed by Newcastle City Council’s Urban Design Consultative Group (UDCG). A Design Verification Statement has been submitted with the application that addresses the design principles that have been used to formulate the development.

The development meets the design excellence criteria of the LEP and is of a high standard of architectural quality.

The application has made reference to Clause 7.5(6), in relation to the proposed height variation. This sub-clause allows a 10% variation to height where the design of the building has been reviewed by a design review panel. It is noted that the proposal has been considered by the UDCG, but as this is not a panel specifically established for the purposes of this clause, that the requested variation is more appropriately considered in accordance with Clause 4.6 of the LEP.
7.10A Floor space ratio for certain other development
Clause 7.10A of the LEP restricts floor space ratio to a maximum of 3:1, given that the site has an area of less than 1,500m². The proposed development has a floor space ratio of 2.7:1, which complies with this requirement.

4.2 Merit Considerations

4.2.1 Relevant Strategic Policies

The Newcastle Local Planning Strategy contains the following vision for Wickham:

Wickham/Maryville will be revitalised to become diverse and dynamic mixed use neighbourhoods integrating with Honeysuckle and the West End via improved pedestrian access and innovative urban design; and the road system balancing the needs of local access and regional transport.

The proposal is consistent with this vision.

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

<table>
<thead>
<tr>
<th>Section</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial Uses – Section 3.10</td>
<td>The development meets the aims and objectives of this section of the DCP as it encourages commercial development that will have a positive contribution to the surrounding development. The proposal will also activate the street frontage and promote pedestrian traffic along the ground floor with the inclusion of business spaces that overlook the public domain.</td>
</tr>
<tr>
<td>Safety &amp; Security – Section 4.04</td>
<td>The applicant has prepared a Crime Prevention Through Environmental Design assessment to identify and address potential safety and security issues. The proposal was reviewed by the UDCG who raised some concern regarding the recessed front lobby, which would be a potential safety issue after hours, particularly given the additional recess to the exit from the fire stair. The applicant responded to this concern by removing the alcove. The activation of the street frontage through the commercial uses and glazing of the facade will also allow for casual surveillance of the site. It is considered that the proposal sufficiently addresses the requirements of this section.</td>
</tr>
<tr>
<td>Social Impact – Section 4.05</td>
<td>It is considered that the redevelopment of the site to an active retail/commercial use will have a positive social impact.</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
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</tr>
<tr>
<td>4.10 Flood Management</td>
<td>The site is subject to flooding. The proposal has been considered by Council's Engineer, and meets the requirements of this section of the DCP.</td>
</tr>
<tr>
<td>5.01 Soil Management</td>
<td>A Sediment and Erosion Management Plan has been submitted with the application to minimise sediments being removed from the site during the construction period. A condition has been placed on the consent to ensure such measures are in place for the entire construction period. Minimal cut and fill is planned for the site as the car parking will be located at ground level with no major excavations proposed.</td>
</tr>
<tr>
<td>5.02 Land Contamination</td>
<td>The subject site is affected by land contamination as discussed above under SEPP55 (see Section 4.1 of this report).</td>
</tr>
<tr>
<td>5.03 Tree Management</td>
<td>The applicant has submitted an Arborist Report due to the close proximity of trees on adjoining land. The report revealed that the development works are likely to impact on the adjoining trees. However, it is noted the trees have low to very low retention value and these comprise a <em>Syzigium</em> sp (Lily Pilly), two <em>Cinnamomum camphor</em> (Camphor Laurel) and a <em>Plumeria rubra</em> (Frangipani) and a dead tree. Owner's consent for the removal of these trees has been provided with the application.</td>
</tr>
<tr>
<td>5.04 Aboriginal Heritage</td>
<td>An assessment in accordance with the <em>Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales</em> (DECCW, 2010) has indicated that an Aboriginal Heritage Impact Permit is not required for this proposed development. Reference to the <em>Aboriginal Heritage Information Management System</em> confirmed there are no sites of Aboriginal significance recorded on the site. The proposal is acceptable having regard to this section.</td>
</tr>
<tr>
<td>5.05 Heritage Items and Heritage Conservation Areas</td>
<td>As discussed in this assessment, the proposal is considered to be acceptable having regard to matters of cultural heritage significance.</td>
</tr>
<tr>
<td>5.07 6.01 Newcastle City Centre</td>
<td>The proposal is within the Newcastle City Centre. The key assessment points are discussed below. The site is located in the west end character precinct. The proposal is consistent with the principles of this precinct; including that building entries are inviting, with activated frontages that allow visual permeability from the street to within the building.</td>
</tr>
</tbody>
</table>
The site does not have a specific street wall height identified, but is rather assigned the generic control of 16 metres, with any development above this height being required to setback 6 metres. A 3.5m primary building setback is specified.

The proposal provides a 16m street wall height, with a nil primary setback. The applicant's justification includes:

'The 'open' balcony areas of the upper floor levels contrast significantly to the 'enclosed' nature of the screened-in balconies on the levels below, resulting in the illusion of an increased setback on the upper levels. The use of a 'darker' material palette on the upper levels also increases the apparent setback of the massing.'

The UDCG considered the front setback in detail and advised:

'The group agreed that a setback at ground floor was not required given the complexity of the street elevation. The angled plan form of the street awning would be improved by provision of the greatest width to the awning at the pedestrian entry to the building. The group noted the articulation of the building mitigated the forward alignment of the upper floor balconies and bedrooms but recommended that further provisions are required to establish a distinct visual setback of the upper floors. Devices such as a 'green' [planting] line across the junction of the fifth and upper floors or other forms of visual separation would assist, but a physical setback, even of comparatively limited dimension, is highly desirable. This would not appear unreasonable when the controls would call for the façade above L5 to be set back from the street by 9.5m.'

The applicant has subsequently addressed the concerns raised in this regard and undertaken the suggested amendments. It is considered that the proposed front setbacks are now acceptable having regard to the specific circumstances of this proposal.

A nil side and rear setback is required to the street wall height, with higher elements to be setback 6 metres. The proposal complies with this requirement. Building separation has been discussed in accordance with SEPP65.
<table>
<thead>
<tr>
<th>Section/Element</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>The building depths and maximum gross floor area per floor comply with the DCP requirements. The proposal has effectively screened the at-grade car parking areas. The street frontage is activated through the location of commercial tenancies.</td>
<td></td>
</tr>
<tr>
<td>Wickham - Section 6.03</td>
<td>The site is not identified in the area controlled by this element of the DCP.</td>
</tr>
<tr>
<td>Building Design Criteria – Section 7.01</td>
<td>It is considered that 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 SEPP65.</td>
</tr>
<tr>
<td>Landscape, Open Space and Visual Amenity - Section 7.02</td>
<td>It is considered that 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 SEPP65.</td>
</tr>
<tr>
<td>Traffic, Parking &amp; Access and Movement Networks – Section 7.03 &amp; Section 7.04</td>
<td>The proposal has been considered by Council’s Development Officer (Engineering) and is considered to be acceptable subject to the conditions at Attachment B. Details of the traffic and parking assessment are outlined within this report.</td>
</tr>
<tr>
<td>Energy Efficiency – Section 7.05</td>
<td>The proposal complies with the requirements of BASIX. The applicant has demonstrated that all apartments receive at least 2hrs solar access in mid-winter, as required by SEPP65.</td>
</tr>
<tr>
<td>Stormwater – Section 7.06, Flood Management – Section 4.01 &amp; Water Efficiency – Section 7.07</td>
<td>The proposal has been considered by Council’s Development Officer (Engineering) and is considered to be acceptable subject to conditions at Attachment B. Details of the stormwater and flooding assessment are outlined within this report.</td>
</tr>
<tr>
<td>Waste Management – Section 7.08</td>
<td>The applicant has submitted a waste management plan in accordance with the DCP and it is considered to be acceptable.</td>
</tr>
<tr>
<td>Street awnings and Balconies – Section 7.10</td>
<td>The overall design of the awning and balconies are acceptable in providing an appropriate level of amenity and protection for pedestrians. The awning and balconies also provide a suitable level of articulation and visual interest to the streetscape. Conditions of consent are recommended in relation to the DCP requirements.</td>
</tr>
</tbody>
</table>
4.2.3 Impacts on the Natural and Built Environment [Section 79C(1)(b)]

