



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 9 April 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**

2 April 2019

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DEVELOPMENT APPLICATIONS COMMITTEE
09 April 2019

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

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 19 MARCH 2019

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 190319 Development Applications Committee Minutes

Note: The attached extract of the minutes are the decisions made by Council at the meeting. The full minutes incorporate the business paper reports previously provided and subsequent decisions. They may be viewed at www.newcastle.nsw.gov.au

CITY OF NEWCASTLE

Minutes of the Development Applications Committee Meeting held in the Council Chambers, 2nd Floor City Hall on Tuesday 19 March 2019 at 5.36pm.

PRESENT

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

IN ATTENDANCE

J Bath (Chief Executive Officer), D Clarke (Director Governance), K Liddell (Director Infrastructure and Property and Interim Director Strategy and Engagement), F Leatham (Interim Director People and Culture), A Murphy (Director City Wide Services), M Bisson (Manager Regulatory, Planning and Assessment), E Kolatchew (Manager Legal), J Vescio (Executive Officer, Chief Executive Office), M Murray (Policy Officer, Lord Mayor's Office), C Field (Executive Officer, Lord Mayor's Office) and K Sullivan (Council Services/Minutes/Webcast).

MESSAGE OF ACKNOWLEDGEMENT

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

PRAYER

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

APOLOGIES

MOTION

Moved by Cr Luke, seconded by Cr Winney-Baartz

The apologies submitted on behalf of Councillors Byrne, Dunn and Elliott be received and leave of absence granted.

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Nil

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 4 DECEMBER 2018

MOTION

Moved by Cr Mackenzie, seconded by Cr Clausen

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

Carried

DEVELOPMENT APPLICATIONS

ITEM-1 DAC 19/03/19 - DA2018/01097 2 AND 4A ROSE STREET TIGHES HILL, THREE LOT INTO TWO LOT SUBDIVISION

MOTION

Moved by Cr Mackenzie, seconded by Cr Robinson

- A. That Council: resolves that the objection under Clause 4.6 Exceptions to Development Standards of the NLEP2012, 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 for development within the R2 Low Density Residential zone in which the development is proposed to be carried out;
- B. That DA2018/01097 for three lot into two lot subdivision at No.2 and No.4A Rose Street Tighes Hill be approved and consent granted, subject to compliance with the conditions set out in the Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of the determination of the application.

For the Motion:

Lord Mayor, Cr Nelmes and Councillors Church, Clausen, Duncan, Mackenzie, Luke, Rufo, Robinson, White and Winney-Baartz.

Against the Motion:

Nil.

Carried

The meeting concluded at 5.40pm.

DEVELOPMENT APPLICATIONS

ITEM-2 **DAC 09/04/19 - DA2018/00948 - 25 MARSHALL STREET
NEW LAMBTON HEIGHTS - DEMOLITION OF DWELLING,
ERECTION OF FOUR TWO STOREY DWELLINGS**

APPLICANT: **ELK DESIGNS**
OWNER: **STEPHEN NIGEL BINNIE & ELIZABETH ANNE BINNIE**
CONTACT: **DIRECTOR GOVERNANCE / MANAGER PLANNING
REGULATORY AND ASSESSMENT**

PART I

BACKGROUND

An application has been received seeking consent for demolition of a dwelling and erection of four two storey dwellings at 25 Marshall Street, New Lambton Heights.

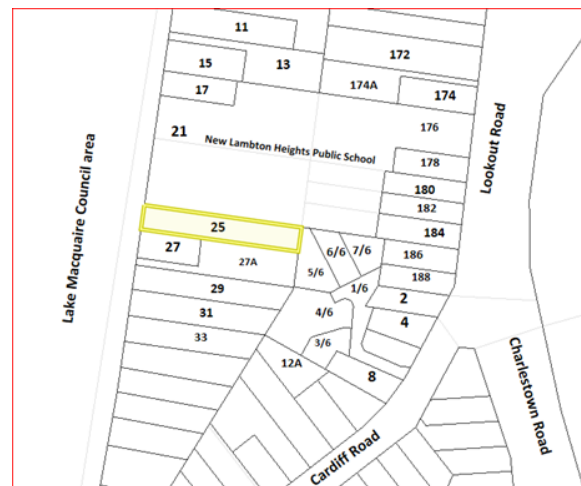
The application is referred to the Development Applications Committee for determination, due to the number of public submissions received in addition to the application being called in by two Councillors.

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

The proposed development was publicly notified for 14 days in accordance with Council's Public Notification policy and 31 submissions were received in response.

The objectors' concerns included:

- i) Inconsistency with land use objectives
- ii) Stormwater runoff
- iii) Removal of trees
- iv) Car parking/access
- v) Amenity
- vi) Building height
- vii) Landscaped area provision
- viii) Frontage width
- ix) Construction impact
- x) Waste management



Subject Land: 25 Marshall Street New Lambton Heights

Following a significant redesign of the proposal in response to the objector's and City of Newcastle (CN) concerns, the proposed development was renotified on 26 February 2019 in accordance with Council's Public Notification policy and 24 submissions were received in response.

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

The proposal was considered at a meeting of the Public Voice Committee on 4 December 2018.

Issues

- 1) Public submissions

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* (EP&A Act 1979) and is considered to be acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

- A. That DA2018/00948 for demolition of a dwelling, erection of four two storey dwellings at 25 Marshall St, New Lambton be approved and consent granted, subject to compliance with the conditions set out in the Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of Council's determination.

Political Donation / Gift Declaration

Section 10.4 of the EP&A 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 political donation' or 'gift' to a Councillor or Council employee within a two year period before the date of this application?*

PART II**1.0 THE SUBJECT SITE**

The subject property comprises Lot A DP 367643 and is a rectangular parcel of land located on the western side of Marshall Street. The site is zoned R2 Low Density Residential Zone under the provisions of the Newcastle Local Environmental Plan (NLEP 2012). The site has a frontage of 15.58m to Marshall Street, 15.35m to the western boundary and 97.76m and 97.93m to the northern and southern boundaries respectively. The total site area is 1,492 m². The site slopes from the north east (rear boundary) to the south west (front boundary) and includes a number of mature trees in the western (rear) portion of the site. The site is currently occupied by a two-storey brick and weatherboard dwelling with the garage located at ground level and the majority of the accommodation on the upper floor. Access to the garage is provided via a driveway that is located along the southern boundary of the site. At the rear of the dwelling is a terraced garden area and a fence running north to south that separates the rear portion of the site from the dwelling and garden.

The site is located within a residential suburb predominantly characterised by one and two storey older style dwellings. To the south and west of the site are areas of residential accommodation, to the east of the site is an area of vegetation identified by CN as coastal plains smooth barked apple woodland and to the north of the site is New Lambton Heights Public School. The playing fields for the school are located directly to the north of the subject site. The LGA boundary between the City of Newcastle and Lake Macquarie extends along Marshall Street to the west of the site with the Lake Macquarie LGA being located on the western side of Marshall Street. The properties on Marshall Street within the Lake Macquarie LGA are zoned R2 Low Density Residential under the provisions of the Lake Macquarie local Environmental Plan (LMLEP 2014).

2.0 THE PROPOSAL

The applicant originally sought consent for demolition of the existing dwelling and erection of five two storey dwellings sited along the northern boundary of the site. Each dwelling included a garage space for car parking in addition to a visitor space provided on site in accordance with CN's controls. Access to all proposed dwellings was provided via a driveway which extended along the southern boundary of the site. The proposed dwellings were two storeys in height and were orientated in a north-south direction. This resulted in the front of the property looking southwards and the rear of the property and amenity areas for each dwelling located along the northern boundary of the site.

The siting and orientation of the dwellings was chosen to minimise the impact on the amenity of the neighbouring properties to the south as they are most likely to be affected by development on the subject site. All dwellings were setback from the southern boundary to avoid overshadowing to the south whilst living accommodation was located on the ground levels of the dwellings to avoid overlooking.

Privacy screening was incorporated into the upper floor bedroom windows on the northern and southern elevations of the proposed dwellings to avoid overlooking to the south and north into the primary school. Due to the retention of the existing solid fence running along the northern boundary of the site, the applicant contented that the proposed POS areas for Units 1-3 would be adequately screened from the primary school by this fence.

Following submission of the development application, concerns were raised by neighbours in respect of a number of aspects of the proposal including the density of development, the length of the proposed driveway, stormwater, overlooking, tree removal and overshadowing. 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**.

In response to the concerns raised, the applicant amended the proposed development. These amendments included the reduction in the proposal from five to four dwellings, a reduction in the height of the proposed dwellings to ensure full compliance with the maximum building height, the protection of an additional eight trees at the rear of the site, increased separation between the proposed dwellings, increased landscaping provision and a reduction in the length of the proposed driveway. Full details of the amendments are addressed as part of the Planning Assessment at **Section 5.0**.

