



City of
Newcastle



CITY OF NEWCASTLE

Development Applications Committee

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 8 October 2019

TIME: Following the Public Voice Committee Meeting

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

J Bath
Chief Executive Officer

**City Administration Centre
282 King Street
NEWCASTLE NSW 2300**

Tuesday 1 October 2019

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DEVELOPMENT APPLICATIONS COMMITTEE
8 October 2019

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

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 17 SEPTEMBER 2019

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 190917 Development Applications Committee Minutes

Note: The attached minutes are a record of the decisions made by Council at the meeting and are draft until adopted by Council. They may be viewed at www.newcastle.nsw.gov.au

Attachment A

CITY OF NEWCASTLE

Minutes of the Development Applications Committee Meeting held in the Council Chambers, 2nd Floor City Hall, 290 King Street, Newcastle on Tuesday 17 September 2019 at 6.00pm.

PRESENT

Deputy Lord Mayor (Councillor D Clausen), Councillors M Byrne, J Church, J Dunn, K Elliott, J Mackenzie, A Robinson, A Rufo, E White and P Winney-Baartz.

IN ATTENDANCE

J Bath (Chief Executive Officer), D Clarke (Director Governance), B Smith (Director Strategy and Engagement), F Leatham (Director People and Culture), K Liddell (Director Infrastructure and Property), A Murphy (Director City Wide Services), D Guest (Acting Manager Legal), M Bisson (Manager Regulatory, Planning and Assessment), J Vescio (Executive Officer, Chief Executive Office), M Murray (Policy Officer, Lord Mayor's Office), A Knowles (Council Services/Minutes) and A Leach (Council Services/Webcasting).

APOLOGIES

MOTION

Moved by Cr Rufo, seconded by Cr Byrne

The apologies submitted on behalf of Lord Mayor, Councillor Nelmes and Councillors Duncan and Luke be received and leave of absence granted.

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillor Robinson

Councillor Robinson declared a non-pecuniary less than significant interest in Item 13 - DA2019/00506 - 50 Honeysuckle Drive Newcastle as he owned some real estate in the vicinity. Councillor Robinson stated he would manage the conflict by leaving the Chamber for discussion on the item.

Councillor Church

Councillor Church declared a significant pecuniary interest in Item 14 - DA2019/00247 - 352 Hunter Street Newcastle as he did some consulting work with the applicant in the last six months. Councillor Church was no longer engaged in any work with the applicant and the work he had done was not related to this item. Councillor Church stated he would remove himself from the Chamber for discussion on the item.

Deputy Lord Mayor, Councillor Clausen

Deputy Lord Mayor, Councillor Clausen declared a less than significant non-pecuniary interest in Item 13 - DA2019/00506 - 50 Honeysuckle Drive Newcastle as his employer leased office space immediately opposite this location. Deputy Lord Mayor, Councillor Clausen had no interest in the site and remained in the Chamber for discussion on the item.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 20 AUGUST 2019

MOTION

Moved by Cr Winney-Baartz, seconded by Cr Byrne

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

Carried

DEVELOPMENT APPLICATIONS

ITEM-12 DAC 17/09/19 - DA2018/00609 - 147 BEAUMONT STREET HAMILTON - DEMOLITION OF DWELLING AND OUTBUILDING, ERECTION OF THREE STOREY. SIXTEEN ROOM BOARDING HOUSE AND ASSOCIATED FENCING

MOTION

Moved by Cr Mackenzie, seconded by Cr Winney-Baartz

- A. That DA2018/00609 for demolition of dwelling and outbuilding, erection of three-storey, eighteen room boarding house and associated fencing at 147 Beaumont Street Hamilton be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; (refer amendment outlined in Memo dated 17 September 2019 stating that Condition 52 at Attachment B, the development having a maximum of 18 boarders in total).
- B. That those persons who made submissions be advised of City of Newcastle determination.

For the Motion:

Deputy Lord Mayor, Cr Clausen and Councillors Byrne, Dunn, Mackenzie, White and Winney-Baartz.

Against the Motion:

Councillors Church, Elliott, Robinson and Rufo.

Carried

**ITEM-13 DAC 17/09/19 - DA2019/00506 - 50 HONEYSUCKLE DRIVE
NEWCASTLE - TORRENS SUBDIVISION ONE LOT INTO TWO LOT**

Councillor Robinson left the Chamber for discussion on the item.

MOTION

Moved by Cr Dunn, seconded by Cr Byrne

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.1 Minimum Subdivision Lot Size, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.1 and the objectives for development within the B3 Commercial Core, B4 Mixed Use and RE1 Public Recreation zones in which the development is proposed to be carried out; and
- B. That DA2019/00506 for a one lot into two lot subdivision at 50 Honeysuckle Drive Newcastle be approved and consent granted, subject to conditions of consent being agreed with the applicant (ie. the Crown) or the Minister, generally as set out in the Draft Schedule of Conditions at **Attachment B**.

For the Motion:

Deputy Lord Mayor, Cr Clausen and Councillors Byrne, Church, Dunn, Elliott, Mackenzie, Rufo, White and Winney-Baartz.

Against the Motion:

Nil.

Carried

Councillor Robinson returned to the Chamber at the conclusion of the item.

**ITEM-14 DAC 17/09/19 - DA2019/00247 - 352 HUNTER STREET, NEWCASTLE,
- COMMERCIAL PREMISES (EIGHT STOREY INCLUDING
CARPARKING) AND OUTDOOR KIOSK**

Councillor Church left the Chamber for discussion on the item.

MOTION

Moved by Cr Mackenzie, seconded by Cr Winney-Baartz

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out; and
- B. That DA2019/00247 for an eight-storey commercial building be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

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For the Motion:

Deputy Lord Mayor, Cr Clausen and Councillors Byrne, Dunn, Elliott, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

Against the Motion:

Nil.

Carried

Councillor Church returned to the Chamber at the conclusion of the item.

The meeting concluded at 6.10pm

DEVELOPMENT APPLICATIONS

ITEM-15 **DAC 08/10/19 - DA2019/00058 - 131 MARSHALL STREET, KOTARA - DEMOLITION OF DWELLING, ERECTION OF NINE X TWO STOREY DWELLINGS AND STRATA SUBDIVISION**

APPLICANT: **CC & JD INVESTMENTS PTY LTD**
OWNER: **CC & JD INVESTMENTS PTY LTD**
NOTE BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

PART I

BACKGROUND

An application has been received seeking consent to demolish a dwelling house and associated structures, construction of nine x two-storey townhouses, associated retaining walls and earthworks, landscaping, lot consolidation and strata subdivision.

The submitted application was assigned to Senior Development Officer, William Toose, for assessment.

The application is referred to the Development Applications Committee for determination, due to the number of objections received.



Subject Land: 131 Marshall Street Kotara

The application was publicly notified in accordance with City of Newcastle's (CN) public participation policy, with 39 submissions being received.

The objectors' concerns included:

- i. Zoning and permissibility
- ii. Character
- iii. Density
- iv. Bulk and scale
- v. Amenity issues
- vi. Traffic and parking
- vii. Tree removal
- viii. Water quality
- ix. Flooding

- x. Stormwater and sewerage
- xi. Waste management and garbage collection
- xii. Construction impacts

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

Details of the submissions received are summarised at **Section 3.0** of Part II of this report and the concerns raised are addressed as part of the Planning Assessment at **Section 5.0**.

The proposal was considered at a meeting of the Public Voice Committee on 17 September 2019.

Issues

- 1) Matters raised in submissions including local character, density, traffic, carparking, waste management and collection.
- 2) Height of the proposed development.

Conclusion

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

RECOMMENDATION

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2019/00058 for demolition of a dwelling house and associated structures, construction of nine x two-storey townhouses, landscaping, lot consolidation and strata subdivision be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of CN's determination.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 THE SUBJECT SITE

The site is located at 131 Marshall Street, Kotara and is legally described as Lots A and B in Deposited Plan 402667. The land is regular in shape, with a combined area of 2,398m² and a 30m wide frontage to Marshall Street.

An existing 5m high acoustic barrier fence is located at the rear of the site (eastern boundary) to minimise impacts from Charlestown Road, Inner City Bypass. A 6m wide easement crosses the site in a north to south direction across the two lots, following a drainage path. The front and rear portions of the site fall toward the drainage path, which itself generally falls from the south side to the north side of the land.

The site is located within a mine subsidence district, though it is not affected by any subsidence restrictions.

The site is not identified as being flood prone, however, a localised flood impact study has been undertaken to calculate the water flows through the drainage easement.

2.0 THE PROPOSAL

The application seeks consent for the following:

- i) Demolish a dwelling house and associated structures;
- ii) Construction of nine x two-storey townhouses;
- iii) Tree removal;
- iv) Landscaping;

- v) Lot consolidation; and
- vi) Strata subdivision

The development is divided into four separate built forms that are located towards each corner of the site, in response to existing site constraints and to reduce bulk and scale. A driveway is proposed to be constructed through the centre of the site. A bridge is proposed to connect four dwellings at the rear of the site to the front of the site, with five dwellings proposed for the front portion of the site.

Public Voice Committee

The proposal was considered at a meeting of the Public Voice Committee on 17 September 2019. Concerns were raised with regards to traffic, carparking, local character, density, waste management and collection.

Following on from Public Voice Committee, Councillors requested the applicant speak with the objectors with a view to explore opportunities for additional car parking on site and discuss other relevant issues. Following discussion with the residents, the main issues that remained largely unresolved were car parking numbers and room for kerbside bin collection.

In response to these issues, the applicant has since amended the proposal to include an additional visitor car parking space at the rear of the site, adjacent to Unit 6. This results in a total three visitor parking spaces for the development, which exceeds the recommended NDCP 2012 rate of one visitor space per five dwellings (or part thereof).

It is considered that providing parking additional spaces in the front landscaped setback would be an undesirable outcome in terms of overall streetscape presentation. The area under the large trees to be retained was also investigated for the use of visitor parking. However, at the recommendation of the arborist, additional fill and hardstand would affect the roots and therefore the viability of the survival of these trees. As an asset to the site and area, these were deemed more appropriate to be retained.

With regard to waste collection, the applicant has provided a plan demonstrating the street frontage has sufficient capacity for 18 x 240L bins, including adequate separation between bins.

A copy of the submitted plans is appended at **Attachment A**.

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

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's public participation policy. The notification period was extended due to the Christmas holiday period and included properties located within the Lake Macquarie Local Government Area. Thirty-nine submissions have been received.

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

- a) **Statutory and Policy Issue**
 - i) Zoning objectives
 - ii) Permissibility

- b) **Amenity Issue**
 - i) Increased noise
 - ii) Loss of view and outlook
 - iii) Loss of privacy

- c) **Design and Aesthetic Issue**
 - i) Density and number of dwellings proposed
 - ii) Bulk and scale
 - iii) Building height
 - iv) Character

- d) **Traffic and Parking Issue**
 - i) Increased demand for on street parking
 - ii) Increased traffic within the street

- e) **Environment**
 - i) Impact on existing stormwater and sewerage system
 - ii) Water quality
 - iii) Rubbish will fill the creek
 - iv) Excessive water run off
 - v) Tree removal
 - vi) Potential for flooding
 - vii) Design of bridge with central supporting structure will disturb the creek bed
 - viii) The proposed construction will impact on noise and dust/air pollution

- f) **Miscellaneous**
 - i) Waste management
 - ii) Garbage collection
 - iii) Loss of property value

The objectors' concerns are addressed under the relevant matters for consideration in **Section 5.0** of this report.

4.0 INTEGRATED DEVELOPMENT

The proposal is integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979*, as approval is required from the New South Wales Rural Fire Service (NSW RFS) under Section 100B of the *Rural Fires Act 1997*.

The NSW RFS granted their '*General Terms of Approval*', on 11 March 2019 (copy included at **Attachment D**).

5.0 PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, as detailed hereunder.

5.1 Provisions of any environmental planning instrument

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

SEPP 55 applies to the proposed development and contains planning controls for the remediation of contaminated land.

Prior to granting consent to the carrying out of any development, the consent authority is required to give consideration as to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

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

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

The Vegetation SEPP works together with the Biodiversity Conservation Act 2016 and the Local Land Services Amendment Act 2016 to create a framework for the regulation of clearing of native vegetation in NSW. It contains provisions similar to those previously contained in NLEP 2012 (relevant clause now repealed), providing that CN's Development Control Plan (NDCP 2012) can make declarations with regard to certain matters relating to vegetation and that CN may issue a permit for tree removal.

The proposal has been assessed in accordance with the NDCP 2012 and is considered to be satisfactory (assessment comments regarding the NDCP 2012 follow). The proposal is considered to be satisfactory with respect to the provisions of the Vegetation SEPP.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

The aim of the ISEPP is to facilitate the effective delivery of infrastructure across the State. The development is subject to requirements of the policy related to the impact of road noise or vibration on non-road development.

A Noise Impact Assessment has been prepared to assess the potential noise impacts from the Inner-City Bypass on the proposed dwellings. This assessment found that the proposed development is capable of complying with the adopted noise criteria.

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

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 Land Use Zones

The subject property is included within the R2 Low Density Residential zone under the provisions of NLEP 2012. The development is permissible with development consent as multi dwelling housing, which is a form of residential accommodation.

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

- i) To provide for the housing needs of the community within a low-density residential environment.*

Comment: The proposed development comprises the erection of nine dwellings on the site in a low-density environment. Each dwelling includes car parking and a landscaped area in accordance with CN's controls. Further, the proposed dwellings are two-storey homes which reflect the character of houses in the surrounding area. Due to the size of the lot, the proposed development has a Floor Space Ratio below the maximum prescribed level and the majority of the dwellings are below the maximum height provision. The proposal will provide for dwellings in a low-density environment.

- ii) To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment: The proposal is for residential accommodation only. This objective does not apply to this development proposal.

iii) To accommodate a diversity of housing forms that respects the amenity, heritage and character of surrounding development and the quality of the environment.

Comment: The proposed dwellings are considered to respect the amenity and character of surrounding development through siting and design.

The proposed dwellings are designed to minimise potential overlooking and overshadowing to surrounding properties.

The proposal will result in a significant portion of the site being retained as green space, reflecting the character of the surrounding area. The existing open drainage line and significant trees are to be retained.