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

The application was considered by Council’s Urban Design Consultative Group (UDCG) and the final amended plans are considered to adequately address the comments of the UDCG.

It is noted that the scale of the development is reflective of the future character and vision for Wickham. This may be a contrast to the existing smaller scale dwellings in the immediate vicinity, however, on balance, it is considered that the proposal is acceptable having regard to the urban consolidation strategies that are relevant to the city centre.

Overall it is considered that the proposal is appropriate having regard to its character, streetscape, appearance, height bulk and scale.

b) Traffic, Access & Parking

The proposal has been assessed by Council’s Development Officer (Engineering) and is considered to be acceptable, subject to conditions appended at Attachment B. In reaching this recommendation, Council’s Development Officer (Engineering) provided the following comments:

Vehicular access, driveway design and crossing location.

The site currently has vehicular access via Wickham Street via two separate combined entry / exits a number of accesses and the proposed development seeks to provide a combined 7.5 metre access crossing to two separate 3 metre wide ramps to two separate levels of car parking…the applicant has justified the separate accesses on the basis of a low level of safety risk and no adverse impact to traffic flows. A queueing area within the property is now provided in front of the security fences and traffic flow on the one way ramps will be controlled by signals. No objection is now raised to the access conditions.

The existing footpath and kerb along the site frontage will need to be reconstructed to Council's requirements and plans lodged with a S138 application once DA consent is issued. The existing asphalt footpath will need to be replaced to Council's design requirements and the sandstone kerb relayed and replaced where necessary to suit the footpath works and the restoration of the redundant driveway. This will be conditioned on any consent issued.

Traffic Generation

It is accepted that the proposal will not on its own adversely impact on the local road network. No additional information required.
Parking Demand

The traffic consultant has identified that the Council DCP parking requirement for the development is 52 car spaces, 41 bicycle spaces and 2 motorcycle spaces. However in regard to the car parking the consultant has not realised that in this section of Wickham the reduced car parking rates associated with the Newcastle City Centre area apply and parking can be provided on the following basis in the development:

- Commercial 1 space per 60 m²
- Residential - 0.6 spaces per 1 bedroom unit + 0.9 spaces per 2 bedroom unit + 1 visitor space per 5 units.
- Provision of a single service bay for the commercial uses.

On this basis the current development is required to provide 3 commercial spaces, 36 resident car parks, 8 visitor car parks and 1 service bay i.e. 48 spaces. It is noted the traffic report identified that no visitor car parking is to be provided on site as on-street car parking is available. However it is important given the likely on-street parking demand in the area to provide some visitor parking though a reduction in visitor parking may also encourage visitors to utilise public transport. Previous approvals in the area have consistently maintained a requirement to provide 50% of the visitor car parking on-site and as such a visitor car parking requirement of 4 spaces would be supported. This reduces the on-site car parking requirement to 44 spaces. The current parking provision is in the order of 42 spaces so a 2 space deficiency exists. The applicant has argued a small variation to Council's car parking requirements on the basis of some cross-use of the commercial facilities and the availability of additional on-street car parking as a result of the removal of a number of redundant access crossings along the site frontage. This variation argument is accepted and I would support the provision of 42 on-site car spaces subject to 2 commercial spaces being delineated in the car park.

Bicycle storage areas for each apartment have now been provided within the car park areas.

The waste collection facilities at the site are considered satisfactory.

c) Stormwater and Flooding

The proposal has been assessed by Council’s Development Officer (Engineering) and is considered to be acceptable in terms of these matters, subject to conditions appended at Attachment B.

In reaching this recommendation, Council’s Development Officer (Engineering) provided the following comments:

Stormwater Management

The proposed stormwater management plan by MPC Consulting Engineers has been reviewed and is considered to comply with Council's DCP requirements.
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It does involve an extension of the existing Council drainage line from an existing pit on the corner of Bishopsgate Road and Wickham Street. It is noted the proposed pipe diameter is 300mm which is acceptable at this location as the existing downstream pipes are only 300mm diameter. More detailed construction plans will be required for approval at construction certificate stage.

**Flood Management**

The site is considered flood prone by Council and as such the development must comply with Council's flood policy.

Previously the following amendments where requested to plans to meet Council's flood requirements;

- Car Park No.1 i.e. ground level car park should be constructed at a level of RL 2.05 m AHD i.e. 1 % AEP level however the access ramp from street level should grade up to a level of RL 2.2 m AHD before ramping back down to the car park level of RL 2.05 m AHD. This then provides suitable protection for the car park against the 1% AEP local catchment flooding as well as future Ocean flooding but still provides suitable flood storage in a PMF event. In a PMF event car park no. 1 will be flooded to a depth of 900 mm.

- As the car park No. 1 will be a flood storage area for events greater than the 1 % AEP suitable signs within the car park indicating that it could be subject to flooding in extreme flood events should be erected within the car park. 

*The plans have been amended as requested therefore the development now complies with Council's flood requirements.*

d) Amenity (Overshadowing, Views & Privacy)

Privacy impacts have been discussed in this assessment in accordance with SEPP65. It is noted that the objection received also raised potential adverse visual and acoustic privacy impacts from the car parking areas and open communal areas. It is noted that the car parking area does not have any openings to the side and rear boundary, and are not likely to have any acoustic impacts in this regard. Concerns regarding potential noise impacts from air conditioning and ventilation can be managed by consent conditions.

It is noted that the scale of the development will have impacts to the adjoining residential properties in relation to overshadowing. However, it is noted that the southern portion of the development site has a height limit of 35 metres and the proposal is 9 metres below this height limit. The proposal is a stark contrast to the existing smaller scale dwellings currently in the vicinity of the site. However, on balance, it is considered that the proposal is acceptable having regard to the urban consolidation strategies of the city centre.
The proposal is considered to be acceptable in terms of privacy, views and overshadowing.

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

It is considered that the proposal will not result in any unreasonable social impacts. The proposal includes sufficient measures to address potential crime and safety issues as discussed within Section 4.2.2 of this report.

It is considered that the proposed development would have a positive social and economic impact in the locality.