A copy of the current amended plans is included at **Attachment A**.

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

3.0 PUBLIC NOTIFICATION

The original application was publicly notified in accordance with the requirements of the EP&A Act 1979, the associated Regulation and the Newcastle Development Control Plan 2012 (NDCP 2012). In response 31 submissions were received. The concerns raised by the objectors in respect of the proposed development are summarised as follows:

- i. Land Use Zone Objectives
 - a) The proposal is not consistent with the objectives of the R2 Low Density Residential Land Use Zone i.e. *“provide for the housing needs of the community within a low-density residential environment”*.
- ii. Stormwater Runoff
 - a) Impact of the proposal on the existing inadequate stormwater system.
- iii. Removal of Trees/Impact on Natural Habitat
 - a) The impact of the removal of trees on the site.

- iv. Car parking/Access
 - a) Insufficient car parking provision.
 - b) Increase in traffic flow on the street as a result of the proposal.
 - c) There is insufficient pedestrian infrastructure for this form of development.
 - d) The proposed driveway exceeds the maximum driveway length.
- v. Amenity
 - a) Impact on the privacy of adjoining properties.
 - b) Impact on the privacy of the adjoining school.
 - c) Concern with level of overshadowing to neighbouring properties.
 - d) Increase in noise levels as a result of increased traffic.
- vi. NLEP 2012 Clause 4.6 Request
 - a) The proposed building height variation will have a further impact on the amenity of neighbours.
- vii. Landscaped Area
 - a) The proposed landscaped area is not sufficient.
- viii. Frontage Width
 - a) The proposal does not accord with the minimum frontage width.
- ix. Construction
 - a) The proposed construction will impact on noise and dust/air pollution.
 - b) Unclear how asbestos will be dealt with if found on site.
- x. Waste Management
 - a) There is insufficient space for bins.

The current amended plans have been publicly notified and 24 submissions have been received expressing continued concerns regarding the proposal.

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

4.0 INTEGRATED DEVELOPMENT

The proposal is not 'integrated development' pursuant to Section 4.46 of the Act.

5.0 PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15 of the EP&A 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.

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

The subject land is currently being used for residential accommodation purposes and City of Newcastle's (CN) 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 (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 (Vegetation in Non-Rural Areas) 2017

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) is one of a suite of Land Management and Biodiversity Conservation reforms that commenced in New South Wales on 25 August 2017.

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. Part 3 of the Vegetation SEPP contains provisions similar to those previously contained in cl.5.9 of NLEP 2012 (clause now repealed) and provides that Council's NDCP 2012 can make declarations with regard to certain matters, and further that Council may issue a permit for tree removal.

The proposal has been assessed in accordance with NDCP 2012 and is considered to be satisfactory.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

Clause 2.1 Land Use Zones

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

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.*

The proposed development comprises the erection of four 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 proposal has a Floor Space Ratio below the maximum prescribed level and 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.*

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.*

The proposal provides for dwellings in a low-density environment. The proposed dwellings are considered to respect the amenity and character of surrounding development through siting and design. All dwellings are designed to minimise potential overlooking and overshadowing to surrounding properties and the public school. In addition, the proposal minimises the removal of trees at the rear (eastern portion) of the site, thereby protecting the area of vegetation at the rear of the site. The proposal will result in a significant portion of the site being retained as green space, reflecting the character of the surrounding area.

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

Clause 2.7 Demolition Requires Development Consent

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

Clause 4.3 Height of Buildings

Under NLEP 2012 the site has a maximum height of 8.5m. The submitted height of the proposed dwellings is approximately 8.47m and complies with this requirement

Clause 4.4 Floor Space Ratio

Under NLEP 2012 the site has a maximum 0.6 floor space ratio. The submitted FSR is approximately 0.45 and complies with this requirement.

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 the 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

It is recommended in the NDCP 2012 that the site has a frontage width of 18 metres for the proposed multi-dwelling housing (the site is mapped within a limited growth precinct). The site has a frontage width of 15.24 metres.

In accordance with the NDCP 2012, an assessment of the proposal against the performance criteria of this control has been undertaken. The following performance criteria apply:

1. Sites are wide enough to accommodate new development that respects the desired character of the surrounding area, the amenity of adjoining development and provides good internal site amenity.

2. Development in the R3, R4 or B4 zones does not result in isolated sites that have less than the minimum developable site frontage.

The proposal has been assessed against performance criteria 1. Sufficient frontage width is available to accommodate the proposed driveway and front setback landscaping, consistent with the character of the locality. The siting and design of the proposed dwellings minimises impact on the amenity of surrounding properties including the dwellings to the south and the primary school to the north. The frontage width does not result in poor amenity for the proposed dwellings with each dwelling comfortably meeting car parking and amenity provisions. Performance criteria 2 is not relevant as the proposed development is within a R2 land use zone.

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

B. Front setbacks

The proposed front setback is consistent with the existing streetscape and the proposed garages are located sufficiently behind the building line. The proposed development is considered to achieve the objectives and controls within this section of the DCP and is acceptable.

C. Side and rear setbacks

Each dwelling is set back sufficiently from each side boundary and the rear boundary to achieve compliance with the controls within this section of the NDCP 2012 and is acceptable.

D. Landscaped Area

The proposal exceeds the minimum landscape area and deep soil requirement for the site. A 3 metre-wide landscaped area can be accommodated within the rear setback and medium and large tree planting is provided at the required rate. The proposed development achieves the controls within this section of the NDCP 2012 and is acceptable.

Siting the development (3.03.01)

A. Local character and context

A Site analysis has been included as part of the architectural drawings. The proposed development is consistent with the local character and context. The proposed dwellings are two-storey in height and are to be constructed of a mix of weatherboard and brick. The scale and materials proposed reflects 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. This includes the provision of a 1.2m high fence on the front boundary, private open space behind the building line and windows overlooking the public domain.

C. Pedestrian and vehicle access

The proposed vehicular access has been assessed by CN's Development Officer (Traffic). The proposed access requires minor amendments to meet AS2890.1 in respect of the squaring of the crossover and an increase to the width of the internal driveway. Following the implementation of these amendments, the proposal is considered acceptable subject to the inclusion of specific conditions of consent relating to the required amendments. The proposed access is sufficient in width to allow for parking and vehicle turning whilst the internal circulation also allows for pedestrian circulation.

The proposed driveway length, at approx. 74.5m, is significantly in excess of the maximum recommended 40m length. In this instance, this driveway length is considered acceptable. The length of the site is approximately 97.8m. Should a restriction be put in place for a maximum 40m driveway length, approximately half of the site would not be capable of being serviced by a driveway. This would prevent development on the rear half of the site, resulting in a possible significant under-development of the site in planning terms.

By restricting the driveway length, it is also likely that a potential future development proposal would seek to build a similar number of dwellings on only half the area used in this proposal. This would undoubtedly have an impact on car parking provision, landscaped area provision and amenity issues such as overlooking and overshadowing.

By utilising a significant portion of the site, the proposed development provides for a high level of amenity for each dwelling and is considered to create an acceptable low density setting for each unit.

The proposal has been designed with a curved element to the driveway. This is to protect an existing neighbouring tree on the southern boundary of the site. This curve also acts as a visual break in the length of the driveway, allowing for an area of landscaping to be located between the southern side of the proposed driveway and the southern boundary. Visually, the driveway will not appear as a single straight line of hardstanding but rather a group of smaller driveways. This will be enhanced by the use of permeable paving for a portion of the driveway.

In conclusion, despite the proposed driveway exceeding the maximum recommended length, it is considered to achieve the performance criteria for this control and is considered acceptable.

D. Orientation and siting

The orientation and siting of the proposed dwellings results in each proposed dwelling achieving the required minimum solar access to the principal area of private open space (PPOS) and living rooms. The private open space (POS) areas for each proposed dwelling are located to the north of the dwellings. Each POS will receive adequate solar access. In addition, the proposed dwellings are suitably separated to allow for the windows to the living rooms to achieve an acceptable level of solar access.

The applicant has provided both an overshadowing plan and facade study for 27 Marshall Street. The overshadowing analysis clearly demonstrates that the proposal will have a minimal impact on solar access to both 27 and 27A Marshall Street. In respect of 27 Marshall Street, the facade study provided by the applicant demonstrates that, outside of 9am, the proposed development will not result in overshadowing to the windows of 27 Marshall Street.

An assessment of 27A Marshall Street has also been undertaken. Having reviewed the floor plans of the property, all of the living accommodation is located on the southern side of the property. The rooms on the northern side of this property (closest to the subject site) are storage rooms, bedrooms a bathroom and laundry respectively. Under the DCP controls, an overshadowing assessment for these rooms is not required. However, the overshadowing analysis confirms that no impact will occur to the solar access of these rooms.

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

E. Building Separation

The proposed development achieves the minimum setback requirements within this section of the NDCP 2012 and is acceptable.