Clause 2.7 Demolition Requires Development Consent

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

Clause 4.3 Height of Buildings

Under NLEP 2012 the site has a height of buildings development standard of 8.5m.

Six of the nine dwellings comply with the 8.5m building height control.

The height non-compliance is limited to a small part of the roof forms of dwellings 2, 3 & 5 and is principally due to the slope of the site. These proposed dwellings reach a height of 9.23m. Numerically, this results in an 8.5% increase on the height of buildings development standard prescribed by clause 4.3.

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

Clause 4.4 Floor Space Ratio

Under NLEP 2012 the site has a maximum floor space ratio of 0.6:1. The proposed FSR is 0.46:1 and complies with this requirement.

Clause 4.6 Exceptions to development standards

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

1. Clause 4.3 (Height of Buildings) is not excluded from the operation of this clause; and
2. The applicant has prepared a written request, requesting that CN vary the development standard and demonstrating that:
 - a) *Compliance with the development standards is unreasonable or unnecessary in the circumstances of the case, and*
 - b) *There are sufficient environmental planning grounds to justify contravening the development standard.*

The applicant's written submission contends that enforcing compliance with the 8.5m building height development standard is unreasonable or unnecessary in the circumstances. An extract of the applicant's request to vary the development standard is provided below:

“What are the objectives of the development standard?”

The objectives of Clause 4.3 – Height of Buildings are as follows:

- a) *to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,*
- b) *to allow reasonable daylight access to all developments and the public domain.*

What is the proposed numeric value of the development standards in your development application?

Small parts of the roof form of units 2, 3 & 5 exceed the 8.5m height limit as the ground falls away towards the drainage easement. The maximum variation reaches a height of 9.23m. Numerically, this results in an 8.5% increase on the height limit prescribed by clause 4.3.

Overall, it is submitted that the development is consistent with the objectives of Clause 4.3 for the following reasons:

The exceedance to the height limit is not proposed to create additional floor space, a larger built form or additional living space. Rather, the associated retaining and earthworks required to resolve the retention and enhancement of the existing open course drainage line and tree retention creates a valley within the site that results in an abnormal ‘dip’ in the topography, the mere definition of meeting height controls does not consider potential prominent topographic undulations.

Consequently, the proposed built form responds well to the site, its layout and surrounds. The additional built form relates only to part of a pitched roof area

and will not result in any additional amenity impacts to neighbouring developments or future schemes as proposed on this site.

Modifying the scheme to strictly comply with the numerical control will result in an architectural form that would be uncondusive to the site design and architectural character being created as part of this application. Alternatively, cutting the two units into the site further will create a detrimental environmental impact to the drainage line and its hydraulic considerations and the structural root zones of the retained vegetation.

Are there Sufficient Environmental Planning Grounds?

Specifically, due to the topographic limitations and intention to retain and enhance and environmental features on the site, three small volumes of roof ridge lines exceed the maximum height limit of 8.5m as prescribed by this clause.

Presented numerically, although only three small prisms exceed the envelope, the maximum point of exceedance is 9.23m. This is represented as an 8.5% variation to the development standard.

It is concluded that applying the development standard to this development would be both unnecessary and unreasonable. Importantly, the resultant built form results in a positive built form that has been architecturally treated to respectfully respond to the steep slope.

Comparatively, it has been demonstrated that to comply with the numerical standard would result in a poor development outcome detrimental to the enhancement of drainage easement, an asset to the development.”

Officer's comment

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

- a) It adequately addresses the matters required to be demonstrated by clause 4.6(3) of NLEP 2012; and
- b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standards and the objectives for development within the R2 Low Residential zone in which the development is proposed to be carried out; and
- c) The Secretary's (ie. of the Department of Planning, Industry and Environment) concurrence to the exception to the height of buildings development standard as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS18-003 of 21 February 2018; and
- d) The applicant has demonstrated that the standard is unreasonable and unnecessary in this instance, that the proposed height, scale and density of development is consistent with the character and height of surrounding

developments in the area and is in accordance with the relevant zone objectives. The proposed variations would not result in any significant impacts and therefore the proposal has planning merit.

The proposed exceptions to the height of building development standard of NLEP 2012 is an acceptable planning outcome and, in this instance, requiring strict compliance would be unreasonable and unnecessary. The proposed variations to the development standard in this instance does not cause any undue adverse environmental impacts, including impacts on neighbouring properties in terms of overshadowing and visual privacy.

The proposal is consistent with the intended urban form within the R2 Low Density Residential zone, having regard to the combination of controls under NLEP 2012 and NDCP 2012.

The request for the height of the proposed building to exceed the 8.5m building height is supported.

Clause 6.1 - Acid Sulfate Soils

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

Clause 6.2 - Earthworks

The level of earthworks proposed to facilitate the development is considered to be acceptable having regard to this clause. The design suitably minimises the extent of proposed earthworks, having regard to the existing topography.

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

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

5.3 Any development control plan

Newcastle Development Control Plan (NDCP 2012)

The main planning requirements of relevance in the NDCP 2012 are discussed below.

Residential Development - Section 3.03

The objective of this section of the NDCP 2012 is to improve the quality of residential development. This can be achieved through a design that has a positive impact on the streetscape through its built form, maximising the amenity and safety on the site and creating a vibrant place for people to live in a compact and sustainable urban form.

The following comments are made concerning the proposed development and the relevant provisions of Section 3.03:

Principal controls (3.03.01)

A. Frontage widths

The NDCP 2012 provides that the site should have a minimum frontage width of 18 metres for the proposed multi-dwelling housing (the site is mapped within a limited growth precinct).

The site has a combined site frontage of 30m and complies with this requirement.

B Front setbacks

The proposed front setback is reasonably consistent with the existing streetscape. A minimum setback of 5.5m is provided for, which is greater than the existing dwelling and the neighbouring dwellings.

C. Side and rear setbacks

It is noted that a small portion of units 6 and 9 at the rear of the site encroach into the 3m rear setback control. The rear boundary of the site adjoins a 5m high concrete acoustic wall and this setback has been purposely reduced in this instance. The dwellings are designed to turn their back on this wall in order to increase the amenity of the site and to prioritise the outlook towards the front of the site. The proposed rear setback does not result in adverse amenity impacts to neighbouring properties.

Side and rear setbacks are considered acceptable from a separation and building envelope perspective.

D. Landscaped Area

The NDCP 2012 requires a minimum landscaped area of 30% and minimum deep soil zone of 15%. A total of 919m² (30%) of landscaped areas is provided, with the majority being for deep soil planting. Landscaped areas are distributed throughout the site and incorporated into both private open space and communal open space areas. Two large pine trees in the centre of the site are to be retained and incorporated into the overall landscape design.

Siting the development (3.03.02)

A. Local character and context

The proposed development is consistent with the local character and context. The proposed dwellings are two-storey in form and are to be constructed of a mix of lightweight cladding and face brick. The proposal includes four separate built forms across the site with adequate landscaping, which assists with minimising bulk and

scale. The scale and materials proposed reflect the existing dwellings within the locality. The proposed development is considered to achieve the objectives and controls within this section of the NDCP 2012 and is acceptable.

B. Public domain Interface

The proposed development achieves the controls within this section of the NDCP 2012 and is acceptable.

C. Pedestrian and vehicle access

A 6m wide internal driveway is provided through the centre of the site, providing access to all units and visitor parking. The driveway is overlooked by windows from habitable rooms of each proposed dwelling. Adequate space is provided for vehicle manoeuvring.

D. Orientation and siting

The buildings have been designed to address both the street frontage and the existing natural landform, particularly the open drainage easement passing through the centre of the site.

E. Building Separation

The nine townhouses are separated into four separate built forms, located towards each corner of the site in order to accommodate the open drainage easement.

The building separation between the northern and southern building is 6m and the separation between the eastern and western buildings is between 22m and 30m, exceeding the DCP requirements.

Amenity (3.03.03)

A. Solar and daylight access

There will be some additional overshadowing to the south, in comparison to the existing dwelling on site. The building mass along the southern boundary has been broken up into separate forms to reduce the overshadowing impact to the neighbour. Shadow diagrams demonstrate the level of overshadowing to be acceptable.

In terms of the site itself, direct sunlight is provided to the private open space and living rooms of each proposed dwelling, in excess of the minimum hours required. The siting of the private open space and living rooms is acceptable.

B. Natural ventilation

The proposed development achieves the objectives and controls within this section of the DCP and is acceptable.

C. Ceiling heights

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

D. Dwelling size and layout

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

E. Private Open Space

The proposed development achieves the private open space and siting requirements within this section of the NDCP 2012 for all dwellings and is acceptable.

F. Storage

The proposed development achieves the storage requirements within this section of the DCP and is acceptable.

G. Car and bicycle parking

The proposed development achieves the minimum garage setback distance required within this section of the NDCP 2012 and is acceptable. Car and bicycle parking provision is further assessed within the NDCP 2012 Section entitled *Traffic, Parking & Access - Section 7.03*.

H. Visual privacy

The proposed development has been sited and orientated to ensure visual privacy between the buildings within the site. This is achieved through the separation distances provided and the retention of the existing watercourse and two large mature trees in the centre of the site.

To maintain visual privacy and minimise overlooking of neighbouring properties, the buildings have been designed to limit impacts on adjacent dwellings.

I. Acoustic privacy

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and the development is acceptable.

J. Noise and pollution

A Noise Impact Assessment has been carried out for the proposed development and is found to be acceptable, subject to recommendations to be implemented at construction certificate stage.

Configuration (3.03.04)

A. Universal design

All units are capable of compliance with the Liveable Housing Design Guidelines Silver Level and is acceptable.

B. Communal area and open space

The drainage easement is being embellished to become a site feature and will also be utilised by residents as a large communal area of open space.

C. Architectural design and roof form

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

D. Visual appearance and articulation

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

E. Pools and ancillary development

The plans do not include pools or spas, detached studio or outbuildings therefore these controls do not apply.

Environment (3.03.05)

A. Energy efficiency

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

B. Water management and conservation

The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable. Stormwater treatment and disposal has been provided in accordance with Section 7.06 of the NDCP 2012.

C. Waste management

The proposal provides for adequate bin storage within the garage of each dwelling. Each dwelling will be provided with three x 240 litre bins, with waste collection proposed from kerbside. The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable. Waste management and servicing is further discussed within the NDCP 2012 Section entitled *Section 7.08 Waste Management*.

Overall, the proposed development is considered acceptable in relation to Section 3.03 (Residential Development) of the NDCP 2012 and achieves relevant acceptable solutions and performance criteria for building form, building separation and residential amenity. The development establishes a scale and built form appropriate for its location. The proposal provides good presentation to the street with good residential amenity, while maintaining a reasonable standard of privacy for adjoining neighbours.

Flood Management - Section 4.01

The site is not identified as being flood prone, however, a localised flood impact study has been undertaken to calculate the water flows through the drainage easement. CN's Senior Development Officer (Engineering) has provided the following comments in relation to the proposal:

“There is a drainage easement that flows south to north through the middle of this property. There is a bridge which will connect four dwellings to the rear with five dwellings at the front. With no previous flood modelling by CN, the applicant has provided a Flood Risk Assessment to assess the flooding impacts of the watercourse to the development.

Consideration has been given to flood safety and access to the rear dwellings during a flood event. As the underside of the bridge is set to the approximate PMF level, and with negligible impacts to upstream flow as per advice provided within the Flood Risk Assessment, it is considered that reasonable access to the dwellings should be maintained during all modelled flooding events. All dwellings are located above the PMF and will not require refuge during flood events.

Correspondence with the Natural Resources and Assets Regulator have confirmed that the open drainage easement is not a water course and will not require a Controlled Activity Approval under the Water Management Act.

Accordingly, the proposal is acceptable in relation to flooding.”

Bush Fire Protection - Section 4.02

The site is identified as being bush fire prone and conditional approval for the proposed development has been granted by the NSW Rural Fire Service.

Mine Subsidence - Section 4.03

The site is located within a proclaimed Mine Subsidence District. However, the site is located within an area that has no building restrictions for residential development. Accordingly, the proposal is not required to be endorsed by Subsidence Advisory NSW.

Safety and Security - Section 4.04

The development has been designed to address crime prevention through the use of passive surveillance, territorial reinforcement, access control and space and activity management. The proposed development is considered to be acceptable in this respect. Further crime risk assessment is not required as the proposal is for less than 10 dwellings.

Social Impact - Section 4.05

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

The development provides for increased housing choice in the locality, which is considered to be a positive social outcome.

Soil Management - Section 5.01

Earthworks are proposed as part of the development. Details of sediment control have been provided by the applicant and are considered to be acceptable. The proposed development achieves the objectives and controls within this section of the NDCP 2012.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP55.

Vegetation Management - Section 5.03

A Biodiversity Assessment Report has been prepared to assess the impact of the development on listed threatened species, populations, ecological communities and their habitats. The results of the report concluded there was a negligible loss of native vegetation and no impact on any threatened species.

An Arborist's Report has been submitted with the application, providing an assessment of the potential impact of the development on all 21 trees on site and a further 10 trees on adjacent properties. 18 trees are proposed to be removed on the subject site. A number of these trees have been identified as weed species, with the remainder primarily being young, semi mature trees that generally have small canopies and are of minimal retention value.

The submitted report has been prepared in accordance with CN's tree assessment requirements and it is considered that the proposed tree removal is acceptable.

A management program for the remaining trees will be prepared prior to commencement of the proposed construction works, in line with the recommendations in the report.

Owner's consent from the adjoining property owner at No.116A Charlestown Road has been provided to support the removal of a tree located on the shared boundary of the subject site.

The amenity of the area will not be significantly impacted in respect of the local character and appearance. Compensatory planting is proposed and appropriate conditions have been recommended.

Aboriginal Heritage - Section 5.04

Reference to the Aboriginal Heritage Information Management System confirmed that there are no sites of Aboriginal significance recorded on the site.

Archaeological Management - Section 5.06

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

Landscape Open Space & Visual Amenity - Section 7.02

A landscape plan has been provided with the development application in accordance with this section of the NDCP 2012.

Private ground floor decks are provided for each dwelling, in addition to deep soil planting for each unit. Suitable screening will be provided between each courtyard area to ensure privacy for each dwelling.