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

The site is not within a Mine Subsidence District or affected by Bushfire Prone Lands.

The site is affected by flooding and land contamination. These constraints have been discussed earlier in the report and the proposal is considered to be acceptable.

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

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

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

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

• Sustainability

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

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

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

• General

The proposed development does not raise any significant general public interest issues beyond matters already addressed in this report. Overall, it is assessed that the proposed development will have minimal adverse impact upon the surrounding natural and built environment. Approval of the application is considered to be in the public interest.
## ATTACHMENTS

<table>
<thead>
<tr>
<th>Attachment A:</th>
<th>Plans and elevations of proposed development - 5-11 Wickham Street, Wickham (DA2016/00351)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attachment B:</td>
<td>Draft Schedule of Conditions - 5-11 Wickham Street, Wickham (DA2016/00351)</td>
</tr>
<tr>
<td>Attachment C:</td>
<td>Processing Chronology - 5-11 Wickham Street, Wickham (DA2016/00351)</td>
</tr>
</tbody>
</table>
ATTACHMENT B - DRAFT SCHEDULE OF CONDITIONS

DA 2016/00351 - 5 - 11 WICKHAM STREET, WICKHAM

REASONS FOR CONDITIONS

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

APPROVED DOCUMENTATION

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

<table>
<thead>
<tr>
<th>Plan No / Supporting Document</th>
<th>Reference Version</th>
<th>Prepared by</th>
<th>Dated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Plan</td>
<td>A07 Rev A</td>
<td>EJE Architecture</td>
<td>18.1.16</td>
</tr>
<tr>
<td>Ground Level Floor Plan</td>
<td>A08 Rev C</td>
<td>EJE Architecture</td>
<td>12.8.16</td>
</tr>
<tr>
<td>Level 1 Floor Plan</td>
<td>A09 Rev C</td>
<td>EJE Architecture</td>
<td>12.8.16</td>
</tr>
<tr>
<td>Level 2, 3, 4, 5, 6 and penthouse level Floor Plan</td>
<td>A10-15 Rev A</td>
<td>EJE Architecture</td>
<td>18.1.16</td>
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<tr>
<td>Plant Level Plan</td>
<td>A16 Rev A</td>
<td>EJE Architecture</td>
<td>18.1.16</td>
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<tr>
<td>Elevation Plans</td>
<td>A17-20 Rev A</td>
<td>EJE Architecture</td>
<td>18.1.16</td>
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<tr>
<td>Section Plans</td>
<td>A21, A22, A23, A24 Rev C</td>
<td>EJE Architecture</td>
<td>12.8.16</td>
</tr>
<tr>
<td>Schedule of Materials</td>
<td>A37 Rev A</td>
<td>EJE Architecture</td>
<td>15.2.16</td>
</tr>
<tr>
<td>Statement of Environmental Effects</td>
<td>deWitt Consulting</td>
<td>April 2016</td>
<td></td>
</tr>
<tr>
<td>Landscape Plan</td>
<td>Sheets L01-L06 Revision A</td>
<td>Terras Landscape Architects</td>
<td>8.2.16</td>
</tr>
<tr>
<td>Stormwater Management Plan</td>
<td>15-659 C01-C03</td>
<td>MPC Consulting Engineers</td>
<td>16.8.16</td>
</tr>
<tr>
<td>Arborist Report</td>
<td></td>
<td>Terras Landscape Architects</td>
<td>22 September 2016</td>
</tr>
<tr>
<td>RAP</td>
<td></td>
<td>RCA Australia</td>
<td>1 September 2016</td>
</tr>
</tbody>
</table>

In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.
CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

3. A total monetary contribution of $223,960 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:

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

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

4. The proposed verandah / awning is to be designed in a manner that is consistent with Element 7.10 ‘Street Awnings and Balconies’ of the Newcastle Development Control Plan 2012. Full details are to be included in documentation for a Construction Certificate application.
5. On-site parking accommodation is to be provided for a minimum of 42 cars and 2 motor cycles. A minimum of 2 spaces are to be allocated for the commercial premises. This parking is to be set out generally in accordance with the minimum parking layout standards indicated in Element 7.03 ‘Traffic, Parking and Access’ of Council’s adopted Newcastle Development Control Plan 2012 and the plans submitted with the development application. Full details are to be included in documentation for a Construction Certificate application.

6. The car park is to be designed to comply with AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking and AS/NZS 2890.6:2009 - Parking facilities - Off-street parking for people with disabilities. Note - The median separating the two access driveways should be line marked and constructed at grade rather than as a raised median from the property boundary to the security gates. Full details are to be included in documentation for a Construction Certificate application.

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

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

9. 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.

10. 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 MPC Consulting Engineers Job No. 15-659 Drawing No.’s C01 to C03 Issue 1 dated 16/08/16 except as amended by this consent. Full details are to be included in documentation for a Construction Certificate application.
11. 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.

12. 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.

13. 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.

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

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

16. 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.

17. A commercial vehicular crossing is to be constructed across the road reserve in Wickham 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 7.5 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 (NSW) has been granted by Council. An application under Section 138 must be applied for and approved before the issue of a Construction Certificate.

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

19. 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.

20. All on-site 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.

21. The whole of the proposed structure below RL 2.55m AHD to be constructed in materials and finishes that are resistant to damage from floodwaters/tidal waters. Any new machinery or equipment, electrical fixtures (such as power points, light fittings and switches), storage units 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.
22. The proposed lighting including car park lighting of the premises is to be designed, positioned, and installed, including appropriate shielding and orientation of the lighting fixture, as to not give rise to obtrusive light, interfere with traffic safety or detract from the amenity of surrounding properties in accordance with Australian Standard AS 4282: 1997 Control of the obtrusive effects of outdoor lighting. Full details are to be included in the documentation for a Construction Certificate application.

23. A dilapidation report prepared by a suitability qualified person shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate. The dilapidation report shall document and photograph the current structural condition of the adjoining buildings, infrastructure and roads.

24. The developer is to design and construct the following works within the Wickham Street frontage adjacent to the site at no cost to Council and in accordance with Council’s guidelines, design specification City Centre Public Domain Manual and the Draft Wickham Public Domain Technical Manual. Full details are to be included in documentation for a Construction Certificate application.

a) Public Domain Works

- Ensure adequate means to protect existing stone kerb and gutter are provided during demolition/construction of building works.
- Install (two) new street trees as indicated on the Architectural plans in accordance with Council requirements.
- Upgrade/install street lighting within 10m-20m of the vicinity of the development to Ausgrid requirements and P2 lighting category as per City Centre Public Domain Technical Manual.
- Remove all redundant driveways, install new kerb and gutter and repair any road works.
- Install / modify any required parking and mandatory signage's to ensure that the footpath widths are made available for access.
- Repair any damages caused during construction.

A detailed public domain plan is to be provided to Council for review and approval as part of the S138 Road Act Type 2 application.

In this regard the separate approval from Council must be obtained for all works within the public road reserve, pursuant to Section 138 of the Roads Act 1993, prior to the release of the Construction Certificate. Engineering design plans and specifications for the works being undertaken in the public road reserve are required to be prepared by a suitably qualified practising civil engineer with experience and competence in the related field and submitted to Council for approval with the Section 138 application.
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Note: An additional fee will be required by Council for the assessment of engineering plans submitted for the public road works. In this regard the developer is advised to confer with Council’s Development & Building Services Section in order to confirm this fee.