Amenity (3.03.03)

A. Solar and daylight access

Direct sunlight is received by the private open space and living rooms of each proposed dwelling in excess of the minimum hours required. The siting of the POS and living rooms is acceptable.

B. Natural ventilation

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

F. Storage

The proposed development achieves the objectives and controls within this section of the NDCP 2012 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 assessed within the Section entitled *Traffic, Parking & Access - Section 7.03*.

H. Visual privacy

The proposed dwellings have been designed to minimise overlooking to surrounding properties including the primary school to the north of the site. The living accommodation of all units is located at ground level with bedrooms and bathrooms/laundries on the upper floor. This assists in reducing the potential for continual overlooking to surrounding properties. The upper floor bedroom windows on the southern and northern elevations of the dwellings are proposed to have privacy screens fitted, which is also required as a condition of consent. This will allow for light access to the rooms whilst minimising the potential for overlooking to the dwellings to the south and the primary school to the north.

A school is located to the north of the site. The portion of the school directly to the north of the site contains landscaping and there is some distance from the school buildings and playgrounds to the proposed dwellings. However, consideration has been given to how privacy can be maintained to the school. The proposal will retain the existing solid fence that runs along the northern boundary of the site. The retention of this fence will significantly reduce the potential for overlooking to the north. The private open space areas for three of the four dwellings are located along the northern boundary. In order to further reduce the potential for overlooking, a condition is included within the conditions of consent to ensure privacy screening is installed along the northern face of the POS areas for Units 1-3.

I. Acoustic privacy

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

J. Noise and pollution

The site is not within 100 metres of road corridor or 80 metres of a train corridor. Lookout Road (main/state road) has an AADT of more than 40,000 vehicles and is located more than 100 metres from the site. No acoustic assessment or treatment is required.

Configuration (3.03.04)

A. Universal design

Given the slope of the site, only one unit can achieve step free access. All remaining units require steps to access the property. All units are however capable of compliance with the remaining Liveable Housing Design Guidelines Silver Level and is acceptable.

B. Communal area and open space

The proposal is for less than 10 dwellings therefore communal open space is not required.

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 DCP 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 3 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.

The proposed development is considered acceptable in relation to the abovementioned NDCP 2012 section 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 privacy for adjoining neighbours.

Bush Fire Protection - Section 4.02

The site is identified as bush fire prone, and conditional approval for the proposed development has been granted by NSW Rural Fire Service. The proposed development does not include subdivision or development for a special fire protection purpose. Therefore, it is not integrated development.

In accordance with this NDCP 2012 Section, the applicant has provided a Bushfire Assessment Report which has been assessed and is considered to adequately demonstrate the proposal is acceptable subject to the inclusion of recommendations. The bushfire recommendations to enable the proposal to comply with PBP (2006) and AS3959-2009 are as follows:

- a) An APZ of 15m is required by PBP (2006) to the west.
- b) Future dwellings within the site should have due regard to the specific considerations given in the BCA, which makes specific reference to the Australian Standard (AS3959 – 2009) construction of buildings in bushfire prone areas as outlined in Chapter 3, Section 3.2 of this report. Assessment of AS3959-2009 has shown that any future development on the site will be able to comply with this standard based on the setbacks provided from the western boundary.
- c) Services are to be provided and connected to the site in accordance with PBP (2006) as summarised and assessed in Chapter 3, Section 3.4 of this report.
- d) Careful consideration of future site landscaping and ongoing fuel management must occur to minimise the potential impact of bushfire on the site.

These recommendations are included within the conditions of consent.

This is considered to adequately address bushfire issues.

Mine Subsidence - Section 4.03

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

Safety and Security - Section 4.04

The 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 acceptable. A crime risk is not required as the proposal is for less than 10 dwellings.

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 acceptable. The extent of disturbance is proposed to be limited to the location of site works and any excavated material will be utilised in the landscaping. The proposed development achieves the objectives and controls within this section of the NDCP 2012 and is acceptable.

Vegetation Management - Section 5.03

To facilitate the proposed works there will be an impact on existing trees at the rear of site.

In support of the proposed works, the applicant has submitted an arborist's report that details species, location, size, health and value. The report is prepared generally in accordance with City of Newcastle's tree assessment requirements and it is considered that the proposed tree removal is acceptable.

As a result of changes to the proposed development including the reduction in the scale of the development from five to four dwellings, the impact on the trees is significantly reduced from the original scheme.

The proposal now retains the majority of trees at the rear of the site (12) in addition to ensuring the protection of existing neighbouring trees to the south. The design of the driveway is affected by the retention of an existing neighbouring tree.

Compensatory tree planting will be undertaken in accordance with CN's requirements. This will be required by a condition of consent.

Landscape Open Space & Visual Amenity - Section 7.02

The proposal is category 2 development. A landscape plan has been provided with the development application in accordance with this section of the NDCP 2012.

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

Traffic, Parking & Access - Section 7.03

The proposal requires a minimum of one car parking space per dwelling and one visitor space on site. The proposal achieves this car parking control. Units 1-3 each include a single car garage whilst Unit 4 includes a double car garage. A visitor car parking space is also provided in between units 2 and 3.

Bicycle provision in accordance with the control in this chapter is provided in the garage of each proposed dwelling whilst motorbike parking is not required.

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

The proposed development fully accords with the objectives and controls of this section and is acceptable.

Section 7.05 - Energy efficiency

The proposal is acceptable having regard to this section. A BASIX Certificate has been submitted with the development proposal detailing the energy efficiency measures to be implemented on the proposal. A condition of consent has been included in the approval to ensure that the measures set out in the certificate will be implemented.

Stormwater- Section 7.06 & Water Efficiency - Section 7.07

The proposed stormwater management comprises the installation of rainwater tanks, new pits and pipelines, underground detention tank with sand filter, porous pavement and connection of stormwater drainage to the public system. Each dwelling will have a 4,000 litre stormwater retention tank fitted while an on-site detention tank will store water run-off from the hardstanding areas.

CN's Development Officer (Engineering) has assessed the proposal and has confirmed it is acceptable subject to the inclusion of specific conditions of consent. These conditions relate to the size of the on-site detention tank and the construction of the driveway.

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

Waste Management - Section 7.08

The applicant has prepared a detailed waste management plan, which 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. Discussions have also been held with CN's Waste Management Officer in relation to the availability of sufficient frontage for bin pickup. The officer confirmed that the site frontage will provide sufficient width to allow for CN pick up of all bins.

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

Public Participation - Section 8.0

The proposal was notified on 3 September 2018 to neighbouring properties for 14 days in accordance with the provisions of NDCP 2012. A total of 31 submissions objecting to the proposal were received.

Following receipt of the submissions, the applicant completed a number of changes to the proposal resulting in the current plans. This amended proposal was notified on 26 February 2019 to neighbouring properties for 14 days in accordance with the provisions of NDCP 2012. A total of 24 submissions objecting to the proposal were received.

An assessment of the issues raised by submitters is provided in **Section 5.8** of this report

Development Contributions

Sections 7.11 and 7.12 of the EP&A Act 1979 enables Council to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's Development Contributions Plans.

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

5.4 Planning agreements

No planning agreements are relevant to the proposal.

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the EP&A Act 1979 and 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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including NLEP 2012 and NDCP 2012 considerations. In addition, the following impacts are considered relevant:

Traffic and Parking

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

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

Vehicular Access, Driveway Design and Crossing Location

The driveway crossing is to be increased in width to 5.0m and maintain for a minimum distance of 5.0m inside the property boundary in accordance with AS2890.1. The driveway crossing across the public road reserve is to be squared (90 degree) to the kerb line in accordance with the Newcastle STD A1300. If the proposed driveway cannot be constructed in accordance A1300 and maintain a minimum clearance of 1m from the edge of driveway to the drainage pit. The pit in the public road reserve is to be relocated by the developer at the developer's expense. These requirements re driveway crossing can be conditioned.

Proposed car garages and internal driveway access meet the Australian Standard AS2890.1. No additional information is necessary.

Traffic Generation

According to the RTA Guide to Traffic Generating Developments, the potential traffic impacts of the proposed development can be estimated as follow;

- 1) *Daily Vehicle Trip 37*
- 2) *Weekday average evening peak hour vehicle trip 4*
- 2) *Weekday average morning peak hour vehicle trip 4*

Acknowledging the increased in traffic, the current road system should be able to cater for the additional traffic generated as a result of the development. It is unlikely the development would cause noticeable impacts on the street network.

Bulk and Scale

The proposed development accords with the NDCP 2012 controls in respect of building height and setbacks. The resulting proposal provides four dwellings consistent with the size and scale of dwellings in the locality. The current amended proposal is considered acceptable.

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.