An extensive landscaped common area is provided in the centre of the site, in consideration of the existing site constraints, and includes:

- i) Retaining mature Norfolk Island Pines.
- ii) Retaining and incorporating the drainage easement into the landscape design with the removal of weeds and new embankment and riparian planting.
- iii) Passive recreation areas including open lawn areas for communal activities.
- iv) Buffer planting to provide a physical separation between private open space terrace areas and common open space terrace areas.
- v) All proposed plant species selection has been considered in terms of soil types, species hardiness and on-going watering maintenance requirements. Screen shrubs are proposed along the side and rear boundaries, while larger existing trees along the boundary are proposed to be retained along with two nature trees in the centre of the development for shade and amenity

The proposed landscaping accords with the controls in this Section and is acceptable.

Traffic, Parking & Access - Section 7.03

One parking space per dwelling has been allocated within single garages that have been integrated into the buildings. Three visitor spaces are provided on the site in optimal locations, to ensure functionality and to reduce the need for on-street parking. This includes the additional visitor space following consultation after Public Voice Committee. This results in additional car parking being provided on site than required.

Car parking access has been assessed by CN's Development Officer (Traffic) and is considered acceptable subject to relevant conditions.

Section 7.05 - Energy efficiency

The proposal is acceptable having regard to this section.

Stormwater - Section 7.06 & Water Efficiency - Section 7.07

The proposed stormwater management plan is in accordance with the relevant aims and objectives of the NDCP 2012. CN's Senior Development Officer (Engineering) has provided the following comments in relation to the proposal:

"The development proposal has approximately 1670m² of impervious area out of a total site area of 2398m² which will require 30m³ of onsite retention. With 4000L water tanks provided for each of the nine dwellings and 12m³ provided between two detention tanks (with sand filters) the on-site retention is acceptable to Council.

CN's Development Officer (Engineering) has assessed the proposal and has confirmed it is acceptable subject to the inclusion of specific conditions of consent.

Accordingly, the proposal is acceptable in relation to water management.

Waste Management - Section 7.08

The applicant has submitted a waste management plan that addresses waste minimisation and litter management strategies. Demolition and waste management will be subject to conditions recommended to be included in any development consent to be issued.

There is adequate room to support storage of residential waste bins within the garages of individual dwellings and sufficient space along the site frontage to adequately store the bins on collection day.

Waste collection vehicles will be able to stop along the site frontage for pick-up at the driveway location without significantly impacting traffic. It is a recommendation of this report that a condition of consent be included that to ensure bins are returned to garage areas on the same day after collection.

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

Public Participation - Section 8.0

The application was publicly notified in accordance with CN's public participation policy and 39 submissions were received. The notification period was extended due to a holiday period and also included properties located within the Lake Macquarie Local Government Area.

Comments are provided in Section 5.8 below.

Development Contributions

The *Environmental Planning and Assessment Act 1979* enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's *Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019*. A condition requiring this contribution to be paid has been included in the Draft Schedule of Conditions (refer to **Attachment B**).

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*. In addition, compliance with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

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

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

The proposed development will not have any undue adverse impact on the natural or built environment. The development is compatible with the existing character, bulk, scale and massing of development in the immediate area. It is considered that the proposal will not have any negative social or economic impacts.

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

The proposed development is acceptable having regard to the proposed height, external appearance, character, bulk and scale.

b) Traffic, Access and Parking

The proposal has been assessed by CN's Senior Development Officer (Traffic) and found to be acceptable, subject to draft conditions included in **Attachment B**. CN's Senior Development Officer (Traffic) provided the following comments:

"Driveway Location and Design

The plans show a 6m wide driveway crossing in the approximate location of the existing driveway. The location of the driveway is suitable however the width will need to be reduced to 4.5m in accordance with CN Standard Drawing A1300.

The grades on the driveway appear to be in accordance with AS2890 with no grades greater than 25% and no grade changes greater than 12.5%.

Bridge Design

As per flood management advice above the bridge is required to be a single span with support piers to be outside the existing drainage easement. Separate to this the bridge is to be designed in accordance with AS5100 and be certified by an accredited structural engineer.

Suitable vehicle barriers are to be provided in accordance with the BCA and Australian Standards and details of which are to be included for the Construction Certificate.

Parking Layout

Suitable turning paths for each of the resident and visitor parking has been provided. Suitable kerbing or barrier protection is to be provided on the northern side of the driveway leading up to the bridge abutment to limit reversing cars from the visitor parking spaces overshooting the edge of the driveway."

It is considered that the traffic, parking and access aspects of the proposed development are acceptable. Furthermore, it is also acknowledged that an additional visitor parking space has now been provided following discussion with the objectors after Public Voice Committee.

c) Amenity (Privacy, Overshadowing & Views)

Privacy

The proposal is considered acceptable and has considered the visual and acoustic privacy of surrounding properties and within the development site itself.

The living areas of all dwellings are provided at ground floor level to reduce the potential for overlooking from the upper floors of the proposed dwellings. The upper floors of each dwelling comprise of bedrooms and bathrooms.

It is considered that the buildings have been designed to suitably limit privacy impacts on adjacent premises.

Overshadowing

Due to the orientation of the site and siting of the proposed dwellings, overshadowing analysis is relevant to the properties to the south only. The proposed development will not result in undue overshadowing of existing residential properties. The overshadowing of adjoining buildings and the surrounding area is considered to meet CN’s controls and is acceptable in this regard.

View Loss

The development does not result in an unreasonable impact on views or outlook. There are no significant views that will be impacted in this location. The proposed development will alter the general outlook due to a change to the size and scale of buildings on the site, but this is considered to be acceptable.

d) Environmental

The proposal has been assessed by CN’s Environmental Health Coordinator with regard to ecological impacts and noise and is acceptable subject to conditions as recommended.

5.7 The suitability of the site for the development

The site is located within an R2 Low Density Residential zone and is suitable for the development. The proposed development comprises the erection of two-storey dwellings, consistent with the scale and type of housing stock in the locality.

A high-quality level of housing will be created to offer a range of suitable housing options in an established suburb, close to suitable infrastructure and facilities.

The site is an appropriate size to accommodate the proposed development while protecting the natural and built environment. In addition, the proposed development is considered to minimise the impact on the amenity of neighbouring properties.

The site is not affected by significant environmental constraints that would preclude development.

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

The key issues raised within the 39 submissions have been discussed previously in this report. The following table provides a further summary of the issues raised and a response to those issues.

Issue	Comment
Permissibility and zone objectives	The proposed development comprises the erection of multi dwelling housing which is a form of ‘residential accommodation’ as defined within NLEP 2012.

Residential accommodation is permitted with consent within the R2 land use zone. As such, the proposed development is permitted in the R2 zone and complies.

Building height, character, bulk and scale The proposed development is acceptable having regard to the proposed height, external appearance, character, bulk and scale

The proposal is consistent with the intended urban form within the area, having regard to the combination of controls under NLEP 2012 and the NDCP 2012.

A high quality standard of housing will be created to offer a range of suitable housing options in an established suburb close to suitable infrastructure and facilities.

Density and number of dwellings The proposed development has a floor space ratio of 0.46:1 which is significantly below the development standard of 0.6:1

Privacy The living areas of all dwellings are provided at ground floor level to reduce the potential for overlooking from the upper floors of the proposed dwellings. The upper floors of each dwelling comprise of bedrooms and bathrooms.

It is considered that the buildings have been designed to suitably limit privacy impacts on adjacent premises.

View loss As discussed in the above report, the development will alter the general outlook due to the proposed changes in the size and scale of buildings on the site, but this is considered to be reasonable.

Flooding The proposal has been assessed by CN's Senior Engineer (Stormwater and drainage) and is considered acceptable in relation flooding.

Tree removal The submitted reports concluded that there was a negligible loss of native vegetation and no impact on any threatened species. Compensatory planting is proposed, and the amenity of the area will not be significantly impacted.

Impact on existing stormwater and sewerage system A stormwater plan was submitted with the application. The proposed stormwater treatment is acceptable subject to the inclusion of recommended conditions.

Increased traffic The proposed development exceeds the parking requirements of the NDCP 2012. The additional traffic generated will not significantly impact on the road network and is considered sustainable in the long term.

It is also acknowledged that an additional visitor parking space has now been provided, following discussion with the objectors after Public Voice Committee.

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

The bridge design, with central supporting structure will disturb creek bed It is recommendation of this report that the design of the bridge will be amended to be a single span structure with all supporting elements located outside the drainage easement, instead of having a central supporting structure within the easement. This is included as a condition of consent.

Waste management and garbage collection The site's frontage measures 30m and the proposal allows for sufficient space on the kerb to cater for kerb-side collection of the required bins.

Increased noise It is considered that the proposed development is unlikely to generate an appreciable increase in noise.

Impacts on property values This concern is not a matter for consideration under the provisions of the *Environmental Planning and Assessment Act 1979*.

There are no significant external impacts associated with the proposal. The application has demonstrated that there will be no significant adverse traffic impacts and it is considered that the development does not cause any significant overshadowing, privacy impacts or view loss for adjacent properties.

It is considered that the issues and concerns raised in the submissions do not warrant the refusal of the application in its present form or necessitate any further amendments. The proposed development does not raise any other significant general public interest issues beyond matters already addressed in this report.

The proposal is considered an acceptable form of development for the site as discussed within this report.

5.9 The public interest

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

The proposed development will not have any undue adverse impact on the natural or built environment and is compatible with the existing character, bulk, scale and massing of development in the immediate area. It is considered that the proposal will not have any negative social or economic impacts.

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

The proposal is consistent with CN'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.

The proposed development provides for the orderly economic development of the site for purposes for which it is zoned and will not have any negative social or economic impacts.

The proposal is considered an acceptable form of development for the site, as discussed within this report.

6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

ATTACHMENTS

Item 15 - Attachment A: Submitted Plans - Under Separate Cover - 131 Marshall Street Kotara

Item 15 - Attachment B: Draft Schedule of Conditions - 131 Marshall Street Kotara

Item 15 - Attachment C: Processing Chronology - 131 Marshall Street Kotara

Item 15 - Attachment D: NSW Rural Fire Service General Terms of Approval

Item 15 - Attachment B

DRAFT SCHEDULE OF CONDITIONS



Application No:	DA2019/00058
Land:	Lots A and B DP 402667
Property Address:	131 Marshall Street Kotara NSW 2289
Proposed Development:	Demolition of dwelling, erection of nine two storey dwellings and strata subdivision

SCHEDULE 1

APPROVED DOCUMENTATION

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

Plan No / Supporting Document	Reference / Version	Prepared by	Dated
Site Analysis	DA004(E)	CKDS	11.01.2019
Ground Floor Plan	DA101(E)	CKDS	11.01.2019
First Floor Plan	DA102(E)	CKDS	11.01.2019
Roof Plan	DA103(E)	CKDS	11.01.2019
Elevations 1	DA201(E)	CKDS	11.01.2019
Elevations 2	DA202(E)	CKDS	11.01.2019
Elevations 3	DA203(E)	CKDS	11.01.2019
Sections	DA300(E)	CKDS	11.01.2019
Building Heights 1	DA402(E)	CKDS	11.01.2019
Building Heights 2	DA403(E)	CKDS	11.01.2019
Material Palettes	DA404(E)	CKDS	11.01.2019
Perspectives	DA405(E)	CKDS	11.01.2019
Landscape Plan	1	Xeriscapes	17.01.2019
Biodiversity Assessment Report	-	RPS	
Noise Impact Assessment	-	Spectrum	December 2018
Bushfire Report	-	MJD	12.12.2018
Arborist Report	-	Bradley magus	20.11.2018
Flood Risk Assessment	-	BMT	24.09.2018

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

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

2. A total monetary contribution of \$27,211.20 is to be paid to the City of Newcastle, pursuant to Section 7.12 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's *Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019*.
- b) The City of Newcastle's *Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019* 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.
- 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 as follows:

Indexation quarters	Approx release date
September	Late October
December	Late January
March	Late April
June	Late July

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

- 3. The car parking and vehicular access is to be designed to comply 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.
- 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. 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.
- 6. Roof water from the proposed new work is to be directed to the proposed water tanks and being reticulated to any new toilet cisterns and cold water washing machine taps, with a mains water top up being installed to maintain between 10% and 15% of the tank capacity. Alternatively, an electronically activated mechanical valve device is to be installed to switch any new toilet cisterns and laundry taps to mains water when the tanks falls below 10% capacity. The water tanks and plumbing are to be designed in accordance with the Plumbing Code of Australia (National Construction Code Volume 3). Full details are to be included in documentation for a Construction Certificate application.
- 7. All stormwater runoff from the proposed development being managed in accordance with the requirements of Element 7.06 'Stormwater' of Newcastle Development Control Plan 2012, the associated Technical Manual and the latest issue of AS 3500.3

as applicable, as indicated on the stormwater management concept plan prepared by MPC Consulting Engineers (Drg. No. 190172- C03, C04, C05, C06 dated 16/01/2019). Full details are to be included in documentation for a Construction Certificate application.

8. 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.
9. 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 landscape plan and specification. The plan and specifications are to be prepared 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.

10. 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.
11. The proposed bridge design is to be amended in accordance with the following criteria:
 - a) The bridge is to be a single span structure with supporting elements outside the existing drainage easement.
 - b) The bridge is to be designed in accordance with relevant Australian Standards and certified by an accredited structural engineer.
 - c) The underside of the bridge is to be set at a minimum height of 81.75m AHD.
 - d) Suitable vehicle barriers are to be provided in accordance with relevant Australian Standards.

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

12. A residential vehicular crossing is to be constructed across the road reserve, in

accordance with the following criteria:

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

These works are not approved until consent under Section 138 of the *Roads Act 1993* has been granted by City of Newcastle. An application under Section 138 must be lodged and consent obtained, or other satisfactory arrangements confirmed in writing from City of Newcastle, before the issue of a Construction Certificate.

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

13. Building demolition is to be planned and carried out in accordance with Australian Standard 2601:2001 - The Demolition of Structures.
14. Tree removal and retention shall be carried out in accordance with the Arborist Report prepared by Bradley Magus Valuation Solutions dated 20 November 2018.
15. 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 City of Newcastle (marked to Attention: Regulatory Services) and the demolisher prior to commencement of work.
16. 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.
17. 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 City of Newcastle's approval to position the container on the adjacent public road in accordance with City of Newcastle's adopted Building Waste Container Policy.