25. To maintain privacy to adjoining properties, the Levels 5, 6 and 7 balustrading on the northern elevation, southern elevation and north-western corner shall be designed so as to be translucent or opaque in their construction. Full details are to be included in documentation for a Construction Certificate application.

26. The proposal shall be undertaken in accordance with the Arborist Report prepared by Terras Landscape Architects dated 22 September 2016. Full details are to be included in documentation for a Construction Certificate application.

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

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

Each toilet is to:

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

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

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

a) Demolition works shall be conducted in accordance with the submitted Hazardous Substances Management Plan and a copy of the Hazardous Substances Management Plan shall be kept on-site for the duration of the proposed development.
b) The removal, handling and disposal of any asbestos material is to be undertaken only by an asbestos removal contractor who holds the appropriate class of Asbestos Licence, issued by the WorkCover Authority of NSW.

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

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

e) On sites where asbestos materials are to be removed, a standard commercially manufactured sign containing the words ‘DANGER ASBESTOS REMOVAL IN PROGRESS’ measuring not less than 400mm x 300mm is to be erected in a prominent position during asbestos removal works.

30. The demolisher is to ensure that all services (ie water, telecommunications, gas, electricity, sewerage etc), are disconnected in accordance with the relevant authority’s requirements prior to demolition.

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

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

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

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

35. Waste management shall be implemented in accordance with the approved Waste Management Plan. At a minimum, the following measures shall be implemented during the construction phase:
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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/littering offences under the Protection of the Environment Operations Act 1997 (NSW).

36. If construction / demolition 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.

37. 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 overhead structure or protective fence shall comply with the Work Health and Safety Act 2011 (NSW), Work Health and Safety Regulation 2011 (NSW) and any relevant approved industry code of practice. Notice of intention of commencement must be given to WorkCover New South Wales.

37 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.

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

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

40. 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.

41. If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person’s own expense:

a) Protect and support the adjoining premises from possible damage from the excavation, and

b) Where necessary, underpin the adjoining premises to prevent any such damage.

The above requirements does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to the requirements not applying.

42. Remediation being carried out in accordance with Option 5 in Section 11.4 as set out in the submitted Remedial Action Plan (RAP) prepared by RCA Australia dated 1 September 2016 and any requirements of the appointed NSW accredited Site Auditor and the conditions of this consent.

43. Any soils identified as exceeding the validation criteria during the remediation works (as specified by the RAP prepared by RCA Australia dated 1 September 2016) are to be removed offsite.

44. Under no circumstances is onsite remediation treatment to be carried out.

45. Prior to any site works commencing, the Developer preparing a Construction Management Plan (CMP) such to be designed and implemented to manage all environmental aspects associated with the construction works, including off site impacts such as transport to and from the site. Two copies of the CMP are to be provided to the Principal Certifying Authority and the CMP is to be maintained on site during all site works and be made available to Authorised Officers upon request. The CMP is to include but not be limited to:
• A site management strategy, identifying and addressing issues such as environmental health and safety, site security, and traffic management.

• A soil and water management strategy, detailing erosion and sediment control, management of soil stockpiles, control and management of surface water and groundwater. Procedures should be included to ensure that all roads adjacent to the site are kept free and clear from mud and sediment.

• A dust management strategy, detailing procedures to minimise dust generation, with particular reference to control techniques and operational limits under adverse meteorological conditions.

• A waste minimisation strategy that aims to avoid production of waste and maximise reuse, recycling or reprocessing of potential waste material.

• A community relations plan that 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.

• A noise management strategy detailing measures to minimise the impact of the construction phase on the amenity of the locality, in accordance with Australian Standard AS 2436, 1981 'Guide to Noise control on Construction, Maintenance and Demolition Sites'. Noise monitoring during the construction phase should be incorporated into the program.

• A site management strategy for dealing with any identifying potential for Acid Sulphate Soils (ASS) to be encountered and measures and techniques to be followed in the event that ASS are encountered.

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

47. 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 (DECC) ‘Waste Classification Guidelines Part 1: Classifying Waste’.

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

49. Any fill material subject to a Resource Recovery Exemption received at the site must be accompanied by documentation demonstrating that material's compliance with the conditions of the exemption, and this documentation must be provided to Council officers or the Principal Certifying Authority on request.
50. 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.

51. 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.

52. 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 ground 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.

     When the roof has been completed, confirming that the building does not exceed the approved levels.

53. 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.

54. 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.

55. 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.

56. 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.
57. 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.

58. 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.

59. 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.

60. 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.

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

62. 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.

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

The tree protection fencing must remain in place and maintained until all works have been completed, with no waste materials, washouts, equipment or machinery to be stored within the fenced area.
64. 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.

65. 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.

66. A Maintenance Manual for all water quality devices is be prepared in accordance with Council’s Stormwater and Water Efficiency for Development Technical Manual (Updated 2013). The Maintenance Manual is to address maintenance issues concerning the water quality devices including routine monitoring and regular maintenance and be kept on site at all times. Establishment and maintenance of the water quality devices in accordance with the Maintenance Manual prepared by the applicant is to be completed prior to occupation of this site for the intended use.

67. 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.

68. The water management measures as indicated on the stormwater management report prepared by MPC Consulting Engineers Job No. 15-440 dated December 2015 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.

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

69. 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.
Development Applications Committee 15 November 2016

70. 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.

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

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

73. The whole of the land is to be consolidated into a single title and documentary evidence of the lodgement for registration of a survey plan of consolidation with NSW Government Land & Property Information being submitted to Council prior to the issuing of an Occupation Certificate for the proposed development.

74. 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.

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

   a) Exterior of the building = 75mm and

   b) Group mailbox - street number = 150mm
      - house number = 50mm

76. A clear warning notice is to be erected and maintained at all points of entry to the ground level car park advising that the premises is subject to flooding and that caution should be observed at times of heavy or prolonged rainfall, being installed prior to issue of an Occupation Certificate. Such notice is to also provide advice regarding the availability of further detail in respect of possible flooding, including an appropriate telephone number.

77. Following completion of the remediation works, a validation report being prepared by a suitably qualified consultant in accordance with the relevant Environment Protection Authority Guidelines and submitted to the Principle Certifying Authority and Council prior to the issuing of Occupation Certificate.
78. Prior to the issuing of an Occupation Certificate the following documentation is to be submitted to Principle Certifying Authority and Council;
   - Site Audit Statement in accordance with the NSW Site Auditor Scheme (site audit form) in relation to:
     - A. To determine land use suitability (please specify intended use[s])

79. A long term Site Management Plan is to be prepared and approved by the Site Auditor to address remaining site contamination risks and to be provided to the Principle Certifying Authority and Council prior to the issuing of Occupation Certificate

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

80. The hours of operation or trading of the commercial area to be not more than from:

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<tr>
<td>Sunday</td>
<td>9am</td>
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unless a separate application to vary the hours of operation or trading has been submitted to and approved by Council.