Privacy

The proposed dwellings have been designed to minimise potential privacy impacts to surrounding properties including the primary school to the north. The living accommodation of all four dwellings is provided at ground level to avoid potential for overlooking from the upper floors of the properties. The living rooms of each dwelling are generally orientated to the north. This is to ensure sufficient solar access is available to the living rooms as well as protecting the privacy of the dwellings to the south. The upper floors of each dwelling comprise of bedrooms and bathrooms. Privacy Screening is proposed to the upper floor bedroom windows on the northern and southern elevations to prevent overlooking. This screening is also required as a condition of consent

To the north of the site is a primary school. A solid fence currently runs along the majority of the northern boundary of the site. This fence will be retained to ensure continued privacy. The proposal includes raised decks along the northern site boundary. A condition is included within the conditions of consent specifying that privacy screens are to be provided along the northern face of the proposed POS areas.

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 impact on the general outlook is reasonable having regard to the allowable height and scale for development under relevant planning policies.

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.

5.7 The suitability of the site for the development

The site is located within an R2 land use 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.

The proposed development will provide for additional accommodation in proximity to existing services such as schools and shops. This will enhance housing stock availability in the area and provide for additional users of local services and facilities.

The site is an appropriate size to accommodate the proposed development whilst 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 application was originally notified on 3 September 2018 in accordance with the NDCP 2012 for a period of 14 days. 31 submissions were received during the notification period.

Following amendments to the proposed development, the application was notified for a second time on 26 February 2019. Twenty four (24) submissions were received during the re-notification period.

The key issues raised within the submissions have been discussed previously in this report.

The following provides a summary of the issues raised and a response to those issues.

Issue	Comment
The proposal is not consistent with the objectives of the R2 Low Density Residential Land Use Zone i.e. <i>“provide for the housing needs of the community within a low-density residential environment”</i>	The proposed development comprises the erection of multi dwelling housing which is a form of residential accommodation as defined within the 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. Following receipt of the original submissions, the proposed development was reduced in size from five to four dwellings. Each dwelling is fully detached and achieves the required level of private amenity,

	<p>landscaped area and car parking provision. In addition, the proposed development is less than the maximum floor space ratio and building height standards for the site. The proposal is therefore considered to achieve the design standards applied to the R2 land use zone.</p> <p>Reference is made to a recent Land and Environment Court decision [Fleetqueen Pty. Ltd. V Newcastle City Council - February 2018]. This decision relates to CoN's refusal of a proposal partly on the grounds of inconsistency with the character of the R2 low density land use zone. The appeal was upheld with the commissioner stating that <i>"The standards and controls established in the NLEP 2012 and NDCP 2012, including height, FSR, setbacks, landscaping, building materials and private open spaces are intended to support and provide objectively in the achievement of 'harmony', and to ensure the character of the surrounding area are 'respected', which in turn support achievement of the zone objectives."</i></p> <p>The proposed development achieves the relevant development standards highlighted in the above paragraph whilst also being permissible with consent in the R2 land use zone. The proposed development is therefore consistent with both the permissible uses and objectives of the land use zone.</p>
<p>Impact of the proposal on existing inadequate stormwater system</p>	<p>In accordance with the NDCP 2012, all development is required to achieve at least the existing run-off rate for stormwater discharge on site. In reality, the stormwater measures required by CN commonly result in a reduction in run-off rates from new development when compared to the existing situation.</p> <p>A stormwater plan prepared by Northrop was submitted with the application. The proposed stormwater management system has been reviewed by the Development Officer (Stormwater). The proposed stormwater treatment is acceptable subject to the inclusion of specific conditions. These conditions are provided as part of the consent.</p>
<p>The impact of the removal of trees on the site</p>	<p>The original proposal included removal of a number of trees from the rear of the site in order to accommodate all proposed dwellings. The proposed development was reduced in scale from five to four dwellings. The dwelling proposed at the rear of the site was removed, thereby significantly reducing the impact of the proposal on the existing trees on site. The amended current proposal results in an additional eight trees being</p>

	<p>retained at the rear of the site.</p> <p>The proposal results in the removal of a small portion of trees on site. However, the majority of trees are to be retained at the rear of the site with the impact on tree coverage as a result of the proposed development considered to be minimal. Compensatory tree planting will be undertaken in accordance with CN's tree controls.</p>
<p>a) Insufficient car parking provision. b) Increase in traffic flow on the street as a result of the proposal. c) There is insufficient pedestrian infrastructure for this form of development. d) The proposed driveway exceeds the maximum driveway length.</p>	<p>The proposal has been assessed by the Development Officer (Traffic) and found to be acceptable subject to the inclusion of specific conditions of consent. These conditions have been included within the consent. Specifically:</p> <p>Insufficient car parking provision The proposal fully accords with CN's car parking standard which requires a minimum one car parking space per dwelling and a visitor space to be provided on site. Units 1-3 provide a single garage car parking space whilst unit 4 provides a two car garage. A visitor space is provided between units 2 and 3.</p> <p>Increase in traffic flow The traffic flow increase was considered by the Development Officer (Traffic) and considered acceptable. The officer stated the following:</p> <p><i>"Acknowledging the increased in traffic, the current road system should be able to cater for the additional traffic generated as a result of the development. It is unlikely the development would cause noticeable impacts on the street network."</i></p> <p>Insufficient pedestrian infrastructure The development provides sufficient pedestrian infrastructure on site to allow for the movement of pedestrians through the site. The site is connected to surrounding streets via a network of pavements. The pedestrian infrastructure both within the site and in the locality is considered acceptable.</p> <p>Exceedance of maximum driveway It is recognised that the proposal will result in an exceedance of the NDCP's maximum driveway control. This issue has been assessed and the proposed driveway length is considered acceptable. A detailed assessment of why the driveway length is acceptable is provided in Section 5.3 of this report (3.03.01 C).</p>

<p>a) Impact on the privacy of adjoining properties</p> <p>b) Impact on the privacy of the adjoining school</p> <p>c) Concern with level of overshadowing to neighbouring properties</p> <p>d) Increase in noise levels as a result of increased traffic</p>	<p>The proposed development is not considered to have a detrimental impact on the amenity of neighbouring properties.</p> <p>Impact of privacy of adjoining properties including the school</p> <p>The proposal has been designed to minimise the potential for overlooking to surrounding properties. In respect of the properties to the south, the proposed living accommodation is located on the northern part of the ground floor of each dwelling. This ensures that no direct overlooking is likely to occur from the living rooms. The upper floor bedroom windows on the southern and northern facades of each dwelling will be required to have privacy screening installed as a condition of consent.</p> <p>To the north of the site is a school. There is currently a solid paling fence that runs the length of the northern boundary. This fence will be retained to ensure that privacy is maintained to the school. In addition, a condition of consent is included within the approval that requires the erection of screening along the northern face of the POS areas, further minimising the potential for overlooking to the school. Further details are provided in Section 5.3 of this report (3.03.03 H). The impact on privacy is considered acceptable.</p> <p>Overshadowing to neighbouring properties</p> <p>The orientation of the site and siting of surrounding properties means that the properties to the south of site are the only properties relevant for overshadowing assessment.</p> <p>Overshadowing assessments have been provided as part of the amended proposed development. The assessments provided (which include an overshadowing plan and facade study for 27 Marshall Street) demonstrate that the proposal will not result in an unacceptable level of overshadowing to these neighbouring properties. Both the living accommodation of the two adjacent dwellings and the POS areas of each dwelling will retain a sufficient level of solar access in accordance with CN's overshadowing controls</p> <p>Increase in noise from traffic</p> <p>Given the likely increase in traffic on the street and the</p>
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CITY OF NEWCASTLE

	<p>fact the street currently contains a large number of dwellings with their own car parking, the increase in traffic on the street will be minimal and will not result in a noticeable increase in noise.</p>
<p>a) The proposed building height variation will have a further impact on the amenity of neighbours.</p>	<p>Following receipt of the submissions, the proposed development was reduced in height. The current proposal now fully complies with the maximum building height standard.</p>
<p>a) The proposed landscaped area is not sufficient.</p>	<p>It was recognised that the original proposal resulted in an insufficient level of landscaping. The proposed development was amended and reduced in scale. In addition, the landscaping provision was increased. The current landscaped area achieves 40% site coverage and the deep soil zone achieves 22% of the site area in excess of CN's requirements of 30% and 15% respectively.</p>
<p>a) The proposal does not accord with the minimum frontage width.</p>	<p>The siting and design of the proposed dwellings minimises impact on the amenity of surrounding properties including the dwellings to the south and the primary school to the north. The frontage width does not result in poor amenity for the proposed dwellings with each dwelling comfortably meeting car parking and amenity area provision. Performance criteria 2 is not relevant as the proposed development is within a R2 land use zone.</p> <p>The proposed development is considered to achieve the objectives and controls within this section of the NDCP 2012 and is acceptable.</p>
<p>a) The proposed construction will impact on noise and dust/air pollution. b) Unclear how asbestos will be dealt with if found on site.</p>	<p>Construction standards will be required to be met to ensure the impact to surrounding properties is minimised. Conditions relating to the construction process are provided as part of the draft approval. Asbestos removal is required to be dealt with by an asbestos removal specialist. A condition is included with the draft consent in relation to this.</p>
<p>a) There is insufficient space for bins.</p>	<p>The proposed development has been considered by CN's Waste Management Officer. The proposal will allow for sufficient space on the kerb to allow for kerb side collection of the required bins</p>

5.9 The public interest

The proposal is consistent with CN's urban consolidation objectives, making more efficient use of the established public infrastructure and services. The proposed development will not result in the disturbance of any endangered flora or fauna habitat or otherwise adversely impact on the natural environment.