18. All demolition material incapable of being re-used in future redevelopment of the site is to be removed from the site and the site being cleared and levelled.

Note: Where reusable building materials are to be stored on site for use in future building works, such materials are to be neatly stacked at least 150 mm above the ground.

19. The demolisher is to ensure that all demolition material is kept clear of the public footway and carriageway as well as adjoining premises.
20. An assessment of the likelihood of the presence of any Aboriginal sites in relation to the proposed development area is to be undertaken to comply with the requirements of the *National Parks and Wildlife Act 1974* and the significance and requirements for the protection of any sites being incorporated into the documentation for a

Construction Certificate application. Written confirmation that the National Parks and Wildlife Service's requirements have been met shall be submitted to City of Newcastle prior to engineering works commencing. Any submitted archaeological study shall be accompanied by a letter from the appropriate Local Aboriginal Land City of Newcastle stating that they are satisfied with the study process and that appropriate arrangements are in place for continued consultation during development of the site.

Note: It is illegal to knowingly damage, deface or destroy a 'relic' or Aboriginal Place without the Director's prior written consent.

21. 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*.

22. 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.

23. An application is to be made to and approved by City of Newcastle 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*, *Work Health and Safety Regulation 2011* and any relevant approved industry code of practice. Notice of intention of commencement must be given to WorkSafe NSW.

24. 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.

25. All building work must be carried out in accordance with the provisions of the National Construction Code.
26. 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.
27. 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.
28. Prior to commencement of site works the developer is to submit to City of Newcastle for approval a Construction Traffic Management Plan addressing traffic control measures to be utilised in the public road reserve during the construction phase.
29. 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.
30. 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.

31. City of Newcastle'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 City of Newcastle for the duration of demolition and construction work.

The sign can be obtained by presenting your development application receipt at City of Newcastle's Customer Enquiry Counter, Wallsend Library or the Master Builders Association Newcastle.

32. Any excavated material to be removed from the site is to be assessed, classified, transported and disposed of in accordance with the Department of Environment and Climate Change's '*Waste Classification Guidelines Part 1: Classifying Waste*'.
33. 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.
- 34. 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.
- 35. 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.
- 36. All external items of air conditioning plant are to be screened or positioned in such a manner as to not detract from the visual presentation of the building.

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

- 37. 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 City of Newcastle within fourteen days of receipt.
- 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. Any damage to the watercourse within the easement during the construction works is to be repaired. Full restoration and rehabilitation of any damage is to be carried out to Council's satisfaction prior to the issue of any occupation certificate.
- 40. A copy of the stormwater drainage design plans approved with the Construction Certificate with 'work as executed' levels indicated, shall be submitted to the Principal Certifying Authority and to 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.
- 41. 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.

42. 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.
43. 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 City of Newcastle'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.
44. 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 the interim or final Occupation Certificate (whichever occurs first).
45. Appropriate acoustic treatment is to be implemented in accordance with the recommendations set out in the report prepared by Spectrum Acoustics, dated December 2018. Written final certification confirming the recommended acoustic treatment has been implemented in accordance with the requirements of the above report is to be submitted to the Principal Certifying Authority and City of Newcastle prior to the issue of an Occupation Certificate.
46. 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*.

ADVISORY MATTERS

- It is recommended that, prior to commencement of work, the free national community service 'Dial before you Dig' be contacted on 1100 or by fax on 1200 652 077 regarding the location of underground services in order to prevent injury, personal liability and even death. Inquiries should provide the property details and the nearest cross street/road.
- Any necessary alterations to public utility installations are to be at the developer/demolisher's expense and to the requirements of both City of Newcastle and any other relevant authorities. City of Newcastle and other service authorities should be contacted for specific requirements prior to the commencement of any works.
- Any approval for fences on side boundaries, common to other private properties, is independent of any consent or agreement which may be required of any adjoining owner under the provisions of the *Dividing Fences Act 1991*.
- Prior to commencing any building works, the following provisions of Division 6.2 of the *Environmental Planning and Assessment Act 1979* are to be complied with:
 - a) A Construction Certificate is to be obtained; and
 - b) A Principal Certifier is to be appointed for the building works and City of Newcastle is to be notified of the appointment; and
 - c) City of Newcastle is to be given at least two days notice of the date intended for commencement of building works.
- 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*.

- The 3 visitor parking spaces are to be clearly marked and signposted for the sole use by visitors. Visitor car parking shall be assigned to the common property should the development be strata subdivided.
- It is an offence under the provisions of the *Protection of the Environment Operations Act 1997* to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ('*on-the-spot fine*') or prosecution.
- Failure to comply with the conditions of consent constitutes a breach of the *Environmental Planning and Assessment Act 1979*, which may be subject to a penalty infringement notice ('*on-the-spot fine*') or prosecution.
- For the purpose of applying the provisions of the National Construction Code for class 1 buildings, it is advised that the proposed building is located in a Flood Hazard Area and the:
 - a) Defined Flood Level (DFL) is 81.9m Australian Height Datum (AHD)
 - b) Flood Hazard Level is 82.4m AHD (Freeboard is 500mm above DFL)

END OF CONDITIONS

SCHEDULE 2

NSW RURAL FIRE SERVICE GENERAL TERMS OF APPROVAL

General Terms of Approval, under Division 4.8 of the *Environmental Planning and Assessment Act 1979*, and a Bush Fire Safety Authority, under Section 100B of the *Rural Fires Act 1997*, are issued subject to the following conditions:

Asset Protection Zones

1. At the issue of subdivision certificate and in perpetuity the entire property shall be managed as an inner protection area 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'*.

Design and Construction

2. All new fencing shall be non-combustible.
3. Construction of the north-western building (units 1, 2 and 3), except for the southern and western elevations, shall comply with section 3 and section 7 (BAL 29) Australian Standard AS3959-2009 *'Construction of buildings in bush fire-prone areas'* or NASH Standard (1.7.14 updated) *'National Standard Steel Framed Construction in Bushfire Areas – 2014'* as appropriate and section A3.7 Addendum Appendix 3 of *'Planning for Bush Fire Protection 2006'*.
4. Construction of the southern and western elevations of the north-western building (units 1, 2 and 3) shall comply with section 3 and section 6 (BAL 19) Australian Standard AS3959-2009 *'Construction of buildings in bush fire-prone area'* or NASH Standard (1.7.14 updated) *'National Standard Steel Framed Construction in Bushfire Areas – 2014'* as appropriate and section A3.7 Addendum Appendix 3 of *'Planning for Bush Fire Protection 2006'*.
5. Construction of the north-eastern building (units 7, 8 and 9), except for the southern and eastern elevations, shall comply with section 3 and section 7 (BAL 29) Australian Standard AS3959-2009 *'Construction of buildings in bush fire-prone areas'* or NASH Standard (1.7.14 updated) *'National Standard Steel Framed Construction in Bushfire Areas – 2014'* as appropriate and section A3.7 Addendum Appendix 3 of *'Planning for Bush Fire Protection 2006'*.
6. Construction of the southern and eastern elevations of the north-eastern building (units 7, 8 and 9) shall comply with section 3 and section 6 (BAL 19) Australian Standard AS3959-2009 *'Construction of buildings in bush fire-prone area'* or NASH Standard (1.7.14 updated) *'National Standard Steel Framed Construction in Bushfire Areas – 2014'* as appropriate and section A3.7 Addendum Appendix 3 of *'Planning for Bush Fire Protection 2006'*.
7. Construction of the two southern buildings (units 4, 5 and 6) shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2009 *'Construction of buildings in bush fire-prone areas'* or NASH Standard (1.7.14 updated) *'National Standard Steel Framed Construction in Bushfire Areas – 2014'* as appropriate and section A3.7 Addendum Appendix 3 of *'Planning for Bush Fire Protection 2006'*.
8. The deck to unit 3 to be reduced in width by 0.2m to stay within the limit of BAL-29.
9. The deck to unit 7 to be reduced in width by 1m to stay within the limit of BAL-29.

SCHEDULE 3

REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; *Newcastle Local Environmental Plan 2012* and applicable State Environmental Planning Policies.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Newcastle Development Control Plan 2012.
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development has appropriate management and mitigation of impacts through conditions of consent.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- City of Newcastle has considered and accepted the proposed development standard variation made under Clause 4.6 of the Newcastle Local Environmental Plan 2012. The proposed 9.5% variation is considered acceptable in the particular circumstances of this case as the variation will not significantly overshadow the neighbouring properties, obstruct significant view corridors or result in negative privacy issues.
- Any issues raised in submission have been taken into account in the assessment report and where appropriate conditions of consent have been included in the determination.

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

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

Item 15 - Attachment C

THE CITY OF NEWCASTLE
Report to Development Applications Committee Meeting on
8 October 2019



PROCESSING CHRONOLOGY

DA2019/00058 - 131 Marshall Street Kotara

- 23 November 2018 - Pre-Development Application Meeting
 - 18 January 2019 - Application submitted
 - 22 January 2019 - Public Notification
 - 11 March 2019 - NSW Rural Fire Service General Terms of Approval issued
 - 17 September 2019 - Public Voice Meeting
 - 24 September 2019 - Additional information provided by applicant following Public Voice Committee Meeting
-

Item 15 - Attachment D

All communications to be addressed to:

Headquarters
4 Murray Rose Ave
Sydney Olympic Park NSW 2127

Headquarters
Locked Bag 17
Granville NSW 2142

Telephone: 1300 NSW RFS
e-mail: records@rfs.nsw.gov.au

Facsimile: 8741 5433



The General Manager
Newcastle City Council
PO Box 489
NEWCASTLE NSW 2300

Your Ref: DA2019/00058
Our Ref: D19/371
DA19020617249 PE

ATTENTION: William Toose

11 March 2019

Dear Mr Toose

**Integrated Development Application - A//402667 & B//402667 - 129 & 131
Marshall Street Kotara 2289**

I refer to your correspondence dated 1 February 2019 seeking general terms of approval for the above Integrated Development Application.

The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted. General Terms of Approval, under Division 4.8 of the 'Environmental Planning and Assessment Act 1979', and a Bush Fire Safety Authority, under Section 100B of the 'Rural Fires Act 1997', are now issued subject to the following conditions:

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 issue of subdivision certificate 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'.

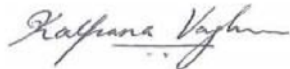
Design and Construction

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. All new fencing shall be non-combustible.
4. Construction of the north-western building (units 1, 2 and 3), except for the southern and western elevations, shall comply with section 3 and section 7 (BAL 29) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' or NASH Standard (1.7.14 updated) 'National Standard Steel Framed Construction in Bushfire Areas – 2014' as appropriate and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection' 2006'.
5. Construction of the southern and western elevations of the north-western building (units 1, 2 and 3) shall comply with section 3 and section 6 (BAL 19) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone area' or NASH Standard (1.7.14 updated) 'National Standard Steel Framed Construction in Bushfire Areas – 2014' as appropriate and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection' 2006'.
6. Construction of the north-eastern building (units 7, 8 and 9), except for the southern and eastern elevations, shall comply with section 3 and section 7 (BAL 29) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' or NASH Standard (1.7.14 updated) 'National Standard Steel Framed Construction in Bushfire Areas – 2014' as appropriate and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection' 2006'.
7. Construction of the southern and eastern elevations of the north-eastern building (units 7, 8 and 9) shall comply with section 3 and section 6 (BAL 19) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone area' or NASH Standard (1.7.14 updated) 'National Standard Steel Framed Construction in Bushfire Areas – 2014' as appropriate and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection' 2006'.
8. Construction of the two southern buildings (units 4, 5 and 6) shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' or NASH Standard (1.7.14 updated) 'National Standard Steel Framed Construction in Bushfire Areas – 2014' as appropriate and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection 2006'.
9. The deck to unit 3 to be reduced in width by 0.2m to stay within the limit of BAL-29.
10. The deck to unit 7 to be reduced in width by 1m to stay within the limit of BAL-29.

Should you wish to discuss this matter please contact Peter Eccleston on 1300 NSW RFS.

Yours sincerely



Kalpana Varghese
Team Leader, Development Assessment and Planning

For general information on bush fire protection please visit www.rfs.nsw.gov.au

ITEM-16 **DAC 08/10/19 - DA2019/00331 - 164 HUNTER STREET, NEWCASTLE - ALTERATIONS AND ADDITIONS TO EXISTING BUILDING FOR ADAPTIVE RE-USE TO FIVE STOREY (PLUS BASEMENT) LEVEL MIXED-USE (COMMERCIAL, RETAIL & RESIDENTIAL DEVELOPMENT)**

APPLICANT: **DE WITT CONSULTING**
OWNER: **SINGLOST PTY LIMITED**
NOTE BY: **GOVERNANCE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

PART I

BACKGROUND

An application has been received seeking consent for a mixed-use development, involving alterations and additions to a heritage listed building, including two additional storeys and a rooftop terrace within Mixed Use zone.

The submitted application was assigned to Senior Development Officer, William Toose, for assessment.

The application is referred to the Development Applications Committee for determination, due to:

1. The proposed variation to the height of buildings development standard of Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation (14.5% variation proposed to Hunter Street elevation and a 25% variation proposed to Keightley Street elevation).
2. The proposed variation to the floor space ratio (FSR) development standard of NLEP 2012 being more than a 10% variation (50% variation proposed). It is noted that the existing building currently does not comply with the FSR development standard.



Subject Land: 164 Hunter Street Newcastle

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

The proposed development was publicly notified in accordance with City of Newcastle's (CN) public participation policy and one submission has been received in response.

The objector's primary concerns relate to waste management and servicing of the development. Details of the submission received are summarised at **Section 3.0** of Part II of this report and the concerns raised are addressed as part of the Planning Assessment at **Section 5.0**.

The proposal will be required to comply with CN's East End Public Domain Masterplan which includes road reserve upgrades, pavement treatment and other improvements, to ensure the desired character of the area occurs.