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

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

82. The use and occupation of the premises is not to give rise to the emission of any 'air impurity' as defined under the *Protection of the Environment Operations Act 1997* (NSW), that interferes unreasonably with the amenity of neighbouring premises and/or other sensitive receivers.
Should Council consider that unreasonable levels of air impurities have been emitted from the premises, the owner/occupier will be required to engage a suitably qualified consultant to recommend measures to control emissions of air impurities to an acceptable level and such measures being implemented within a nominated time period. Furthermore, written certification from the suitably qualified consultant will be required to be submitted to Council confirming that air impurity emissions from the premises do not interfere unreasonably with the amenity of neighbouring premises and/or other sensitive receptors before the expiration of the nominated period.

83. The landscaped areas are to be kept free of parked vehicles, stored goods, garbage or waste material and being permanently maintained.

84. A Landscape Establishment Report is to be submitted to Council following completion of a three month maintenance period, verifying that satisfactory maintenance of the landscape works has been undertaken and any necessary rectification measures have been carried out to a high professional standard; copy of report format attached.

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

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

87. 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.

88. 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’.

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

The minimum numeral heights shall be:

a) exterior of the building = 75mm and

b) group mailbox - street number = 150mm
   - house number = 50mm

90. The premise/s is/are allocated the following street address/es in accordance with Council’s House Numbering Policy and the Surveying and Spatial Regulation.
<table>
<thead>
<tr>
<th>Unit Number on plan</th>
<th>Council Allocated Street Address(es)</th>
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<tbody>
<tr>
<td></td>
<td>House Number</td>
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<td>604/7</td>
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ADVISORY MATTERS

91. 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:
   Defined Flood Level (DFL) is RL 2.05 m Australian Height Datum (AHD)
   Flood Hazard Level is RL 2.55 m AHD (Freeboard is 500mm above DFL)
   Maximum Flow Velocity of floodwaters for the Defined Flood Event is 0.28 m/s

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

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

94. 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.

95. 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.

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

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

   a) A Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act
Development Applications Committee 15 November 2016

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

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

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

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

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

END OF CONDITIONS
### ATTACHMENT C - PROCESSING CHRONOLOGY

**DA 2016/00351 - 5 - 11 WICKHAM STREET, WICKHAM**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>4 April 2016</td>
<td>Development application lodged with Council.</td>
</tr>
<tr>
<td>8 April 2016</td>
<td>Public exhibition (14 days).</td>
</tr>
<tr>
<td>15 June 2016</td>
<td>Application considered by the Urban Design Consultative Group (UDCG).</td>
</tr>
<tr>
<td>16 June 2016</td>
<td>Applicant advised of issues raised after technical assessment of the application, in relation to contamination and public submissions.</td>
</tr>
<tr>
<td>12 July 2016</td>
<td>Response received from Applicant in relation to comments made by UDCG.</td>
</tr>
<tr>
<td>21 July 2016</td>
<td>Applicant advised of issues raised after technical assessment of the application, in relation to vehicle access, traffic, parking, stormwater and flooding.</td>
</tr>
<tr>
<td>26 July 2016</td>
<td>Preliminary response received from Applicant in relation to vehicle access, traffic and parking.</td>
</tr>
<tr>
<td>27 July 2016</td>
<td>Response received from Applicant in relation to contamination.</td>
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<tr>
<td>3 August 2016</td>
<td>Applicant advised of issues raised after technical assessment of the application, in relation to contamination.</td>
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<tr>
<td>17 August 2016</td>
<td>Further response received from Applicant in relation to vehicle access, traffic, parking, stormwater and flooding.</td>
</tr>
<tr>
<td>7 September 2016</td>
<td>Response received from Applicant in relation to contamination.</td>
</tr>
<tr>
<td>16 September 2016</td>
<td>Applicant advised of issues raised after technical assessment of the application, in relation to contamination.</td>
</tr>
<tr>
<td>7 October 2016</td>
<td>Response received from Applicant in relation to contamination.</td>
</tr>
</tbody>
</table>
ITEM-16  DA2015/0734.01 - 6 WADE STREET AND 116-120 NORTHCOTT DRIVE ADAMSTOWN HEIGHTS - PROPOSED BOUNDARY ADJUSTMENT AS MODIFICATION TO APPROVED DEVELOPMENT INVOLVING DEMOLITION OF DWELLINGS AND OUTBUILDINGS, ERECTION OF 12 ATTACHED TWO-STOREY DWELLINGS,

APPLICANT: DL HALL & SR HALL
OWNER: DL HALL & SR HALL
REPORT BY: PLANNING AND REGULATORY
CONTACT: DIRECTOR PLANNING AND REGULATORY / MANAGER DEVELOPMENT AND BUILDING SERVICES

PART I

PURPOSE

A Section 96 application (S96) has been received seeking consent to a boundary adjustment, modifying the layout of the approved development and associated subdivision.

The original development, approved by the Land & Environment Court, involved the demolition of dwellings and outbuildings, erection of 12 attached two-storey dwellings, associated site works and three lots into two lots subdivision.

A copy of the submitted plans for the proposed modification is appended at Attachment A.

Subject Land: 6 Wade Street & 118-120 Northcott Drive Adamstown Heights

The proposal was notified in accordance with the provisions of Newcastle DCP 2012 and two public submissions have been received.

The concerns raised by the objectors in respect of the proposal include: character, development potential, building envelopes, vehicle access, garage widths, retaining walls, fencing, easements, drainage, mine subsidence, open space, communal open space, solar access, amenity impacts, unauthorised works, public notification, lot sizes, non-compliance with the Building Code of Australia and that the proposal should not be a S96 application.

The application is to be determined by the Development Applications Committee due to the application being 'called-in' by Councillors.
Issues

- Whether the proposed modified subdivision layout is acceptable.
- Whether the proposal has acceptable amenity impacts.

Conclusion

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

Accordingly, it is recommended that the S96 application be approved on the basis of the submitted plans, subject to the nominated conditions of consent (refer to Attachment B).

RECOMMENDATION

A. THAT the S96 application seeking consent to a boundary adjustment modifying the layout of the approved development and associated subdivision be approved on the basis of the submitted plans, subject to the nominated conditions of consent (refer to Attachment B); and

B. THAT those persons who made submissions be advised of Council's determination.

Political Donation / Gift Declaration

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

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

1.0 THE SUBJECT SITE

The subject site comprises Lot 44, DP31245 - (6 Wade Street) and Lots 39, 40 & 41 DP29469 - (120, 118 & 116 Northcott Drive). The subject lots combine to exhibit an irregular shape with two frontages, located on the western side of Wade Street and the south western side of Northcott Drive, Adamstown Heights. The site has a frontage of 30.48m to Northcott Drive and 11.58m to Wade Street. The lots fronting Northcott Drive are each 45.72m deep while the southern boundary of the Wade Street allotment is 49.97m deep. The combined area of the land that is subject to the application is approximately 3119.33m².

The site has a fall of 9.75m approximately from both Wade Street and Northcott Drive frontages to the western corner of Lot 44 (6 Wade Street).

The current site contains three detached houses on the allotments fronting Northcott Drive while the house, associated outbuildings and in-ground swimming pool at 6 Wade Street have been demolish/removed under the consent.