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

6.0 CONCLUSION

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

ATTACHMENTS

- | | |
|----------------------|---|
| Attachment A: | Amended Plans - 25 Marshall Street New Lambton Heights
Distributed under separate cover |
| Attachment B: | Draft Schedule of Conditions - 25 Marshall Street New Lambton Heights |
| Attachment C: | Processing Chronology - 25 Marshall Street New Lambton Heights |

Attachment B

SCHEDULE OF CONDITIONS



Application No:	DA2018/00948
Land:	Lot A DP 367643
Property Address:	25 Marshall Street New Lambton Heights NSW 2305
Proposed Development:	Demolition of dwelling and erection of four two storey dwellings,

SCHEDULE 1

REASONS FOR CONDITIONS

- The conditions of this consent have been imposed in accordance with Section 7.12 of the *Environmental Planning and Assessment Act 1979* (NSW). The conditions relate to any matter referred to in Section 4.15 of relevance to the development the subject of the consent and are imposed to ensure that the development is undertaken in an orderly manner, with acceptable impacts on the natural and built environment.

APPROVED DOCUMENTATION

- 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 Plan	17129 DA002 Issue B	ELK	12/02/2019
Site Plan	17129 DA003 Issue B	ELK	12/02/2019
Site Coverage Plan	17129 DA004 Issue B	ELK	12/02/2019
Shadow Diagrams	17129 DA005 Issue B	ELK	12/02/2019
Demolition Plan	17129 DA006 Issue B	ELK	12/02/2019
Neighbour Shadow Analysis	17129 DA008 Issue A	ELK	12/02/2019
Bushfire BAL Overlay Plan	17129 DA 010 Issue B	ELK	12/02/2019
Overall Plans	17129 DA 100 Issue B	ELK	12/02/2019
Ground Floor Units 1-2	17129 DA101 Issue B	ELK	12/02/2019
Ground Floor Units 3-4	17129 DA102 Issue B	ELK	12/02/2019

First Floor Units 1-2	17129 DA103 Issue B	ELK	12/02/2019
First Floor Units 3-4	17129 DA104 Issue B	ELK	12/02/2019
Roof Plan	17129 DA105 Issue B	ELK	12/02/2019
Elevations	17129 DA300 Issue B	ELK	12/02/2019
Elevations	17129 DA 301 Issue B	ELK	12/02/2019
External Finishes	17129 DA350 Issue B	ELK	12/02/2019
Sections	17129 DA400 Issue B	ELK	12/02/2019
Sections	17129 DA401 Issue B	ELK	12/02/2019
Sediment Control	17129 DA900 Issue B	ELK	12/02/2019
BASIX Certificate	927912M	Evergreen Energy Consultants	03/08/2018
Bushfire Threat Assessment	V2	MJD Environmental	August 2018
Concept Erosion and Sediment Control Plan Sheet 1	DA01 Revision A	Northrop	13/08/2018
Concept Erosion and Sediment Control Plan Sheet 2	DA02 Revision A	Northrop	13/08/2018
Concept erosion and sediment control details	DA02 Revision A	Northrop	13/08/2018
Concept civil and stormwater plan sheet 1	DA04 Revision A	Northrop	13/08/2018
Concept civil and stormwater plan sheet 2	DA05 Revision A	Northrop	13/08/2018
Typical details and stormwater summary	DA06 Revision A	Northrop	13/08/2018

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

3. The proposed vehicular access driveway is to be increased in width to 5.0m, for a minimum distance of 5.0m inside the front property boundary. The driveway crossing across the public road reserve is to be squared (90 degree) to the kerb line in accordance with the Newcastle STD A1300. Details are to be included in documentation for a Construction Certificate application.
4. All roof water is to be directed to the proposed water tanks (minimum capacity of 4000litres per dwelling) and be reticulated to any new toilet cisterns, outdoor taps and cold water washing machine taps. A mains water top-up system is to be installed to maintain a minimum water depth of 100mm within the tank. Alternatively, an

electronically activated mechanical valve device is to be installed to switch to mains water when the water level in the tank falls below the minimum depth. The water tank and plumbing are to be installed in accordance with the Plumbing Code of Australia. Full details are to be included in documentation for a Construction Certificate application.

5. A structural engineer is to determine the location and depth of the proposed underground retention tank and certify that it will not adversely affect any building foundation footings or slabs when the tank is empty. Full details are to be included with documentation for a Construction Certificate.
6. A total monetary contribution of \$20,659.81 is to be paid to Council, 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 S94A Development Contributions Plan 2009* (updated version operational from 15 March 2011). A copy of the plan may be inspected at Council's Customer Enquiry Centre, ground floor of the City Administration Centre, 282 King Street Newcastle 8.30 am to 5.00 pm, excluding public holidays.
- b) The City of Newcastle S94A Development Contributions Plan 2009 permits deferred or periodic payment of levies in certain circumstances. A formal modification of this condition will be required to enter into a deferred or periodic payment arrangement. Refer to the s94A Development Contributions Plan 2009.
- c) The amount of contribution payable under this condition has been calculated on the basis of the current rate as at the date of consent and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of Statistics (ABS). The CPI index rate is expected to rise at regular intervals and therefore the actual contribution payable is indexed and recalculated at the CPI rate applicable on the day of payment.

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

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 Council's Customer Enquiry Centre for determination of the indexed amount of contribution on the date of payment.

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

9. 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.
10. All stormwater runoff from the proposed development being managed in accordance with the requirements of Element 7.06 'Stormwater' of Newcastle Development Control Plan 2012, the associated Technical Manual and the latest issue of AS 3500.3 as applicable, as indicated on Stormwater Management Plans prepared Northrop Consulting Engineers, Project no: NL172-866, Drawing no: DA04, DA05 & DA06, Issue: A, Dated: 13/08/2018 and the following additional design requirements:
 - a) Permeable pavement is not supported and to be deleted off the plans.
 - b) All driveway and turning areas are to be constructed as concrete.
 - c) The required volume of underground onsite retention with sand filter is 6200litres minimum (i.e. minimum dimensions of storage chamber 2.5m x 2.48m x 1m of maximum water level).
 - d) The minimum sand filter area is 2.8m².

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

11. 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.

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

or in another adequately screened location, for the storage of garbage. Full details are to be included in documentation for a Construction Certificate application.

14. A group type mailbox is to be provided at the street frontage in accordance with the requirements of Australia Post, clearly displaying individual unit numbers and the required house number. Full details are to be included in the documentation for a Construction Certificate application.
15. A commercial type vehicular crossing is to be constructed across the road reserve, in accordance with the following criteria:
 - a) Constructed in accordance with Council's A1300 - Driveway Crossings Standard Design Details.
 - b) The driveway crossing, within the road reserve, shall be 5 metres wide.
 - c) The driveway crossing is to be square (90 degree) to the kerb line.
 - d) Letterboxes, landscaping and any other obstructions to visibility should be kept clear of or limited in height to 1.2 metre, in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance.
 - e) The proposed driveway shall be a minimum of 3 metres clear of the trunk of any tree within the public reserve.
 - f) The proposed driveway shall be a minimum of 750mm clear of the centre of any pole or obstruction within the public reserve and 1 metre clear of any drainage pit.
 - g) If the proposed driveway cannot be constructed in accordance A1300 and maintain a minimum clearance of 1m clear of a drainage pit. The pit in the public road reserve is to be relocated. All associated works are to be undertaken by the developer at the developer's expense.

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

16. A separate application must be lodged and consent obtained from Council for all works within the road reserve pursuant to Section 138 of the *Roads Act 1993 (NSW)*, before the issue of a Construction Certificate. The consent must be obtained, or other satisfactory arrangements confirmed in writing from Council, before the issue of a Construction Certificate.
17. The car parking and vehicular access is to be designed to comply with AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking and AS/NZS 2890.6:2009 - Parking facilities - Off-street parking for people with disabilities. Full details are to be included in documentation for a Construction Certificate application.
18. A 1.8m high fixed privacy screen (no individual opening more than 30mm wide or made of translucent glass) is to be attached to the northern side of each deck area for the full length for Units 1-3. Full details are to be included in documentation for a Construction Certificate application.
19. Fixed privacy screens (min 45 degrees angle) are to be provided to the upper floor bedroom windows on the northern and southern facades of all dwellings to address potential visual privacy impacts. Full details are to be included in documentation for a Construction Certificate application.