Issues

- 1) The proposed development does not comply with the height of buildings development standard of 20m under NLEP 2012. The proposed height of the building is 22.9m along the Hunter Street elevation (to the south) and 25m along the Keightley Street elevation (to the north), including lift over-run and rooftop communal area. This equates to a 14.5% variation and a 25% variation to the height of buildings development standard, respectively, if considered in the context of the two main street frontages.
- 2) The proposed development does not comply with the FSR development standard of 3:1 under NLEP 2012. The proposed development has an FSR of 4.5:1, which equates to a 50% variation to the FSR development standard. It is noted that the existing building currently has an FSR of 3.1:1, which does not comply with the FSR development standard.
- 3) No car parking is provided as part of this development. A historical parking deficiency exists for this building and is considered acceptable given the constraints of the site and the heritage listing for the façade, therefore limiting the ability to make substantial changes to the existing building.
- 4) The subject site is listed ('1406 Municipal Building') for its local heritage significance in NLEP 2012. The adaptive re-use of the building and rooftop additions respond well to the existing built form and are setback to preserve the appearance of the building from the public domain, minimising the impact on the streetscape.

Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under Section 4.15(1) of the *Environmental Planning and*

Assessment Act 1979 and is considered to be acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out; and
- B. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out; and
- C. That DA2019/00331 for a mixed-use development, involving alterations and additions to a heritage listed building, including two additional storeys and a rooftop terrace, at 164 Hunter Street Newcastle, be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- D. That those persons who made submissions be advised of CN's determination.

Political Donation / Gift Declaration

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

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

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

PART II

1.0 THE SUBJECT SITE

The site is located at 164 Hunter Street, Newcastle (Lot 1 DP 600274) and has an area of 594.5m². The site has frontages to Hunter Street (south), Market Street (east), Thorn Street (west) and Keightley Street (north). A moderately steep fall in level is evident from Hunter Street to Keightley Street.

A commercial building known as the '*Municipal Building*' is located on site and is listed as an item of local heritage significance in NLEP 2012. The building currently comprises of several tenancies across four levels, including a basement level. No parking is currently provided on the site and there is no provision for vehicular access to the site.

To the west of the site, at No.176 Hunter Street, is a heritage building known as the '*Former AA Dangar Building*' which has development approval (DA2017/00052) for adaptive re-use as a mixed-use development comprising retail, commercial and residential land uses. This approved development includes two additional levels and an overall height of 24.95m (24.75% variation) to the Hunter Street elevation. No car parking was provided as part of this development.

2.0 THE PROPOSAL

The development application proposes a mixed-use development, involving alterations and additions to a heritage listed building, including two additional storeys and a rooftop terrace.

The proposal will be required to comply with CN's East End Public Domain Masterplan which includes road reserve upgrades, pavement treatment and other improvements, to ensure the desired character of the area occurs.

Specifically, the proposal includes the following components:

Ground Floor (Keightley Street)

- i) Modified internal layout to create four retail tenancies accessed from Keightley Street and Market Street.
- ii) Introduction of a new lift and fire stair accessed from Keightley Street.
- iii) New shared toilet facilities.
- iv) Reinstatement and improvement works to the facade, modified access and fenestration.

Ground Floor (Hunter Street)

- i) Modified internal layout to create five retail tenancies.
- ii) New toilet facilities and alterations to facilitate improved access from Hunter Street, through the introduction of mezzanines to the northern end of tenancies.

- iii) Entrances to each tenancy from Hunter Street.
- iv) Reinstatement and improvement works to facade.

Levels 1 and 2

- i) Modified internal layout of the existing commercial tenancies to create 16 apartments (ie. eight apartments per floor)
- ii) New lift shaft and stairwell to be centrally located and served by a communal lobby at the Keightley Street entrance.
- iii) Reinstatement and improvement works to facade. Existing windows within the heritage facades along Thorn Street, Hunter Street and Market Streets are proposed to be retained and supplemented by low level fixed panels under the existing sills. Treatments to this level along Keightley Street include modernisation and rationalisation of facade treatments and fenestration.

Levels 3 and 4

- i) Two additional levels of apartments comprising 12 x one-bedroom apartments (ie. six apartments per floor).

Level 5 (Rooftop Terrace)

- i) A roof top terrace for communal use by building occupants, incorporating a landscaped perimeter and screen enclosed service areas.

A copy of the current amended plans is appended at **Attachment A**. The various steps in the processing of the application to date are outlined in the Processing Chronology (refer to **Attachment C**).

3.0 PUBLIC NOTIFICATION

The application was publicly notified in accordance with CN's public participation policy and one submission was received in response. The objector's primary concerns relate to waste management and servicing of the development.

The objector's concerns are addressed under the relevant matters for consideration in **Section 5.0** of this report.

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15(1) of *the Environmental Planning and Assessment Act 1979*, as detailed hereunder.

5.1 Provisions of any environmental planning instrument

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

SEPP 55 requires that where land is contaminated, CN 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 land is currently developed, and the site is not listed as potentially contaminated on CN's Contaminated Land Register. The site does not have a history of potentially contaminated uses. Having due regard to the provisions of SEPP 55 and the nature of the proposal, the site is considered to be suitable for the proposed development.

State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP)

The proposed development is located in the Coastal Use Area and Coastal Environment Area, as mapped under the Coastal Management SEPP.

The proposed development involves additions to a commercial building in the Newcastle City Centre and will not adversely impact on the coastal zone. The proposal will not adversely impact on access or any existing public areas within this zone.

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

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

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

SEPP 65 applies to the development of residential flat buildings, with the aim to improve the quality of residential flat development. SEPP 65 requires the consent authority to take into consideration the advice of a Design Review Panel and the design quality of a proposed residential flat development when evaluated in accordance with the design quality principles and the Apartment Design Guide (ADG).

A SEPP 65 Statement has been submitted with the application, addressing the design quality principles. CN's Urban Design Consultative Group (UDCG) has considered the proposal on two occasions, with their assessment of the proposal summarised in the following table:

Design Quality Principles	Assessment
Principle 1: Context and Neighbourhood Character	<u>Applicant's response:</u> "Noted"

UDCG comments:

11 December 2018

"The subject building is a three storey, rendered brick, late Victorian Free Classical Style building erected in 1884. The National Trust listing of the building notes: The interiors and ground floor facade have been completely altered in connection with the Kern Market Square development.

The original ground and first floor post-supported verandas have been replaced by a freestanding acrylic awning to the Hunter Street elevation that detracts, rather than enhances the original detailing of the Municipal Building.

The building sits within the retail area of Hunter Street, the immediate setting having been the subject of previous streetscape works. The rear northern elevation is, in contrast, utilitarian, lacking detail and having limited streetscape value.

Current adaptive reuse of early 20th Century buildings to the southern opposing side of the street incorporates restoration and retention of existing facades in conjunction with cohesive additions of limited projection above the existing parapet line and or substantial setback from the parapet line.

The context comprises extensive adaptive development retaining and enhancing the core historic aspects

of the Hunter Street urban centre.”

17 April 2019

“No change.”

Principle 2: Built Form and Scale

UDCG comments:

11 December 2018

“The Group considered that a more rigorous appraisal of the existing building, both internally and externally needs to be undertaken. It is recommended that this begin with comprehensive investigation of the existing fabric and its history identifying aspects of key significance externally and internally.”

17 April 2019

“The proposed development has been amended with deletion of the previously proposed first floor verandah and provision of a ground floor suspended awning. This is considered a more successful response to the building, the contemporary setting and the resolution of interior rooms.

Projecting curved balconies have been deleted from the two upper level additions. This reduces the visual impact of the proposed additions, as does alteration of openings in the additions to align with those in the historic facades.

Window openings at first and second floors have been deepened with existing sills and architraves retained.”

Applicant's response:

“Design changes and refinements have been achieved as recommended. The materiality and form of the addition is of a modern aesthetic, but recessive to the heritage building below. The façade at this level is light weight and fenestrated with larger openings aligning with elements within the heritage building below.”

Officer's response:

Appropriate design changes and refinements have been achieved, as recommended.

Principle 3: Density

UDCG comments:

11 December 2018

"The proposed addition exceeds the allowable FSR."

17 April 2019

"No change."

Applicant's response:

"With respect to height and FSR, the benefits of the adaptive reuse and nature of the development are considered appropriate. As demonstrated in the supplied documentation indicating existing and approved future developments in the immediate context, the proposed development is consistent with the future desired scale and character of the area. The concerns surrounding height were mainly with respect with the original scheme and considered dominance of the additions because of the treatments and colours. The scheme was lightened, and balconies internalised to reduce impacts of the upper levels which was received in positive light."

Officer's response:

Appropriate design changes and refinements have been achieved, as recommended.

Principle 4: Sustainability

UDCG comments:

11 December 2018

"Provision of water harvesting and PV cells at roof level are encouraged."

17 April 2019

"No change."

Applicant's response:

"A BASIX assessment and certification has been prepared and supplied as part of the development application and demonstrates ability to achieve compliance with legislated sustainability measures as proposed."

As part of the Construction Certification process, the proposal will implement the relevant required sustainability measures. We argue that the adaptive reuse of an existing heritage building, as opposed to wholesale redevelopment is in itself a substantial sustainability measure in reusing structure that embodies significant energy. Additional matters may be considered through the detailed design phase."

Officer's response:

Appropriate design changes and refinements have been achieved, as recommended.

Principle 5: Landscape

UDCG comments:

Applicant's response:

"The upper level landscaping will largely consist of raised planter beds within a

11 December 2018

“Landscaping to the communal area should not be provided as a solitary raised planter but be integrated with the deck level and employed to provide separable small gathering areas. Landscaping to decks should have an automated watering system and an established maintenance contract.”

17 April 2019

“No change.”

Principle 6: Amenity

UDCG comments:

11 December 2018

“The Group considered the proposal to require substantial amendment in terms of user amenity.”

17 April 2019

“Deletion of the first-floor verandas has improved natural lighting of deep plan apartments.

Large clerestory openings above top floor apartments could be reduced in size whilst still providing effective light and ventilation. Lift lobbies continue to lack natural light on existing floors.

The roof top plant rooms and common area could be reduced in footprint.”

Principle 7: Safety

UDCG comments:

11 December 2018

communal gathering area that is accessible by all residents, this area will provide varied material selection and treatments that will enable sustainable and appropriate amenity is provided to its users.

Final planting specifications and details (ie pot sizes, drainage maintenance) will be prepared by a qualified landscape designer and be included as part of a Construction Certificate.”

Officer’s response:

Appropriate design changes and refinements have been achieved, as recommended.

Applicant’s response:

“The plant area on the roof will be sized accordingly and subject to detailed design consideration. Should the plant area be able to be reduced this will be unknown until detailed design considerations. The increase in window size in strategic locations ensures additional solar access is provided. Where feasible, natural light and ventilation has been provided in accordance with the Apartment Design Guidelines, and whereas there is somewhat limited solar access to common lift areas on the lower two residential floors, we believe this slight deviation warrants acceptance given their position within an existing heritage building seeking to maintain structure and facade presentation. On the upper levels, the provision of voids and treatments to ensure natural light to common area lobbies has been achieved as per the issued proposal.”

Officer’s response:

Appropriate design changes and refinements have been achieved, as recommended.

Applicant’s response:

“A point was discussed surrounding the entry to Tenancy 2 and Lobby, however the wall in this location is existing and not proposed to be removed or altered. Glazing

“The Group recommends that greater attention to the rear residential entry is provided to ensure safer exit and entry from the rear lane.”

is proposed for the Lobby and Tenancy 2 when viewed from the street.”

Officer’s response:

Appropriate design changes and refinements have been achieved, as recommended.

17 April 2019

“Provision of a clear glazed opening in the blade dividing the Lobby and Tenancy 2 entries should be provided to enable clear vision of the recesses from laneway approaches.

The area of roof deck on the western side of the building is accessed via a narrow walkway and there is no opportunity for any casual surveillance into this area. It should be redesigned in parallel to the addressing of the reduction of the footprint of the plant area and clerestory lights described under the Amenity heading.”

Principle 8: Housing Diversity and Social Interaction

Applicant’s response:

“Some form of removable seating will be provided in the lobby; however, it has not been illustrated on the proposed plans as the detailed design will also consider amenity of such areas and seating could can be incorporated through the development phase.”

UDCG comments:

11 December 2018

“The lack of any diversity in the apartment mix is of concern, with one-bedroom apartments only being proposed. The lack of parking and market trends in the immediate context favouring apartments of high amenity, raises questions as to the commercial attraction issues.

Officer’s response:

Appropriate design changes and refinements have been achieved, as recommended.

The current layout of the entry lobby could be designed to incorporate a small seating area.”

17 April 2019

“Housing diversity has been improved by provision of 1 and 2 bed apartments. Details of lobby seating remain to be shown.”

Principle 9: Aesthetics

UDCG comments:

11 December 2018

“The new works are not considered cohesive with the highly articulated heritage building, in particular the design of the verandah appears unrelated, and inconsistent with the original form.”

17 April 2019

“The aesthetic treatment of the building has improved with the deletions noted above. Further resolution of aesthetics is recommended in the areas of:

- i) Colour finish to the roof top additions.*
- ii) The treatment of existing window openings either deleting the lower windowpane or treating this as a separate element.*
- iii) Provision of a consistent pattern of shop window fronts including provision for signage panels.”*

Amendments Required to Achieve Design Quality

UDCG comments:

“Given the desirability and challenges of restoration and

Applicant’s response:

“Detailed signage design can be considered through the individual retailer proposals where required. Schematic design has been provided which reflects the intent of signage and possible treatments.”

Officer’s response:

Appropriate design changes and refinements have been achieved, as recommended.

Officer’s response:

Appropriate design changes and refinements have been achieved, as recommended.

The current amended proposal is considered to have adequately addressed

addition, some variation to the height and FSR Controls could potentially be supported, provided that the issues raised have been addressed. the key areas of concern raised by the UDCG with respect to access, landscaping, amenity and aesthetics.

The excess in height is mainly on the north side, where it would not cause unacceptable impacts.

From the mall any visual impact would be minor due to the setback of the top-floor communal facilities and plant.”

Apartment Design Guide (ADG) - Key "Rule of Thumb" Numerical Compliances

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

3B Orientation

The development maintains its existing building footprint and orientation to street frontages. The building and floor plans respond to the restricted site conditions to allow for available views, optimising solar access to units and allowing for cross ventilation to apartments. Overshadowing to neighbouring buildings and the public domain has been minimised.