Surrounding the site are single detached dwellings which are predominately single storey in height. The slope of the surrounding lands is such that some of the houses are effectively presenting as two-storey in height, notwithstanding that the dwellings consists of only one level (or one habitable level and garage under). Further west of the site is Belair Primary School, Hudson Park and Kotara High School. To the north, approximately 200m away from the site, is the Westfield Kotara shopping centre.

2.0 THE PROPOSAL & BACKGROUND

The S96 application has been received seeking consent to a boundary adjustment, modifying the layout of the approved development and associated subdivision.

The original development, approved by the NSW Land & Environment Court, involved the demolition of the existing dwellings and outbuildings, erection of 12 attached two-storey dwellings, associated site works and three lots into two lots subdivision.

The originally approved two lots, resulting from subdivision of three lots, are approximately 2274.1m² and 715.7 m² in area (i.e. 6 Wade Street and 118/120 Northcott Drive respectively). The approximate dimensions of the approved 118/120 Northcott Drive lot have a 30.5m frontage to Northcott Drive and a depth of 23.2m.
The proposed modifications involve a 'triangle' of land at the rear of the current 116 Northcott Drive being incorporated into the approved lot fronting 6 Wade Street and increasing the depth of the approved lot fronting Northcott Drive.

The lots sizes proposed under the S96 modification are approximately 2324.78m$^2$ and 794.55m$^2$ (i.e. 6 Wade Street and 118/120 Northcott Drive respectively). The depth of the 118/120 Northcott Drive lot changes from approximately 23.2m to 26.085m.

As a result of the proposed boundary adjustment, several other modifications are proposed by the current application as follows:

- Altering the landscape area layout of the approved development.
- Altering the private open space provision (i.e. courtyards) and associated adjustment of clothesline locations for approved dwellings 8-12.
- Altering the proposed landscape design at the rear of approved dwellings 8-12, in association with the additional 'triangular' parcel of land proposed to be incorporated as part of this application.
- The provision of a set of access stairs to the 'triangular' parcel of land proposed to be incorporated as part of this application.

The S96 application does not change the number or location of the approved dwellings and their associated parking.

A copy of the submitted plans are appended at Attachment A. The various steps in the processing of the application to date are outlined in the Processing Chronology appended at Attachment C.

3.0 PUBLIC NOTIFICATION

The S96 application was publicly notified in accordance with Council's Public Notification Policy. Two submissions have been received. Additionally, 49 copies of letters submitted in connection with the original approved proposal have also been submitted.

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

i) Amenity Issues

   a) Amenity Impacts - Concern that the proposed boundary adjustment will result in reduction in airflow, visual and acoustic privacy for the future development of the allotment fronting Northcott Drive. Concern regarding the loss of landscaping from the rear of the courtyards of approved dwellings 8-12.
ii) Design and Aesthetic Issues

a) **Lots Sizes** - Concern that the change in the boundary adjustment and lot size (i.e. 118-120 Northcott Drive) from approximately 709 m² to 790 m² will result in additional impacts. Concern that the triangular shape of the boundary adjustment at the rear of 116 Northcott Drive does not meet the requirements of the Newcastle DCP 2012.

b) **Open space** - Approved dwellings 8-12 have a reduction in their available private open space replaced with a larger communal open space area. Concern regarding the loss of larger plantings at the rear of proposed dwellings 8-12.

c) **Communal Open Space Area** - Concern that the new additional area will result in unreasonable privacy and acoustic impacts. A privacy screen should be provided to the neighbouring property to 17 Carolyn Street (e.g. landscape screening).

d) **Solar Access** - Concern that the proposed boundary realignment will impact on solar access of the proposed dwellings 8-12. Concern that the future development of proposed allotment fronting Northcott Drive will result in further overshadowing of 4 Wade Street.

e) **Character** - *'The development does not integrate into surrounding development…'*

f) **Building Envelope** - The proposal does not meet the building envelope provisions under the Newcastle DCP 2012.

g) **Garage Widths** - Condition 5 of the consent has not been met - *'Garage door openings are to be minimum width 3.0m clear for single garages and 4.8m clear for double garages.'*

h) **Vehicle access** - Condition 75 of the consent has not been meet - *'The development is to be serviced by vans or small fixed-wheelbase delivery vehicles capable of being turned on-site.'*

i) **Retaining Walls** - Concern that the applicant proposes to build retaining walls on the neighbouring property at 4 Wade Street and/or adjacent to this boundary. Furthermore the plans approved by the court and the S96 modifications plans submitted do not demonstrate that retaining walls are necessary or required in this location.
iii) Subdivision Issues

a) **Easement** - The resultant allotment at 116 Northcott Drive should be provided with a stormwater easement.

b) **Drainage** - Concern that 4 Wade Street & 122 Northcott Drive will contribute to drainage impacts on the approved 12 dwelling development as they have not been provided drainage easement(s).

c) **Mine Subsidence** - Concern that the development is not suitable due to Mine Subsidence.

iv) Public Notification & Process Issues

a) **S96** - 'We do not believe that this modification is for landscaping purposes only. A further boundary adjustment will allow the developer to change the scope of work and increase the dwellings with subsequent modifications.' Concern that 'The application appears to differ significantly from that of the original application approved by the Land and Environment Court "with conditions".'

b) **Public Notification** - Concern that the proposal has not been assessed and notified in accordance with the provisions of the Environmental Planning & Assessment Act 1979 (ie Section 96AA) and, as such, a Section 123 judicial review (ie 'appeal') could be made in terms of:
   i. Notification to the Court
   ii. That all parties were notified including those who previously made a submission.
   iii. That the proposal is not substantially the same as the originally approved development
   iv. Insufficient and inadequate information was provided in Council's notification letter.
   v. Insufficient details have been submitted to assess solar access.

c) **Unauthorised Works** - Concern regarding unauthorised works on the site and Council not undertaking enforcement action in the event of a breach of planning law.

v) Miscellaneous

a) **Development Potential** "We suspect properties 116, 114 and potentially 112 Northcott Drive will eventually acquire shared stormwater access with the development of 6 Wade Street. However, blocks of 4 Wade Street and 122 Northcott Drive look to remain starved of future development amenity."
b) **New Fencing** - Concern regarding the removal and replacement of existing boundary fencing. The owners of 4 Wade Street request the following:

- *The outdoor entertainment area located in the SW corner of 4 Wade Street is 600mm above natural ground level. We request that an additional height of 600mm privacy screening in the lowest corner be installed (raked) so as to maintain a level height of 1.8 meters above the entertainment area pad. Once clear of the adjacent entertainment area, the 1.8 high fencing can continue until reaching point 2 below.‘*

- *‘Negotiations need be finalised around the driveway entrance portion of fencing, as a 1.8m high colourbond or timber fence would not provide visual and/or acoustic privacy between accessing vehicles and our master bedroom located adjacent to the drive. We will work with the applicant to determine a reasonable alternative in due course.’*

c) **Non Compliance with the BCA** - The development has not demonstrated compliance with condition 39 of the consent - *‘39. All building work must be carried out in accordance with the provisions of the Building Code of Australia.’* The proposal does not achieve access for fire trucks in accordance with *‘Building Codes of Australia 2007 Volume 1. Part C2.4, Requirement for open space vehicular Access.’*

It should be noted that in determining the Section 96 modification Council can only consider the proposed changes and not revisit the original application, in this case the proposed application involves a boundary adjustment/subdivision, landscaping amendments and associated works. The original application addressed a range of issues associated with the 12 dwellings, including character, privacy, shadowing, stormwater, traffic, bulk and scale and was ultimately approved by the Land & Environment Court. The current amendment is not seeking to alter the design or layout of the approved 12 dwellings. The proposal is limited to the works discussed within section 2.0 of the report.