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

20. The proposed visitor parking bays are to be clearly indicated by means of signs and/or pavement markings.
21. Toilet facilities are to be available or provided at the work site before works begin and

be maintained until the works are completed, at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

Each toilet is to:

- a) Be a standard flushing toilet connected to a public sewer, or
 - b) Have an on-site effluent disposal system approved under the *Local Government Act 1993* (NSW), or
 - c) Be a temporary chemical closet approved under the *Local Government Act 1993* (NSW).
22. Building demolition is to be planned and carried out in accordance with Australian Standard 2601:2001 - The Demolition of Structures.
23. A Hazardous Substances Management Plan is to be prepared by a competent person for the building(s) or parts of the building(s) proposed to be demolished in accordance with Australian Standard 2601:2001 - The Demolition of Structures. A copy of the Hazardous Substances Management Plan is to be provided to Council (marked to Attention: Compliance Services) and the demolisher prior to commencement of work.
24. The demolition works are to be undertaken in accordance with Australian Standard 2601:2001 - The Demolition of Structures and the following requirements:
- a) Demolition works shall be conducted in accordance with the submitted Hazardous Substances Management Plan and a copy of the Hazardous Substances Management Plan shall be kept on-site for the duration of the proposed development
 - b) The removal, handling and disposal of any asbestos material is to be undertaken only by an asbestos removal contractor who holds the appropriate class of Asbestos Licence, issued by the WorkCover Authority of NSW
 - c) A copy of all waste disposal receipts are to be kept on-site for the duration of the proposed development and made available to authorised Council Officers upon request
 - d) Seven working days' notice in writing is to be given to Council and the owners/occupiers of neighbouring premises prior to the commencement of any demolition works. Such written notice is to include the date demolition will commence and details of the name, address, contact telephone number(s) and licence details (type of licences held and licence numbers) of any asbestos removal contractor and demolition contractor. Notification to owners/occupiers of neighbouring premises shall also include Council's contact telephone number (49742000) and the Workcover Authority of NSW telephone number (49212900) and
 - e) On sites where asbestos materials are to be removed, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent position during asbestos removal works.
25. 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.
26. Any waste containers used in association with the proposed demolition are to be located on the site where possible.

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

27. 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.

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

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

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

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

30. 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.

31. 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.

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

reserves including the road reserve is not permitted.

33. 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.
34. 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.

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

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

36. Erosion and sediment control measures are to be implemented prior to the commencement of works and maintained during the period of demolition and/or construction in accordance with the requirements of *Managing Urban Stormwater: Soils and Construction 4th Edition - Vol. 1* (the 'Blue Book') published by Landcom, 2004. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.
37. Where the proposed development involves the destruction or disturbance of any existing survey monuments, those monuments affected are to be relocated at no cost to Council by a Surveyor registered under the *Surveying and Spatial Information Act 2002* (NSW).
38. All public trees that are required to be retained must be physically protected in accordance with the City of Newcastle Urban Forest Technical Manual 'Section 8.0 Protection Measures'.

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

39. All building work must be carried out in accordance with the provisions of the National Construction Code.
40. In the case of residential building work for which the *Home Building Act 1989* (NSW) requires there to be a contract of insurance in force in accordance with Part 6 of that Act, such a contract of insurance is to be in force before any building work authorised to be carried out by this consent commences.
41. If the soil conditions require it, retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided and adequate provision must be made for drainage.
42. All roof and surface waters are to be conveyed to the street gutter by way of a sealed pipe system, extending through the footway to Council requirements, in accordance with Element 7.06 'Stormwater' of Newcastle Development Control Plan 2012.
43. 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.

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

44. 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.
45. A Maintenance Manual for the retention tank with sand filter is to be prepared in accordance with Council's Stormwater and Water Efficiency for Development Technical Manual (Updated 2017). The Maintenance Manual is to address maintenance issues concerning the retention tank with sand filter including routine monitoring and regular maintenance and be kept on site at all times. Establishment and maintenance of the system in accordance with the Maintenance Manual prepared by the applicant is to be completed prior to occupation of this site for the intended use.
46. All public footways, footpaving, kerbs, gutters and road pavement damaged during the works are to be immediately repaired following the damage, to a satisfactory state that provides for safe use by pedestrians and vehicles. Full restoration of the damage is to be carried out to Council's satisfaction prior to the completion of demolition work or prior to the issue of any Occupation Certificate in respect of development involving building work.
47. All commitments listed in the relevant BASIX certificate for the development are to be satisfactorily completed prior to the issue of an Occupation Certificate. Should there be any changes to the specifications of the dwelling that have implications for compliance with the approved certificate, except where restricted or excluded by any other condition of consent, an amended BASIX Certificate can be relied upon as having complied with this condition. A copy of any amended BASIX Certificate is to be provided to Council within fourteen days of receipt.
48. All works within the road reserve required by this consent are to be completed prior to the issue of the interim or final Occupation Certificate (whichever occurs first).
49. 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).
50. 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 the interim or final Occupation Certificate (whichever occurs first). The plans shall be prepared by a Practising Professional Engineer or Registered Surveyor experienced in the design of stormwater drainage systems.
51. A Landscape Practical Completion Report is to be submitted to the Principal Certifying Authority prior to the issue of the Final Occupation Certificate. The report is to verify that all landscape works have been carried out in accordance with the comprehensive landscape design plan and specifications that were required to be included in documentation for a Construction Certificate application and is to verify that an effective maintenance program has been commenced.
52. The premises are to be identified by the provision of house and street numbers on the building exterior and mailbox, respectively, such that they are clearly visible from the road frontage.

The minimum numeral heights shall be:

- a) Exterior of the building = 75mm and
- b) Group mailbox - street number = 150mm
- house number = 50mm

53. The proposed development will require the provision of additional street numbers for the delivery of services and goods. The allocated house numbers are:

Unit/ Dwelling/ Lot Number on plan	Council Allocated Street Addresses			
	House Number	Street Name	Street Type	Suburb
Unit 1	1/25	Marshall	Street	New Lambton Heights
Unit 2	2/25	Marshall	Street	New Lambton Heights
Unit 3	3/25	Marshall	Street	New Lambton Heights
Unit 4	4/25	Marshall	Street	New Lambton Heights

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

54. Appropriate provision is to be made in the strata management by-laws requiring the Owners Corporation to keep and maintain the retention tank with sand filter, in accordance with the Maintenance Manual.

ADVISORY MATTERS

- It is recommended that, prior to commencement of work, the free national community service 'Dial before you Dig' be contacted on 1100 or by fax on 1200 652 077 regarding the location of underground services in order to prevent injury, personal liability and even death. Inquiries should provide the property details and the nearest cross street/road.
- Any necessary alterations to public utility installations are to be at the developer/demolisher's expense and to the requirements of both Council and any other relevant authorities. Council and other service authorities should be contacted for specific requirements prior to the commencement of any works.
- It is an offence under the provisions of the *Protection of the Environment Operations Act 1997* (NSW) to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.
- Failure to comply with the conditions of consent constitutes a breach of the *Environmental Planning and Assessment Act 1979* (NSW), which may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.
- Retaining walls not clearly noted on the approved plans or outside of the parameters of 'exempt development' as specified in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (NSW) are to be subject to a separate development application. An application in this regard is to be approved prior to any works relating to the retaining wall taking place.
- Any approval for fences on side boundaries, common to other private properties, is independent of any consent or agreement which may be required of any adjoining owner under the provisions of the *Dividing Fences Act 1991* (NSW).

- Prior to commencing any building works, the following provisions of Division 6.2 of the *Environmental Planning and Assessment Act 1979* are to be complied with:
 - a) A Construction Certificate is to be obtained; and
 - b) A Principal Certifier is to be appointed for the building works and Council is to be notified of the appointment; and
 - c) Council is to be given at least two days notice of the date intended for commencement of building works.
- Prior to the occupation or use of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the proposed development. An application for an Occupation Certificate must contain the information set out in Clause 149 of the *Environmental Planning and Assessment Regulation 2000* (NSW).

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* (NLEP) 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 (NDCP).
- 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.
- 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 Council's determination;
- Identify modifications and additional requirements that will result in improved compliance, development and environmental outcomes;
- Prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- Set standards and measures for acceptable environmental performance; and
- Provide for the ongoing management of the development.