3C Public Domain interface

The proposal addresses the condition of a heritage listed building in a key location of the city. Street frontages are activated with retail tenancies and lobby space which address the street and provides a good interface to the public domain.

3D Communal and Public open space

The communal rooftop is oriented to the north-east and achieves direct sunlight throughout the day. This area is supported by landscaping and has been designed to offer high quality amenity for a variety of uses.

3E Deep Soil Zones

The policy acknowledges that deep soil zones may not be possible on some sites, due to their city centre location, and the fact that there are non-residential uses at ground floor level. Both of these conditions are relevant to this site. Non-residential uses on the ground floor, in addition to heritage constraints does not leave the required space for deep soil planting within the site.

3F Visual Privacy

Building separation has been established by the existing building's footprint and its relationship to neighbouring buildings. Notwithstanding, visual and acoustic privacy is achieved through the placement of windows/openings and the use of screening where required

3G Pedestrian Access and Entries

A single lobby is provided and multiple retail frontages are proposed.

3H Vehicle Access

No parking is currently provided and there is no provision for vehicular access to the site.

3J Bicycle and Car Parking

No off-street parking is provided given the site's existing parking deficiencies, heritage constraints and a location that facilitates good access to the light rail and other public transport options.

4A Solar and Daylight Access

Given the scale and proximity of existing and proposed neighbouring buildings, some overshadowing of the site will occur, which is beyond reasonable control of this development. Natural daylight is maximised wherever possible through the placement of apartments oriented to the east and north aspects. Clerestory windows are provided as secondary light sources to apartments on the uppermost level.

4B Natural Ventilation

18 of the 28 apartments are capable of achieving compliance with the criteria, consisting of eight apartments within the existing heritage fabric and 10 apartments in the proposed additional floors, amounting to 64% of apartments being cross ventilated in total.

4C Ceiling Height

Ceiling heights in excess of 3 metres are proposed within the heritage component of the building. A 2.7m minimum floor to ceiling height is provided for all habitable rooms within the additional storeys.

4D Apartment Size and Layout

All apartment sizes are in excess of the minimum required under SEPP 65. Each apartment layout provides a high level of residential amenity and exceeds the

minimum standards for habitable room sizes. All kitchens are no more than 8m from a window and the width of each apartment type is greater than 4m.

4E Private Open Space and Balconies

The provision of balconies to the existing heritage component of the building is considered to be lacking in merit, due to the location of adjacent buildings, building orientation and heritage constraints.

On the proposed upper two storeys, all the apartments are to have balconies. The provision of a large communal area at the rooftop adequately compensates for the shortfall in balconies, in addition to the development's proximity to adjacent amenities of the foreshore and the mall area.

4F Common Circulation and Spaces

There is a maximum of eight apartments around the lift core in the existing heritage building, and 6 apartments on each floor in the proposed additional levels.

4H Acoustic Privacy

The building layout has been designed to achieve minimisation of noise transfer to and from apartments. Acoustic treatments to walls, floors and ceilings further reduce noise transfer.

SEPP 65 Concluding Comment

The proposal is considered to be acceptable having regard to SEPP65, taking into consideration the design criteria in the ADG and comments received from the UDCG in respect of the design principles.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

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

Clause 2.1 - Land Use Zones

The property is located within the B4 Mixed Use zone.

The proposal is a mixed-use development comprising commercial premises on the ground floors, with residential apartments above, which are uses that are permissible in the zone.

The proposal is also considered to be consistent with the zone objectives, which are:

- a) *To provide a mixture of compatible land uses.*

- b) *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.*
- c) *To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.*

The proposed development will integrate residential and retail / business development within a city centre location. The site is ideally located with respect to public transport and will support the viability of the city centre through increased housing and employment opportunities within the area.

Clause 4.3 - Height of Buildings

The proposed development does not comply with the height of buildings development standard of 20m under NLEP 2012. The proposed height of the building is 22.9m along the Hunter Street elevation (to the south) and 25m along the Keightley Street elevation (to the north), including lift over-run and rooftop communal area. This equates to a 14.5% variation and a 25% variation to the height of buildings development standard, respectively, for the two main street frontages.

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

Clause 4.4 - Floor Space Ratio

The proposed development does not comply with the floor space ratio (FSR) development standard of 3:1 under NLEP 2012. The proposed development has an FSR of 4.5:1, which equates to a 50% variation to the FSR development standard. It is noted that the existing building has an FSR of 3.1:1 which does not comply with the FSR development standard.

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

Clause 4.6 - Exceptions to development standards

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

1. Clauses 4.3 (Height of Buildings) and 4.4 (Floor Space Ratio) are not excluded from the operation of this clause; and
2. The applicant has prepared a written request, requesting that CN vary the development standard and demonstrating that:
 - a) *Compliance with the development standards is unreasonable or unnecessary in the circumstances of the case, and*
 - b) *There are sufficient environmental planning grounds to justify contravening the development standard.*

The applicant's written submission contends that enforcing compliance with both the 20m building height and the 3:1 FSR development standards are unnecessary in the circumstances.

An extract of the applicant's request to vary the Development Standards is provided below:

“What are the objectives of the development standard?”

The objectives of Clause 4.3 – Height of Buildings are as follows:

- a) *To ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,*
- b) *To allow reasonable daylight access to all developments and the public domain.*

The objectives of Clause 4.4 – Floor Space Ratio are as follows:

- a) *To provide an appropriate density of development consistent with the established centres hierarchy,*
- b) *To ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.*

What is the proposed numeric value of the development standards in your development application?

The numeric value of the proposed development and percentage variation are detailed in the following table:

Height

LEP Clause	Control	Proposal	Variation
Clause 4.3 – Building Height	20m	22.9m (Keightley Street elevation)	2.9m (14.5%)
		25m (Hunter Street elevation)	5m (25%)

Floor Space Ratio

LEP Clause	Control	Proposal	Variation
Clause 4.4 – Floor Space Ratio	3:1 (1,783m ²)	4.5:1 (2,689m ²)	906m ² (50%)

Overall, it is submitted that the development is consistent with the objectives of Clause 4.3 and Clause 4.4 for the following reasons:

- i) *The proposed development meets the underlying intent of the controls and is a compatible form of development that does not result in unreasonable environmental amenity.*
- ii) *The proposed 5 storey development is in keeping with the surrounding developments and the recently approved development at 176 Hunter Street Newcastle (DA2017/00052), located adjacent to the site.*
- iii) *The proposed alterations and additions to the building provide an appropriately scaled development enabling the retention and upgrading of an otherwise predominantly vacant and aging heritage building. Furthermore, the building will be significantly enhanced through modern architecture complementing the heritage building and will result in improved streetscape and overall visual impact.*
- iv) *The adaptive re-use of the heritage building is considered to be a desirable planning outcome for the site. The design, construction materials and detail preserve the cultural significance of the site. The scheme also leaves key areas of the site intact without undue disturbance of archaeological remains.*
- v) *Whilst there is already an existing non-compliance with respect to FSR, the proposed additional levels have been designed to be recessive in nature to ensure the existing heritage building remains the dominant component.*
- vi) *As identified within the SEPP 65 assessment (above), the residential apartments are of high quality and functionality and will contribute to the revitalisation of Newcastle City Centre. The design has been subject to expert advice from the UDCG and has been subject to amendments designed to achieve design excellence.*
- vii) *The design facilitates appropriate development of the site and involves modifications and additions to an existing building that would allow a higher quality living and working environment for future occupants and tenants. In addition, the design is considered to result in an improved outcome to the building layout and provide a positive streetscape.*
- viii) *There will also be minimal environmental impact through alterations and additions to an existing building within an existing urban site that has access to existing infrastructure.*
- ix) *The proposed development will enable the retention of a heritage building whilst improving development opportunity in an existing mixed use and city environment. Improved housing and commercial options in an area that has access to transport, employment and recreation opportunities will promote social and economic welfare of the occupants of the building and assist local businesses.*

Are there Sufficient Environmental Planning Grounds?

This assessment demonstrates that the resultant environmental impacts of the proposal are considered to be satisfactory. The additional height is set back from the site's boundaries and will not result in unreasonable visual impacts. The additional height and floor space will have a negligible effect on overshadowing and will not impact the privacy of adjoining residents. The proposal results in a high-quality design that will make a positive contribution to the streetscape and City Centre.

The objectives of Clause 4.3, Clause 4.4 and B4 Mixed Use Zone have been met with the proposed development. In light of the above, there is considered to be sufficient environmental planning grounds to justify contravening these two development standards in this instance."

Officer's comment

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

- a) It adequately addresses the matters required to be demonstrated by clause 4.6(3) of NLEP 2012; and
- b) The proposed development will be in the public interest because it is consistent with the objectives of the particular standards and the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out; and
- c) The Secretary's (ie. of the Department of Planning, Industry and Environment) concurrence to the exception to the height of buildings and floor space ratio development standards as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS18-003 of 21 February 2018; and
- d) The applicant has demonstrated that the standard is unnecessary in this instance, that the proposed height, scale and density of development is consistent with the character of surrounding developments in the area and is in accordance with the relevant zone objectives. The proposed variations would not result in any significant impacts and therefore the proposal has planning merit.

The proposed exceptions to the height of building and floor space ratio Development Standards of NLEP 2012 is an acceptable planning outcome and in this instance strict compliance would be unnecessary. The proposed variations to the development standards in this instance do not cause any undue adverse environmental impacts, including impacts on neighbouring properties in terms of overshadowing and visual privacy.

The proposal is consistent with the intended future urban form within the area, having regard to the combination of controls under NLEP 2012 and NDCP 2012 (notably Section 6.01 Newcastle City Centre).

The request for the height of the proposed building to exceed the 20m building height of buildings development standard and the 3:1 FSR development standard is supported.

Clause 5.10 - Heritage Conservation

The subject site is listed ('*I406 Municipal Building*') for its local heritage significance in NLEP 2012.

The subject site is also located within the Newcastle City Centre Heritage Conservation Area and a number of other sites in the vicinity are also listed for their cultural heritage significance including:

- 1) I408 – the former AA Dangar Building being the closest of nearby listed items, at 176 Hunter Street, opposite the subject site on the corner of Hunter Street and Thorn Street;
- 2) I459 – the former Beberfaulds Warehouse, at 175 Scott Street;
- 3) I409 – the former Newcastle School of Arts, at 182 Hunter Street;
- 4) I403 – the former Municipal Building, at 121 Hunter Street, diagonally opposite to the site;
- 5) I405 – the former Hotel Hunter, at 152-160 Hunter Street, is opposite to the site on the corner of Hunter and Market Streets;
- 6) I458 – the former R Hall and Sons building, at 161 Scott Street, is northeast of the site.

A Statement of Heritage Impact, detailing the history of Newcastle and the subject site and the '*Municipal Building*', built in 1887, has been submitted with the application. The Heritage Impact Statement found:

"the building has been recognised as contributing to the establishment of the Newcastle Central Business District which was important in the pattern of the local area's cultural history. The building, like similar buildings of the period was developed to boost local trade by providing contemporary shops and office space for the period, which helped the growth of Newcastle as a town centre."

The subject area is in a period of transition and growth, resulting in a continually changing built environment. The aesthetics of the proposed development responds to the future desired character of the area and preserves a significant heritage element within the streetscape. The design proposes a built form that will be

consistent with the bulk and scale of the future streetscape and has a balanced composition of architectural treatments.

An assessment of the likely impact of the proposed works on the heritage significance of the site has been undertaken. The Statement of Heritage Impact concludes:

“This SOHI has assessed the proposed design and found that the overall development has minimal impacts on the heritage significance of the former Municipal Building, the nearby individually listed heritage items and the surrounding heritage conservation area.”

The materiality and form of the addition is modern but is recessive to the heritage building below. The bulk and scale of the development, together with the facade, sits comfortably in the conservation area and complements both the period architecture and other infill contemporary designs.

The proposed development will not significantly affect the heritage significance of the listed heritage buildings, nor detract from their setting or obstruct any view of these heritage items from public places. It is also considered that the proposed development will not significantly affect the heritage significance of the Newcastle City Centre Heritage Conservation Area.

Clause 6.1 – Acid Sulfate Soils

The site is mapped by CN as containing Class 5 acid sulfate soils. The proposed development does not propose any excavation and therefore requires no disturbance of soil.

Clause 6.2 - Earthworks

The design suitably minimises the extent of proposed earthworks, having regard to the site constraints.

Part 7 Additional local provisions - Newcastle City Centre

The site is located within the 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 proposal is considered to be consistent with the objectives of Part 7 of NLEP 2012.

Clause 7.4 - Building Separation

The building height of the proposed development does not exceed 45 metres and is therefore compliant with this clause.

Clause 7.5 - Design excellence

The amended proposal provides an acceptable level of amenity within the context of the area and is generally consistent with State and local guidelines relating to building design and amenity. As such, the amended proposal is considered to address the predominant concerns of the UDCG and CN's assessment and is an acceptable form of development within the context of the site and location.

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

The proposal does not generate a requirement to undertake an architectural design competition as the height of the proposed building is not greater than 48m and the site is not identified as a key site within the City Centre.

It is considered that design excellence has been achieved, as required by this clause.

Clause 7.10A - Floor space ratio for certain other development

The proposed development has a site area of less than 1,500m². Accordingly, the provisions of this clause apply to the proposal. This clause specifies that the maximum FSR of a building is whichever is the lesser of the FSR identified on the FSR map (ie 3:1) or 3:1.

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

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

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

The main planning requirements of relevance in the NDCP 2012 are discussed below.

Residential Development - Section 3.03

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

Commercial Uses - Section 3.10

The proposed development is considered to achieve the objectives and controls within this section of the NDCP 2012. These include activation of street frontages, promotion of uses that attract pedestrian traffic along ground floor street frontages for commercial and retail premises and compatibility with other development sites in the locality.