Many of the issues raised within the submissions concern matters which have been addressed within the original assessment and approval by the Land & Environment Court.

The concerns relating to the previous approval and alleged non-compliance with conditions need to be kept separate from the assessment of the current S96 application.

### 4.0 ENVIRONMENTAL PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 79C(1) of the Environmental Planning and Assessment Act 1979, as detailed hereunder.
Section 96 Application

The S96 application was submitted under the provisions of S96(1a) of the Environmental Planning & Assessment Act 1979 (EP&A ACT), but Council's assessment of the proposal has considered the provisions of S96AA (i.e. 'Modification by consent authorities of consent granted by the Court') under the EP&A Act.

It is considered that the modified development that is the subject of the proposed S96 application is substantially the same development as the development for which the consent was originally granted.

All aspects of the public notification and referral aspects of the proposal have been undertaken in accordance with the provisions of the EP&A Act and the Environmental Planning and Assessment Regulation 2000. This includes the notification of adjoining/adjacent neighbours, notification of all parties who previously made a submission and notice to the Court of the submitted S96 application.

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

Newcastle Local Environmental Plan 2012

Clause 2.1, 2.2 & 2.3 - Land Use Zones & Zone Objectives

The subject property is included within the R3 Medium Density Residential zone under the provisions of the Newcastle Local Environmental Plan 2012, within which zone the originally proposed development is permissible with Council's consent as multi dwelling housing. The proposed development is also consistent with the zone objectives. The current S96 application does not alter the proposal in these respects.

Clause 2.6 Subdivision

The proposal seeks a boundary adjustment to alter the approved subdivision layout which is permissible with consent under this clause.
Clause 4.1 Minimum Subdivision Lot Size

A minimum 400m² lot size applies to the subject sites. The proposed lots under this S96 application comply with this development standard, being 232.4.78m² and 794.55m² respectively. The resultant lot at 116 Northcott drive will be approximately 683m², so it also complies with the development standard.

Clause 4.3 Height of Buildings

The proposed S96 application makes no changes to the height of the approved development.

Clause 4.4 Floor Space Ratio (FSR)

The proposed S96 application makes no changes to the floor space of the approved development. The approved development and proposed S96 modification does not exceed the allowable FSR of 0.9:1.

Clause 6.1 Acid Sulfate Soil

The subject site is listed as Class 5 under the Acid Sulfate Soil Map and the proposed scope of works will not be impacted in this respect.

Clause 6.2 Earthworks

The proposed earthworks have been assessed and are considered to be acceptable having regard to the provisions of this clause. It is noted that the only additional works are associated with the 'triangular' area of land incorporated as part of the boundary adjustment and involve access stairs and additional landscaping.

4.2 Merit Considerations

4.2.1 Relevant Strategic Policies

The broader strategic policies, including the Newcastle Urban Strategy and the Lower Hunter Regional Strategy identify the site as a Substantial Growth precinct.

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

Section 3.01 – Subdivision

The proposal involves a Torrens Title boundary adjustment/subdivision.

The S96 application has been assessed having regard to the provisions of this section of the DCP and is considered that the resultant lots are acceptable.

Section 4.01 Flood Management

The subject site is not categorised as flood prone land.
Section 4.02 Bush Fire Protection

The subject site is not categorised as bush fire prone land.

Section 4.03 Mine Subsidence

The subject site is affected by Mine Subsidence and the proposal is considered acceptable subject to conditions that are already contained within the consent issued for the approved development, as follows:

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

Section 4.04 Safety & Security

The development is considered to be adequate in terms of Crime Prevention through Environmental Design principles, as follows:

• Surveillance
• Access control
• Territorial reinforcement
• Space management.

Section 4.05 Social Impact

It is considered that the proposed development is consistent with the zone objectives and is appropriate having regard to the strategic planning intent for the future of the area. It is considered that the proposal is acceptable in terms of its social impacts.

Section 5.01 Soil Management

It is considered that the proposal is acceptable, subject to conditions that are already contained within the consent issued for the approved development, as follows:

22. 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.

Section 5.02 Land Contamination

The proposed site is not known to be affected by land contamination. The proposal does not involve any change of use that would warrant further land contamination investigation.
Development Applications Committee 15 November 2016

Section 7.01 – Building Design Criteria

The proposal is considered to be acceptable having regard to:

- Height
- FSR
- Setbacks & Building Height Envelopes
- Building Appearance/Streetscape
- Solar Access/Overshadowing - see Section 4.2.3 for further discussion
- Views & Privacy - see Section 4.2.3 for further discussion
- Fencing & Walls

It is noted that the subject S96 application does not change the impacts of the approved development in relation to these aspects.

The only effective change in setbacks is the decrease in the setback at the rear of the approved dwellings 8-12 from approximately 8.4m to 5.5m. This change in setback is between lots within the subject development site (i.e. between 6 Wade Street and 118/120 Northcott Drive).

The proposal is considered to be acceptable having regard to:

- Open Space (area of private open space)

The proposal provides each unit with an acceptable individual private open space area.

Each dwelling is required to be provided with a private open space area (i.e. courtyard) of at least 25m². Notwithstanding that the proposed boundary adjustment at the rear of approved dwellings 8-12 is decreasing these private open space areas from 40+m² to 25-28.5m², these areas all still comply with the minimum specified under this section of the DCP and are considered to be acceptable.

Section 7.02 – Landscape Open Space & Visual Amenity

The proposal is considered to be acceptable having regard to:

- Landscape concept plan.
- Landscape Areas - approved by the Court was approximately 24% (i.e. 25% is required under the DCP). The current S96 application will result in a small increase in landscape area of approximately 41m² and is otherwise considered to be acceptable.
- Deep Soil Areas - proposal is considered to be acceptable overall in terms of deep soil plantings.
Section 7.06 - Stormwater & Section 4.01 – Flood Management & Section 7.07 - Water Efficiency

The approved development incorporates drainage and associated easement from the approved allotment fronting Northcott Drive (i.e. 118/120 Northcott Drive) connecting through the 6 Wade Street allotment to the existing easement joining with Council’s drainage infrastructure in Carolyn Street.

The applicant has advised that they will be separately pursuing an inter-allotment drainage easement connection for 116 Northcott Drive to facilitate the construction process for the approved development.

The proposed boundary adjusted associated with the 116 Northcott Drive allotment does not warrant an easement being imposed as a condition of the submitted S96 application.

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

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

The current S96 application makes no changes to these aspects of the approved development. Any variations to the building envelope under the Newcastle DCP 2012 were previously approved by the Land and Environment Court and are unchanged by this S96 application.

b) Traffic Access & Parking

The current S96 application makes no changes to these aspects of the approved development.

c) Stormwater & Flooding

This aspect has been discussed within Section 4.2.2 above.

d) Amenity (Privacy, Overshadowing, Views & Construction Impacts)

The proposal is considered to be acceptable in terms of privacy, views and overshadowing.