Attachment C

THE CITY OF NEWCASTLE
Report to Development Applications Committee Meeting on 9 April 2019

PROCESSING CHRONOLOGY

DA 2018/00948 – 25 Marshall Street, New Lambton Heights

- 27 August 2018 - Application lodged
 - 3 September 2018 - Public notification of application
 - 4 December 2018 - Application presented to Public Voice
 - 13 February 2019 - Amended architectural plans submitted
 - 26 February 2019 - Public re-notification of application
-

ITEM-3 DAC 09/04/19 - DA 2017/00629 - 52 PARKER STREET & 9 EVERETT STREET CARRINGTON - ALTERATIONS AND ADDITIONS TO EXISTING INDUSTRIAL BUILDINGS, ERECTION OF ASSOCIATED WEIGHBRIDGES, SITEWORKS AND RAIL AND SPUR AND USE AS A FREIGHT TRANSPORT FACILITY

APPLICANT: SELL & PARKER (HOLDINGS) PTY LIMITED
OWNER: SELL & PARKER (HOLDINGS) PTY LIMITED
CONTACT: DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT

PART I

BACKGROUND

An application has been received seeking consent for alterations and additions to existing industrial buildings, erection of associated weighbridges, siteworks and rail spur and use as a freight transport facility at 52 Parker Street and 9 Everett Street, Carrington

The application is referred to Council’s Development Applications Committee for determination as the construction value of the proposed development (\$15.9 million) exceeds the staff delegation limit of \$10 million.

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

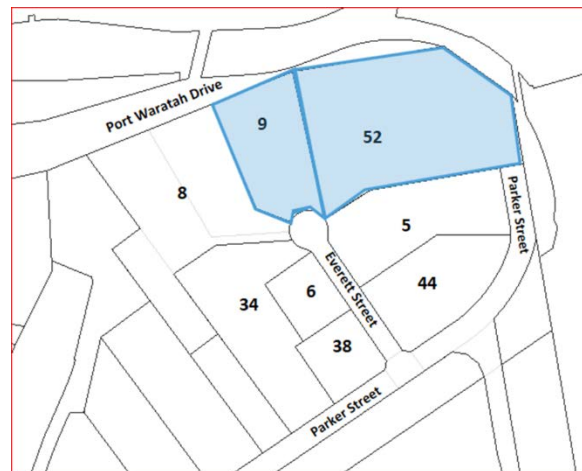
The proposed development was publicly notified in accordance with Council’s Public Notification policy and no submissions have been received in response.

The applicant has declined the opportunity to make a presentation at a meeting of the Public Voice Committee of Council.

Issues

The assessment of the application has addressed the following issues:

- i) whether the proposal is appropriate given the proximity of residential properties;



Subject Land: 52 Parker Street & 6 Everett Street Carrington

- ii) whether the development will cause increased traffic, noise, lights and other forms of pollutants;
- iii) whether the proposed 24-hour operation is acceptable given the surrounding neighbourhood;
- iv) whether the management of contaminated materials is acceptable.

Conclusion

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

RECOMMENDATION

That the application (DA 2017/00629) for alterations and additions to existing industrial buildings, erection of associated weighbridges, siteworks and rail spur and use of the site as a freight transport facility, at 52 Parker Street and 9 Everett Street, Carrington be approved and consent granted, subject to compliance with the conditions set out in the Schedule of Conditions at **Attachment B**.

Political Donation / Gift Declaration

Section 10.4 of the EP&A 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 political donation' or 'gift' to a Councillor or Council employee within a two year period before the date of this application?*

PART II

1.0 THE SUBJECT SITE

The subject property comprises Lot 2 DP 1102476 and Lot 1 DP 1102476 (i.e. 52 Parker Street and 9 Everett Street, Carrington respectively) which are irregular shaped allotments with a combined area of 3.88 hectares.

The combined site has two small frontages. The Parker Street frontage is 24.38 metres and only slightly wider than the width of the roadway it adjoins (i.e. Parker Street does not finish in a cul-de-sac or similar turning head as it terminates with the subject property's boundary).

The Everett Street frontage is positioned on the curve of the cul-de-sac at the end of the street and this curved frontage is approximately 41.8 metres.

The majority of the site is devoid of vegetation with 31 trees/shrubs located predominately towards the northern and eastern boundaries of 52 Parker Street. The site is relatively flat with a slight fall towards the north/north west.

The existing site consists of multiple older industrial buildings predominately located towards the east (i.e. on the 52 Parker portion of the subject site). The eastern most building has recently obtained consent (DA2018/01187) to be used as a container drop off centre (i.e. recycling cans and plastic bottles). To the north and east of the subject site are existing rail lines. The surrounding nearby area consists of large industrial and portside developments including a coal terminal to the north. The proponent also operates a metal recycling facility to the west of the subject site.

To the south, approximately 360 metres are residential dwellings within the R2 Low Density Residential zone under the Newcastle Local Environmental Plan 2012 (NLEP 2012). This residential zone is bounded to both the eastern and western sides by IN2 – Light Industrial zoned land under the NLEP 2012. It is notable that the subject site is within land zoned under State Environmental Planning Policy (Three Ports) 2013 but the lands south of Elizabeth Street, Carrington are zoned under NLEP 2012. These aspects are discussed further within the report below.

2.0 THE PROPOSAL

The applicant seeks consent for alterations and additions to existing industrial buildings, erection of associated weighbridges, siteworks and rail spur with the overall site to be used as a freight transport facility. The proposal also includes demolition of a smaller eastern building and parts of the larger buildings.

The applicant's submitted Statement of Environmental Effects (SEE) summarises the proposal as follows:

"The proposal is for a freight transport facility. The development is to be constructed in 2 stages.

Stage 1 - to establish a general freight handling facility accessed by road transport.

Stage 2 - to construct a new rail spur to facilitate rail access to the site.

Specifically the proposal involves:

- i) Demolition of part of an existing industrial building;*
- ii) Upgrading of existing building to include office and staff facilities;*
- iii) Construction of hard stand storage areas, internal access ways and parking areas;*
- iv) Construction of two weighbridges;*
- v) Construction of new on-site sewer disposal system;*
- vi) Stormwater management facilities;*
- vii) Landscaping; and*
- viii) Construction of a new rail spur".*

The site is intended to be used to transport a variety of goods including *“containerised goods, scrap metal, machinery, plastics, large farm, mining, and heavy industry equipment that cannot be containerised.”*

The applicant’s statement confirms that *“no hazardous materials or odour generating materials will be transported”* as part of the proposal.

The development is intended to operate on a 24-hours/7 days a week basis. Predominately, train movements will occur overnight but could occur at any time but are limited to one movement per day.

Total staffing estimated with the proposal is 22 full time equivalent staff (i.e. 10 permanent position and 12 casual employees).

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 the requirements of the EP&A Act 1979, the associated Regulation and the Newcastle Development Control Plan 2012 (NDCP 2012) for a period of 14 days (i.e. 5-21 June 2017). No submissions were received as a result of the notification process.

4.0 INTEGRATED DEVELOPMENT

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

5.0 PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15 of the EP&A Act 1979, as detailed hereunder.

Designated Development

Based on an assessment of the information submitted with the application, it is considered that the proposal does not constitute *designated development* under Clause 28 of Schedule 3 of the *Environmental Planning & Assessment Regulations, 2000* as extracted below:

‘28 Railway freight terminals

Railway freight terminals (including any associated spur lines, freight handling facilities, truck or container loading or unloading facilities, container storage, packaging or repackaging facilities):

- (a) That involve more than 250 truck movements per day, or*
- (b) That involve the clearing of more than 20 hectares of native vegetation, or*
- (c) that is located:*

- (i) within 40 metres of a natural water body, wetland or environmentally sensitive area, or*
- (ii) within 500 metres of a residential zone or dwelling not associated with the development and, in the opinion of the consent authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, odour, dust, lights, traffic or waste.'*

It is advised that the proposal does not exceed the numerical parameters given under subclauses 28(a)-(b) or 28(c) (i).

The proposal is "*within 500 metres of a residential zone or dwelling not associated with the development.*" (e.g. dwellings at the northern end of Bourke Street within the R2 Low Density Residential zone under the NLEP 2012) and could constitute *designated development* under subclause 28(c)(ii) if the consent authority is of the opinion that the proposed development is "*likely to significantly affect the amenity of the neighbourhood by reason of noise, odour, dust, lights, traffic or waste.*"

The proposal has been assessed having regard to the terms of subclause 28(c)(ii) and it is considered that the development will not have a "*significant affect on the amenity of the neighbourhood.*". The assessment of the application, as detailed within the report below, demonstrates that the proposal is acceptable in terms of its impacts including noise, traffic and waste.

Further assessment of the odour, dust and lighting impacts is provided directly below.

The proposal will not include any odour generating materials. The odours generated by the proposed truck and rail transport are considered to be acceptable having regard to the context of the area and separation distance from the residential properties.

It is considered that the proposal will not, by its nature, be unreasonably dust generating.

The applicants have submitted a lighting plan demonstrating that the lighting impacts of the proposal (i.e. lux diagram) are acceptable. The majority of the impacts are internally facing restricting the impacts within the subject site. There are three spots adjacent to industrial sites which, while having greater lighting impacts, are considered not to be significant having regard to the context of the neighbourhood. There are no lighting impacts on any residential properties from the proposed development.