Flood Management - Section 4.01

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

"The subject site is identified as flood prone land according to Council's latest flood data and is affected by ocean flooding (to year 2100) and flash flooding in both the 1% AEP and PMF storm events. It is noted that the area of flood affectation is limited to the lower part of the subject site (northern side) adjacent to Keightley Street. The plans show that all new habitable residential floor areas are sited well above the Flood Planning Level for the site of 2.6m AHD. There are 4 commercial tenancies proposed in the Basement Level and 5 commercial tenancies proposed on the Ground Floor Level, all of which is currently used as commercial floor space. Although the basement floor levels are below the FPL of 2.6m, the property is unlikely to be affected given the direction of sheet flow during local catchment flooding events. Together with consideration of the proposed use being consistent with the existing commercial use of the basement, the proposal is compliant with the DCP from a flood management perspective."

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

Mine Subsidence - Section 4.03

The site is located within a proclaimed Mine Subsidence District and approval for the proposed development is required to be granted by Subsidence Advisory NSW.

An appropriate condition to address this requirement has been included in the Draft Schedule of Conditions (refer to **Attachment B**).

Safety and Security - Section 4.04

The building design and functionality, with frontage to multiple streets, allows increased casual surveillance of all surrounding footpath areas.

The proposal achieves good surveillance by providing clear sight lines between private and public spaces, effective lighting of public places and activation of street frontages. A Crime and Safety Report was submitted with the application, providing recommendations to minimise the risks of crime.

Social Impact - Section 4.05

The proposed development will have a positive impact within the community as it will provide additional well-designed and varied housing opportunities within the City Centre. It is considered unlikely that a residential development of this nature would result in increased anti-social behaviour. The development provides for increased housing choice within the area, which is considered a positive social outcome.

The refurbishment of the building and the provision of new retail tenancies will have positive impacts for the community.

The proposed development will positively contribute to the diversity of the City Centre and is unlikely to result in negative social impacts on the community.

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP55.

Aboriginal Heritage - Section 5.04

A search of the Aboriginal Heritage Information Management System indicates that no Aboriginal sites are recorded in or near the subject land and no Aboriginal places have been declared in or near the subject land.

Heritage Items - Section 5.05

As discussed under Clause 5.10 Heritage of NLEP 2012, the proposed development will not significantly affect the heritage significance of the building or of the listed heritage items in the vicinity of the site.

Archaeological Management - Section 5.06

The site is not specifically listed in the Newcastle Archaeological Management Plan 1997 or NLEP 2012 as an '*Archaeological Site*'. However, the Statement of Heritage Impact has recommended that a Baseline Archaeological Assessment of the site be undertaken early and prior to the issue of a Construction Certificate, to ascertain if there are any relevant archaeological remains of former uses on the site. A condition has been included in the consent that references the recommendations of the Statement of Heritage Impact.

Newcastle City Centre - Section 6.01

The existing building setbacks will remain unchanged and the existing street wall height is not proposed to be altered. The proposed additions on the upper levels are set back from the historic facade and protruding structures have been limited, to ensure that visual impacts on the streetscape and potential for impacts from overshadowing are minimised.

No views to or from any historical landmarks are adversely impacted on. The proposed additional levels to the existing building are largely screened by other nearby buildings and recently approved developments within the broader area.

The proposed development removes an existing covered walkway and replaces it with a lightweight architecturally designed awning, which is functional and respectful of the heritage of the building. The existing awning structure is intrusive on the significance of the listed heritage building.

The building is not a public or civic building and does not exceed a height of 45m, therefore a public art requirement is not applicable.

The proposal respects the historic and built qualities of the building while increasing the residential population of the city centre and adding commercial activity to the ground floor.

Heritage Conservation Areas - Section 6.02

As discussed under Clause 5.10 Heritage of NLEP 2012, the proposed development will not significantly affect the heritage significance of the Newcastle City Centre Heritage Conservation Area.

Landscape Open Space and Visual Amenity - Section 7.02

The proposed development involves alterations and additions to an existing developed site, with no area at ground level available for landscaping. Given the nature of the existing development, landscaping is limited to the rooftop area and is considered to be satisfactory.

Traffic, Parking and Access - Section 7.03

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

Section 7.05 - Energy efficiency

The applicant has submitted a BASIX report and has met the requirements for water and energy efficiency and thermal comfort. The proposal is acceptable having regard to this section.

Stormwater- Section 7.06 and Water Efficiency - Section 7.07

The proposed development has been assessed by CN's Senior Development Officer (Engineering) and is considered to be acceptable subject to conditions, as recommended.

The proposal can comply with CN's policies relating to stormwater management. Appropriate conditions have been recommended in the Draft Schedule of Conditions (refer to **Attachment B**) to require that the development meets the specified standards.

Waste Management - Section 7.08

Historically, the site has utilised Keightley Street for the storage of garbage bins and this application had initially proposed to formalise an on-street arrangement with the provision of a bin enclosure in Thorn Street.

This arrangement is not supported by CN and an appropriate condition has been recommended, requiring that the development proposal be amended to provide a dedicated internal/onsite refuse area for the storage of garbage bins (recyclable and non-recyclable), within the building.

A further condition is included requiring these garbage bins not to be presented to the street for collection, with the service provider to access the refuse area, manually collect the bins and then return them to the on-site refuse area. This waste service arrangement is to be in place prior to occupation of the premises.

Relevant conditions have been recommended within the Draft Schedule of Conditions (refer to **Attachment B**).

Public Participation - Section 8.0

The proposal was advertised and notified in accordance with CN's public participation policy and one submission was received in response.

Comments are provided in Section 5.8 below.

Development Contributions

The *Environmental Planning and Assessment Act 1979* enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's *Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019*. A condition requiring this contribution to be paid has been included in the Draft Schedule of Conditions (refer to **Attachment B**).

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

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

Assessment Regulation 2000. In addition, compliance with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

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

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

The amended plans are acceptable having regard to the proposed height, external appearance, character, bulk and scale of the development. The proposal has been assessed by CN's Urban Design Consultative Group and is considered to be acceptable having regard to the provisions of SEPP 65 and the Apartment Design Guide.

The height of buildings and floor space ratio development standards are exceeded by the proposed development. However, these variations have been considered in the context of adjoining and potential future development. The development also has minimal impacts on surrounding development and is considered to be acceptable.

The proposed setbacks of the upper additions and the site's location ensure that impact on solar access and public spaces is minimised.

Through material selection, setbacks and design considerations, the heritage component remains the dominating element of the proposed building, which contributes to the street and the mall area.

b) Traffic, Access and Parking

The proposal has been assessed by CN's Senior Development Officer (Traffic) and found to be acceptable, subject to draft conditions included in **Attachment B**. CN's Senior Development Officer (Traffic) provided the following comments:

Parking

"The proposed development will be mixed use, comprising 26 x 1-bedroom units, 2 x 2-bedroom units, and 925m² of commercial/retail GFA. Applying the above rates, the total car parking requirement for the proposed development is 38.2 car parking spaces (17.4 for residential, 5.4 for visitors and 15.4 for commercial). The GFA of the existing commercial development is 1850m² which would attract an on-site parking demand of 31 spaces. As the current building does not provide any on-site parking, there is an associated historic parking deficiency of 31 spaces which may be deducted from any proposed development. Applying this historic deficiency, the proposed alterations and additions would ordinarily be required to provide 7.2 on-site car parking spaces by the DCP.

The DCP acknowledges that there may be situations where it is impracticable or undesirable to provide parking on site at the nominated rate where the benefits of the proposal are significant. The proposal offers the potential for adaptive re-use and renewal of the Hunter Street Mall area and provision of residential development within close proximity to public transport and amenities. The creation of on-site parking will require at least partial redevelopment of the existing site instead of adaptive re-use and bring additional traffic into the area which is not considered a desirable outcome for the Newcastle City Centre area. With consideration of these factors, the demonstrated benefits outweigh the concerns regarding the level of parking provision and it is therefore recommended that the proposed parking deficiency of 7.2 spaces be supported.

No motorbike parking spaces are required for developments in the Newcastle City Centre Precinct.

No bike parking is required for residential developments in the Newcastle City Centre precinct. It is noted that adequate public bicycle parking facilities are available on nearby Hunter Street to service demand generated by the commercial premises."

Public Domain

"The public domain has been inspected and appropriate conditions have been recommended for this application requiring the embellishment of this area along the frontages of the site, (excluding Thorn Street). These works will enhance pedestrian amenity and safety acknowledging the increased pedestrian activity generated by this development."

Comment: The proposed development is considered to be acceptable with regard to traffic, access and parking, noting that the identified car parking deficiency is supported on the basis of the retention of a heritage item and the location of the site being in close proximity to services.

c) Amenity (Privacy, Overshadowing and Views)

Privacy

The proposal achieves adequate visual and acoustic privacy for the proposed residential development and for the surrounding properties and has suitably considered the potential future development of the area.

Overshadowing

Any additional overshadowing caused by the proposal is primarily to the surrounding street and commercial buildings and is considered acceptable in this regard.

Views

There are no significant views that will be impacted in this location and the proposal does not have a significant adverse impact on the adjoining properties in terms of

view loss. The development will alter the general outlook due to the proposed changes in size and scale, but this is considered to be reasonable having regard to the height and scale of adjacent developments and other approved developments in the area.

Noise

A noise assessment was carried out to support the proposed development. The noise assessment demonstrated that compliance with internal noise level requirements would be achieved. The assessment also addressed future uses of the commercial tenancies at the subject site. Given that the uses are currently speculative, no assessment of any mechanical plant or patron noise have been provided and as such potential impacts cannot be accurately determined. Under these circumstances, CN's standard "*no offensive noise*" standard condition provides a reasonable and sufficient level of control for the situation.

However, given the unknown nature in future tenancies it is recommended that Council apply standard hours of operation (ie 7:00am – 6:00pm) to limit any potential noise impacts. Should the future tenants wish to modify the hours, an application will be required, enabling potential noise impacts to be further considered.

5.7 The suitability of the site for the development

The site is suitable for the proposed development as it is located in the City Centre, which is well serviced by public transport and community facilities. It is considered that adequate services and waste facilities can be provided to the development. Having regard for the City Centre location and the availability of public transport services, it is considered that the proposed development is satisfactory in respect of its accessibility.

The constraints of the site have been considered in the proposed development, which includes flooding, heritage and vehicle access.

The design of the development has considered the cultural significance of the heritage listed building and the heritage conservation area. The additional two floors have been designed to be sympathetic with the existing facade, to minimise any impacts on the significance of the item and the heritage conservation area. The inclusion of retail and business spaces on the ground floor will assist with activating the street frontages and add vitality to this section of Hunter Street, as well as allowing for the reuse of the existing building.

The development will have positive social and economic benefits. It will facilitate employment within walking distance to public transport and local services, as well as providing employment during the construction period. The proposed development also provides additional housing opportunities within the city centre. In addition, the proposed apartments do not generate any significant overshadowing or privacy impacts and will provide a suitable level of amenity for future occupants, including adequate acoustic attenuation from potential noise generated from the commercial uses at the lower levels of the building and from neighbouring land uses.

It is expected that the proposal will not adversely impact on any public or private views. Views from surrounding roads and residential developments are generally screened as a result of landform, existing developments or recently approved developments.

The development will have minimal impact on the natural environment. The site does not contain any vegetation and the proposal will not impact on any natural ecosystems. Appropriate measures will be required to be in place during proposed building works to minimise any sediments leaving the site or entering waterways.

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

The application was advertised and notified in accordance with CN's public participation policy. The period was extended as it was over the Easter holiday period. One submission was received during the advertising and notification period raising the following concern:

"We recommend that all waste should be the responsibility of the tenants/residents of the Adaptive Re-Use Building at 164 Hunter Street Newcastle – and as such should be kept in their Bin Room and placed in either Hunter Street or Scott Street on the day of pick-up."

Officer's response

As previously discussed in this report, under NDCP 2012 Section 7.08 - Waste Management, the use of the public domain for storage and collections of bins is not supported. It is recommended that the development be required to be amended to provide a dedicated internal / onsite refuse area for the storage of garbage bins (recyclable and non-recyclable), within the building. This will result in minimal change to the floor plan layout. It is considered that this matter needs to be resolved prior to issue of a Construction Certificate.

Furthermore, garbage bins should not be presented to the street for collection, with the service provider required to access the refuse area, manually collect the bins and then return them to the on-site refuse area. This waste service arrangement needs to be in place prior to occupation of the premises.

Relevant conditions have been recommended within the Draft Schedule of Conditions (refer to **Attachment B**).

5.9 The public interest

The proposed development does not raise any significant general public interest issues beyond matters already addressed in this report. Overall, the proposed development will have an acceptable impact on the surrounding natural and built environment and would have positive social and economic impacts.

The proposed development is considered to be satisfactory having regard to the principles of ecologically sustainable development. The proposal is consistent with CN's urban consolidation objectives, making more efficient use of established public infrastructure and services.

The development is in the public interest and will allow for the construction of additional commercial premises and residential accommodation in an area that is well serviced by public transport and community facilities and will assist with the revitalisation of the City.

The proposed development will provide housing in a well-serviced area to meet the demands of a growing population, while incorporating increased housing choice within the City Centre. The proposal includes sufficient measures to address potential crime and safety issues.

6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

ATTACHMENTS

Item 16 - Attachment A: Submitted Plans - Under Separate Cover - 164 Hunter Street Newcastle

Item 16 - Attachment B: Draft Schedule of Conditions - 164 Hunter Street Newcastle

Item 16 - Attachment C: Processing Chronology - 164 Hunter Street Newcastle

Item 16 - Attachment B

DRAFT SCHEDULE OF CONDITIONS



Application No: DA2019/00331
Land: Lot 1 DP 600274
Property Address: 164 Hunter Street Newcastle NSW 2300
Proposed Development: Mixed-use development, involving alterations and additions to a heritage listed building, including two additional storeys and a rooftop terrace

SCHEDULE 1

APPROVED DOCUMENTATION

- 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.