Privacy

The inclusion of the additional communal landscape area within the ‘triangular’ area of land at the rear of 116 Northcott Drive is considered to be acceptable in terms of visual and acoustic privacy impacts.

Fencing 1.8m high is already required as a condition of the original consent which would be sufficient to address potential privacy impacts, as follows:
56. A 1.8 m high, lapped timber paling fence, or equivalent, is to be erected along the side and rear boundaries of the site in consultation with the adjoining owners involved.

Note: Any disputation which may arise between the developer and the adjoining property owners in respect of this matter is to be resolved in accordance with the provisions of the Dividing Fences Act 1991 (NSW).

The S96 proposal also includes additional screen planting on the western boundary of the triangle area of land adjoining the neighbouring properties with frontage to Carolyn Street, which is considered to be acceptable subject to conditions of consent recommended at Attachment B.

Beyond the matters addressed above, the current S96 application makes no other changes to the privacy aspects of the approved development.

Overshadowing

The current S96 application makes no changes to these aspects of the approved development. The position and design of the approved dwellings is not proposed to be changed.

It has been raised within a submission that the proposed boundary adjustment at the rear of 118-120 Northcott Drive will result in further overshadowing impacts from possible future development of that site.

Having regard to the overall size and shape of the proposed allotment (i.e. 794.55m², 28.48m by 26.085m deep), it is considered that current S96 application does not need to address impacts from a possible future development of that site. This is a matter for the assessment of any future proposed development at the time that a relevant application is lodged.

Views

The current S96 application makes no changes to these aspects of the approved development. The position and design of the approved dwellings is not proposed to be changed.

Construction Impacts

Appropriate conditions have already been included with the approval issued by the Court to address construction impacts. The current S96 application does not alter these impacts.

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

It is considered that the current S96 application is reasonable in terms of social and economic impact, given that it involves negligible changes in this respect.
4.2.4 Suitability of the Site for the Development [Section 79C(1)(c)]

The site is within a Mine Subsidence District area and appropriate conditions were imposed on the original approval by the Court to address this aspect.

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

This report has addressed the various concerns raised in the submissions received in respect of the S96 application.

The following submissions have been addressed directly below:

a) **Garage Widths** - Condition 5 of the consent has not been met - *'Garage door openings are to be minimum width 3.0m clear for single garages and 4.8m clear for double garages.'*

   **Comment:**
   These details are required to be addressed via a future Construction Certificate application.

b) **Vehicle access** - Condition 75 of the consent has not been met - *'The development is to be serviced by vans or small fixed-wheelbase delivery vehicles capable of being turned on-site.'*

   **Comment:**
   This condition is only applicable to the development once it is fully completed - this condition is listed under *'Conditions to be satisfied during the Operation and Use the Development.'* Furthermore, it is considered likely that compliance with this condition will be achieved.

c) **Retaining Walls** - Concern that the applicant proposes to build retaining walls on the neighbouring property at 4 Wade Street and/or adjacent to this boundary. Furthermore the plans approved by the court and the S96 modification plans submitted do not demonstrate that retaining walls are necessary or required in this location.

   **Comment:**
   Retaining walls were approved under the original consent issued by the Court and the only change proposed under this S96 application is the provision of access stair to the 'triangular' area of land added as part of the boundary adjustment proposed under this S96 application.

d) **Drainage** - Concern that 4 Wade Street & 122 Northcott Drive will contribute to drainage impacts on the new 12 dwelling development as they have not been provided drainage easement(s).

   **Comment:**
This drainage matter was raised within the original application that was approved by the Land and Environment Court and is unchanged as a result of the proposed S96 application.

The provision of an easement for 4 Wade Street and 122 Northcott Drive was considered unnecessary as a result of the originally proposed development and otherwise remains a civil matter between the various owners.

e) **Unauthorised Works** - Concern regarding unauthorised works on the site and Council not undertaking enforcement action in the event of a breach of planning law.

**Comment:**
The concerns relating to alleged non-compliance with conditions and/or unauthorised works are a separate issue and have not been considered in the assessment of this modified proposal.

d) **New Fencing** - Concern regarding the removal and replacement of existing boundary fencing. The owners of 4 Wade Street request the following:

- "The outdoor entertainment area located in the SW corner of 4 Wade Street is 600mm above natural ground level. We request that an additional height of 600mm privacy screening in the lowest corner be installed (raked) so as to maintain a level height of 1.8 meters above the entertainment area pad. Once clear of the adjacent entertainment area, the 1.8 high fencing can continue until reaching point 2 below."

- "Negotiations need be finalised around the driveway entrance portion of fencing, as a 1.8m high colourbond or timber fence would not provide visual and/or acoustic privacy between accessing vehicles and our master bedroom located adjacent to the drive. We will work with the applicant to determine a reasonable alternative in due course."

**Comment:**
The current S96 application makes no effective changes to the fencing as originally approved adjacent to 4 Wade Street. Any further negotiations relating to fencing is a civil matter between land owners under the Dividing Fences Act 1991.

e) **Non Compliance with the BCA** - The development has not demonstrated compliance with condition 39 of the consent - "39. All building work must be carried out in accordance with the provisions of the Building Code of Australia.‘ The proposal does not achieve access for fire trucks in accordance with ‘Building Codes of Australia 2007 Volume 1. Part C2.4, Requirement for open space vehicular Access.‘

**Comment:**
The concerns relating to this condition of consent are not relevant to the works proposed under the current S96 application and are a matter to be addressed with a required Construction Certificate application. However, it is noted that the specific BCA reference that has been raised is not applicable to the approved development.
4.2.6 Public Interest [Section 79C(1)(e)]

- **Sustainability**

The current S96 application is considered to be satisfactory having regard to the principles of ecologically sustainable development.

- **General**

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

**ATTACHMENTS**

- **Attachment A:** Copy of submitted plans - 6 Wade Street & 116-120 Northcott Drive, Adamstown Heights - DA 2015/0734.01
- **Attachment B:** Draft Schedule of Conditions - 6 Wade Street & 116-120 Northcott Drive, Adamstown Heights - DA 2015/0734.01
- **Attachment C:** Processing Chronology - 6 Wade Street & 116-120 Northcott Drive, Adamstown Heights - DA 2015/0734.01
ATTACHMENT B - DRAFT SCHEDULE OF CONDITIONS

DA 2015/0734.1 - 6 WADE STREET ADAMSTOWN HEIGHTS

The following conditions to be amended:

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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<tr>
<th>Plan No / Supporting Document</th>
<th>Reference / Version</th>
<th>Prepared by</th>
<th>Dated</th>
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The following additional condition to be included:

29A The landscape concept plan being amended to provide a landscape privacy screen of medium growing shrub species, which have a mature height of at least 3.0m (such as Murraya paniculata), along the boundary fence with 17 Carolyn Street. Full details are to be incorporated within the comprehensive landscape plan required to be submitted and approved as part of the Construction Certificate.
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<td>20 September - 7 October 2016</td>
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