Plan No / Supporting Document	Reference / Version	Prepared by	Dated
SITE ANALYSIS	AA1101 (E)	DWP	19.03.2019
SITE PLAN	AA1102 (F)	DWP	19.03.2019
GROUND PUBLIC DOMAIN PLAN	AA1103 (B)	DWP	19.03.2019
GENERAL ARRANGEMENT PLAN - BASEMENT	AA1201 (L)	DWP	19.03.2019
GENERAL ARRANGEMENT PLAN - GROUND FLOOR	AA1202 (L)	DWP	19.03.2019
GENERAL ARRANGEMENT PLAN - LEVEL 1	AA1203 (L)	DWP	19.03.2019
GENERAL ARRANGEMENT PLAN - LEVEL 2	AA1204 (L)	DWP	19.03.2019
GENERAL ARRANGEMENT PLAN - LEVEL 3	AA1205 (L)	DWP	19.03.2019
GENERAL ARRANGEMENT PLAN - LEVEL 4	AA1206 (L)	DWP	19.03.2019
GENERAL ARRANGEMENT PLAN - LEVEL 5	AA1207 (G)	DWP	19.03.2019
SOUTH ELEVATION	AA2101 (H)	DWP	19.03.2019
WEST ELEVATION	AA2102 (H)	DWP	19.03.2019
NORTH ELEVATION	AA2103 (H)	DWP	19.03.2019
EAST ELEVATION	AA2104 (H)	DWP	19.03.2019
SECTION	AA3001 (E)	DWP	19.03.2019
SHADOW IMPACT STUDY	AA6010 (E)	DWP	19.03.2019
MATERIALITY	AA9001 (E)	DWP	19.03.2019
3D MASSING CONTEXT	AA9005 (H)	DWP	19.03.2019
3D STREETVIEW	AA9006 (D)	DWP	19.03.2019
3D STREETVIEW (D)	AA9007 (A)	DWP	19.03.2019

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3D RENDERING	AA9008 (A)	DWP	19.03.2019
3D RENDERING	AA9009 (A)	DWP	19.03.2019
STATEMENT OF ENVIRONMENTAL EFFECTS	-		MARCH 2019
STATEMENT OF HERITAGE IMPACT	B	JOHN CARR HERITAGE DESIGN	20.03.2019
BUILDING CODE OF AUSTRALIA 2019 COMPLIANCE REPORT		BUILDCERT	10.06.2019
TRAFFIC, PARKING AND ACCESS REPORT	-	SECA SOLUTIONS	04.03.2019
ACOUSTIC ASSESSMENT	-	REVERB ACOUSTICS	MARCH 2019

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

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

2. A total monetary contribution of \$171,926.10 is to be paid to City of Newcastle, pursuant to Section 7.12 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's *Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019*.
- b) The City of Newcastle's *Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019* 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.
- 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 as follows:

Indexation quarters	Approx release date
September	Late October
December	Late January
March	Late April
June	Late July

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

3. Consent is not granted for the proposed bin enclosure, adjacent to Thorn Street, as indicated on drawings AA1102(F), AA1103(B), AA1202(L). The bin enclosure is to be deleted and does not form part of this consent.
4. The design of the development is to be amended to provide a dedicated on-site refuse area for the storage of garbage bins (for recyclable and non-recyclable waste). Full details are to be included in documentation for a Construction Certificate application.
5. The proposed verandah/awning is to be designed to meet the requirements of Element 7.10 'Street Awnings and Balconies' of the Newcastle Development Control Plan 2012. 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. Full details are to be included in documentation for a Construction Certificate application.
7. 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 landscape plan and specification. The plan and specifications is to be prepared 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.

8. 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.
9. Working drawings and specifications of the proposed building are to be submitted to Subsidence Advisory NSW for approval prior to an application for a Construction Certificate and any requirements of the Board are to be included in the documentation for a Construction Certificate application.
10. A separate application must be lodged and consent obtained from City of Newcastle

for all works within the road reserve pursuant to Section 138 of the *Roads Act 1993*, before the issue of a Construction Certificate. The consent must be obtained, or other satisfactory arrangements confirmed in writing from City of Newcastle, before the issue of a Construction Certificate.

11. Verification of compliance with the recommendations in the Statement of Heritage Impact prepared by John Carr dated 20 March 2019 are to be included in documentation for a Construction Certificate application.
12. A design verification statement from a qualified designer shall be submitted to the Certifying Authority. The statement shall confirm the Construction Certificate plans and specifications achieve or improve the design quality of the development for which consent is granted, having regard to the design quality principles set out in Part 2 of *State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development*.

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

Note: '*Qualified Designer*' means a person registered as an architect in accordance with the *Architects Act 2003*. This condition is imposed in accordance with Clauses 143A of the *Environmental Planning and Assessment Regulation 2000*.

13. The Developer designing and constructing the following works in connection with the proposed development adjacent to the site, at no cost to City of Newcastle and in accordance with City of Newcastle's City Centre Public Domain Technical Manual and design specifications:

Hunter Street

- a) Kerb and gutter
- b) Normal footway profile grading at 2.5% from boundary to top of kerb and gutter
- c) Full width paving across the footway
- d) Associated drainage works
- e) Regulatory signage and line marking
- f) Street tree planting

Market Street

- a) Full width paving across the footway
- b) Associated drainage works

Keightley Street

- a) Full width laneway reconstruction
- b) Associated drainage works
- c) Regulatory signage and line marking

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

14. Building demolition is to be planned and carried out in accordance with Australian Standard 2601:2001 - The Demolition of Structures.
15. 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 City of Newcastle (marked to Attention: Compliance Services) and the demolisher prior to

commencement of work.

16. The demolisher is to ensure that all demolition material is kept clear of the public footway and carriageway as well as adjoining premises.
17. 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.
18. Prior to commencement of site works the developer is to submit to City of Newcastle for approval a Construction Traffic Management Plan addressing traffic control measures to be utilised in the public road reserve during the construction phase.
19. 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.
20. An application is to be made to and approved by City of Newcastle 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*, *Work Health and Safety Regulation 2011* and any relevant approved industry code of practice. Notice of intention of commencement must be given to SafeWork NSW.
21. 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.
22. Certification is to be prepared by a Registered Surveyor and submitted to the Principal Certifying Authority at the stages of construction indicated:
 - a) On completion of 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.

23. 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.
24. 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.

25. City of Newcastle'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 City of Newcastle for the duration of demolition and construction work.

Note: City of Newcastle's 'PREVENT POLLUTION' sign can be obtained by presenting your development application receipt at City of Newcastle's Customer Enquiry Counter.

26. 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 City of Newcastle by a Surveyor registered under the *Surveying and Spatial Information Act 2002*.

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

27. 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 City of Newcastle within fourteen days of receipt.
28. 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 City of Newcastle'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.
29. The developer being responsible for the provision of additional regulatory signage in Hunter Street, Market Street and Keightley Street adjacent to the site frontage and all adjustments to and/or relocation of existing regulatory signage necessary as part of this development, at no cost to City of Newcastle and in accordance with City of Newcastle requirements, such works being implemented prior to the issue of any occupation certificate.

Note: The provision of additional regulatory signage and alterations to existing regulatory signage will need to be referred to the Newcastle City Traffic Committee for approval prior to installation.

30. Appropriate arrangements are to be made for garbage bins (recyclable and non-recyclable) to be collected from and returned to the on-site refuse storage area located within the site. These arrangements must be in place prior to the issue of any

Occupation Certificate for the proposed development. Under no circumstances are garbage bins to be presented to the street for kerbside collection for kerbside collection or remain at kerbside after collection.

- 31. All general goods deliveries to the premises and waste collection from the premises only being undertaken between the hours of 7:00am and 6:00pm.
- 32. All works within the road reserve required by this consent are to be completed prior to the issue of a Final Occupation Certificate.
- 33. Street lighting being provided at no cost to City of Newcastle (other than annual maintenance) to Standard P3 in accordance with AS 1158.1.1 – Road Lighting on Hunter Street, Market Street and Keightley Street across the frontages of the site. The lighting works being completed prior to the issuing of any Occupation Certificate for the proposed development.
- 34. 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.
- 35. Appropriate acoustic treatment is to be implemented in accordance with the recommendations set out in the report prepared by Reverb Acoustics, dated March 2019. Written final certification confirming the recommended acoustic treatment has been implemented in accordance with the requirements of the above report is to be submitted to the Principal Certifying Authority and City of Newcastle prior to the issue of an Occupation Certificate.

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

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

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

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

- 37. The hours of operation or trading of the commercial/retail premises are to be not more than from:

DAY	START	FINISH
Monday	7:00am	6:00pm
Tuesday	7:00am	6:00pm
Wednesday	7:00am	6:00pm
Thursday	7:00am	6:00pm
Friday	7:00am	6:00pm
Saturday	7:00am	6:00pm

Sunday	7:00am	6:00pm
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unless a separate application to vary the hours of operation or trading has been submitted to and approved by City of Newcastle.

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

Should City of Newcastle 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 City of Newcastle prior to the expiration of the nominated period.

39. Under no circumstances are garbage bins to be presented to the street for kerbside collection for kerbside collection or remain at kerbside after collection.

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

Should City of Newcastle 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 City of Newcastle 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.

41. The premise/s is/are allocated the following street address/es in accordance with *City of Newcastle's House Numbering Policy* and the *Surveying and Spatial Regulation*.

Unit/ Dwelling/ Lot Number on plan	City of Newcastle Allocated Street Addresses			
	House Number	Street Name	Street Type	Suburb
Site	164	Hunter	Street	Newcastle
Tenancy 1	17	Keightley	Street	Newcastle
Tenancy 2	11	Keightley	Street	Newcastle
Tenancy 3	10	Market	Street	Newcastle
Tenancy 4	8	Market	Street	Newcastle
Tenancy 5	170	Hunter	Street	Newcastle
Tenancy 6	168	Hunter	Street	Newcastle
Tenancy 7	166	Hunter	Street	Newcastle
Tenancy 8	164	Hunter	Street	Newcastle
Tenancy 9	162	Hunter	Street	Newcastle
Residential Entry	13	Keightley	Street	Newcastle
Unit 101	101/13	Keightley	Street	Newcastle
Unit 102	102/13	Keightley	Street	Newcastle

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Unit 103	103/13	Keightley	Street	Newcastle
Unit 104	104/13	Keightley	Street	Newcastle
Unit 105	105/13	Keightley	Street	Newcastle
Unit 106	106/13	Keightley	Street	Newcastle
Unit 107	107/13	Keightley	Street	Newcastle
Unit 108	108/13	Keightley	Street	Newcastle
Unit 201	201/13	Keightley	Street	Newcastle
Unit 202	202/13	Keightley	Street	Newcastle
Unit 203	203/13	Keightley	Street	Newcastle
Unit 204	204/13	Keightley	Street	Newcastle
Unit 205	205/13	Keightley	Street	Newcastle
Unit 206	206/13	Keightley	Street	Newcastle
Unit 207	207/13	Keightley	Street	Newcastle
Unit 208	208/13	Keightley	Street	Newcastle
Unit 301	301/13	Keightley	Street	Newcastle
Unit 302	302/13	Keightley	Street	Newcastle
Unit 303	303/13	Keightley	Street	Newcastle
Unit 304	304/13	Keightley	Street	Newcastle
Unit 305	305/13	Keightley	Street	Newcastle
Unit 306	306/13	Keightley	Street	Newcastle
Unit 401	401/13	Keightley	Street	Newcastle
Unit 402	402/13	Keightley	Street	Newcastle
Unit 403	403/13	Keightley	Street	Newcastle
Unit 404	404/13	Keightley	Street	Newcastle
Unit 405	405/13	Keightley	Street	Newcastle
Unit 406	406/13	Keightley	Street	Newcastle

ADVISORY MATTERS

- Any proposed business identification sign or advertising sign should be designed in accordance with the provisions of Newcastle Development Control Plan 2012 and be the subject of a separate Development Application approved prior to erection or placement in position.
- Any necessary alterations to public utility installations are to be at the developer/demolisher's expense and to the requirements of both City of Newcastle and any other relevant authorities. City of Newcastle and other service authorities should be contacted for specific requirements prior to the commencement of any works.
- Prior to commencing any building works, the following provisions of Division 6.2 of the *Environmental Planning and Assessment Act 1979* are to be complied with:
 - a) A Construction Certificate is to be obtained; and
 - b) A Principal Certifier is to be appointed for the building works and City of Newcastle is to be notified of the appointment; and
 - c) City of Newcastle is to be given at least two days notice of the date intended for

commencement of building works.

- Development applications are not assessed against the provisions of the National Construction Code. An application to modify the application under the *Environmental Planning and Assessment Act 1979* 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.
- Prior to the occupation or use of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the proposed development. An application for an Occupation Certificate must contain the information set out in Clause 149 of the *Environmental Planning and Assessment Regulation 2000*.
- A copy of the final Fire Safety Certificate (together with a copy of the current fire safety schedule) is to be given to the Commissioner of NSW Fire Brigades and a further copy of the Certificate (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.
- An annual Fire Safety Statement in the form described in Clause 175 of the *Environmental Planning and Assessment Regulation 2000* is to be submitted to City of Newcastle and a copy (together with a copy of the current fire safety schedule) is to be given to the Commissioner of New South Wales Fire Brigades. A further copy of the Statement (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.
- It is an offence under the provisions of the *Protection of the Environment Operations Act 1997* to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.
- Failure to comply with the conditions of consent constitutes a breach of the *Environmental Planning and Assessment Act 1979*, which may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.

END OF CONDITIONS

SCHEDULE 2

REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; Newcastle Local Environmental Plan 2012 and applicable State Environmental Planning Policies.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Newcastle Development Control Plan 2012.
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development has appropriate management and mitigation of impacts through conditions of consent.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- City of Newcastle has considered and accepted the proposed height of buildings and floor space ratio development standard variations made under Clause 4.6 of the Newcastle Local Environmental Plan 2012. The proposed variations are considered acceptable in the particular circumstances of this case as the variations do not cause any undue adverse environmental impacts, including impacts on neighbouring properties in terms of overshadowing and visual privacy. The proposal is consistent with the intended future urban form within the area, having regard to the combination of controls under Newcastle Local Environmental Plan 2012 and Newcastle Development Control Plan 2012 (notably Section 6.01 Newcastle City Centre).

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

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

Item 16 - Attachment C

THE CITY OF NEWCASTLE
Report to Development Applications Committee Meeting on
8 October 2019



PROCESSING CHRONOLOGY

DA2019/00331 - 164 Hunter Street Newcastle

- 18 December 2018 - First visit to UDCG (pre lodgement)
 - 22 March 2019 - Application lodged (submitted plans were amended to address previous concerns raised by UDCG)
 - 4 April 2019 - Advertising and public notification
 - 17 April 2019 - Second visit to UDCG
 - 3 May 2019 – Additional information and response to UDCG minutes
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