Appropriate conditions to address these issues has been included in the Schedule of Conditions.

Overall it is considered that the proposal will not have any significant impacts on the amenity of the neighbourhood and, as such, does not constitute *designated development*.

**5.1 Provisions of any environmental planning instrument
State Environmental Planning Policy (Three Ports) 2013**

The subject site is zoned SP1 – Special Activities under the provisions of the SEPP. The proposal is not within the *Lease Area* as defined under the SEPP (i.e. Port of Newcastle 'lease area') and, as such, the City of Newcastle (CN) is the consent authority for the application. It is further noted that this SEPP prevails to the extent of any inconsistency with another environmental planning instrument (e.g. the zoning under the SEPP prevails over the NLEP 2012 zonings).

The proposal is permissible with consent as a *freight transport facility* within the SP1 zone (i.e. as detailed and defined below).

"Zone SP1 Special Activities"

1 Objectives of zone

- a) *To provide for special land uses that are not provided for in other zones.*
- b) *To provide for sites with special natural characteristics that are not provided for in other zones.*
- c) *To facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and that minimises any adverse impacts on surrounding land.*
- d) *To maximise the use of waterfront areas to accommodate port facilities and industrial, maritime industrial, freight and bulk storage premises that benefit from being located close to port facilities.*
- e) *To enable the efficient movement and operation of commercial shipping and to provide for the efficient handling and distribution of freight from port areas through the provision of transport infrastructure.*
- f) *To provide for port related facilities and development that support the operations of Port Botany, Port Kembla and the Port of Newcastle.*
- g) *To facilitate development that by its nature or scale requires separation from residential areas and other sensitive land uses.*
- h) *To encourage employment opportunities.*

2 Permitted without consent

Jetties; Moorings; Roads

3 Permitted with consent

*Capital dredging; Environmental facilities; Environmental protection works; Maintenance dredging; Navigation and emergency response facilities; Neighbourhood shops; Port facilities; Wharf or boating facilities; **Any other development not specified in item 2 or 4***

4 Prohibited

Artisan food and drink industries; Business premises; Caravan parks; Cemeteries; Centre-based child care facilities; Crematoria; Educational establishments; Entertainment facilities; Function centres; Funeral homes; Garden centres; Hardware and building supplies; Medical centres; Office premises; Places of public worship; Recreation facilities (indoor); Registered clubs; Residential accommodation; Respite day care centres; Restricted premises; Shops; Specialised retail premises; Tourist and visitor accommodation; Vehicle sales or hire premises”

*“**freight transport facility** means a facility used principally for the bulk handling of goods for transport by road, rail, air or sea, including any facility for the loading and unloading of vehicles, aircraft, vessels or containers used to transport those goods and for the parking, holding, servicing or repair of those vehicles, aircraft or vessels or for the engines or carriages involved.”*

It is considered that the proposal is consistent with the objectives of the zone including:

- i) freight and bulk storage premises that benefit from being located close to port facilities”, and*
- ii) “To enable the efficient movement and operation of commercial shipping and to provide for the efficient handling and distribution of freight from port areas through the provision of transport infrastructure.”*

Trees

The proposal will result in the removal of a total of 20 shrub/trees, predominately along a portion of the northern and eastern boundaries. The majority of these shrub/trees to be removed are due to proposed alignment of the railway line spur and associated works, which is proposed to be along the northern boundary and then bending along part of the eastern boundary. Two trees are proposed to be removed to allow for proposed driveway upgrades at the Parker Street frontage. A further tree is proposed to be removed to allow for the proposed drainage works at the north western corner of the site.

The application proposes to plant 50 trees/shrubs, predominately being taller growing trees, distributed across the site which is considered to be appropriate compensatory plantings.

The proposal is considered to be acceptable in terms of Clauses 29 and 30 of the SEPP.

Heritage

The SEPP, under Clauses 31 and 32, addresses heritage items declared under the provisions of the SEPP.

A review of the SEPP shows that there are no heritage items that are on the subject site or within vicinity of the site under the SEPP. Heritage items under the NLEP 2012 are addressed separately below under clause 5.10.

It is advised that the SEPP does not have provisions controlling aspects such as height, floor space ratio (FSR), minimum lot sizes or acid sulphate soils.

State Environmental Planning Policy No 33 - Hazardous and Offensive Development

The Statement of Environmental Effects submitted with the proposal indicates that *“no hazardous material or odour generating materials will be transported or stored on the site.”*

The proposal is considered to be acceptable under the provisions of the SEPP subject to conditions recommending no hazardous or offensive materials, which would trigger the provisions of the SEPP, being involved in the operations of the proposal.

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

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

Clause 7 provides that prior to granting consent to the carrying out of any development on land the consent authority is required to give consideration as to whether the land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

Council records identify the site as being contaminated land. The SEPP and section 5.2 of the NDCP 2012 require a preliminary site investigation to be carried out in accordance with the 'Guidelines for Consultants Reporting on Contaminated Sites'.

The applicant has undertaken further investigations of the site including a detailed site investigation, preparation of a remediation action plan and review of this plan by a site auditor.

The proposal has been assessed by CN's Senior Environmental Protection Officer and is considered to be acceptable subject to conditions of consent.

The officer's assessment is included below:

"Contamination

The previous memo addressed the site auditors concerns as outlined within Interim Site Audit Advice No 7 dated 10 August 2018. The auditor required further testing around the known Underground Storage Tanks (UST's), the installation of a bore (as the previous was damaged) and capping the site due to the asbestos contamination.

These issues were addressed and resulted in Interim Audit Advice No 9 being issued. A Remediation Action Plan (RAP) was prepared by Coffey dated 10 December 2018. In the auditor's opinion the remediation strategy for the site which involves capping the asbestos impacted fill (Section 4.2.3) was deemed appropriate and as a result, would make the site suitable for the intended land use.

Given the site proposes an onsite sewerage system, garden beds and landscaping will be required. This has been addressed in the RAP whereby the beds will be excavated, a geofabric marker layer will be placed down and 300mm of Virgin Excavated Natural Material (VENM) will be backfilled.

It is understood that the existing buildings will form part of the cap and as such will require the validation report to be submitted prior to issue of an Occupation Certificate.

There are has no objections to the RAP and as such will condition the proposal such that a site audit statement certifying the land is suitable (following complete of the validation report) for the intended land use will be required prior to the issuing of an Occupation Certificate.

Given the proposed earth works required at the site and the potential for dust disturbance and potential asbestos impacts, a condition will be recommended that a suitability qualified hygienist prepare a management plan to address potential offsite and WHS asbestos impacts which is to be implemented during civil works."

Appropriate conditions to address these issues has been included in the Schedule of Conditions (refer to **Attachment B**).

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

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) is one of a suite of Land Management and Biodiversity Conservation reforms that commenced in New South Wales on 25 August 2017.

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. Part 3 of the Vegetation SEPP contains provisions similar to those previously contained in Clause 5.9 of NLEP 2012 (i.e. this clause now repealed) and provides that Council's NDCP 2012 can make declarations with regard to certain matters, and further that Council may issue a permit for tree removal.

The proposal will result in the removal of 20 shrub/trees along a portion of the northern and eastern boundaries. The application proposes to plant 50 trees/shrubs, predominately being taller growing trees, distributed across the site which is considered to be appropriate compensatory plantings.

The proposal has been assessed in accordance with NDCP 2012 and is considered to be satisfactory.

State Environmental Planning Policy (Coastal Management) 2018

This SEPP effectively replaced the repealed SEPP 71 and acts to combine several areas (i.e. wetlands, littoral rainforests and coastal protection) under one integrated policy.

Notwithstanding this, Clause 21 of the SEPP 'Savings and transitional provisions' applies to the current proposal and the previous SEPP No 71 provisions continue to apply to the development in this instance as the proposal was lodged prior to the commencement of SEPP (Coastal Management) 2018, with the discussion below.

State Environmental Planning Policy No 71 – Coastal Protection

The subject site is within the '*coastal zone*' but not within a '*sensitive coastal zone*' (e.g. within 100 metres of the water) and, as such, Clause 8 of the SEPP details the matters for consideration in the assessment of the proposal in context of the SEPP.

An assessment of the application has been undertaken in context of the Clause 8 provisions and the development is considered to be acceptable. The proposal is some distance from the coast and in this respect, many of the provisions are satisfied or otherwise not significant in this instance.

This assessment is summarised as follows:

- i) the application is consistent with objectives of the SEPP in terms of strategic goals, natural, cultural, recreational and economic attributes having regard to the coast
- ii) the proposal is acceptable in terms of its impact on access to the coast making no significant or real changes
- iii) that the development is suitable in context of its type, location and design and its relationship with the surrounding area

- iv) that the proposal will not have a '*..detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore*'
- v) the development will not have impact on wildlife or heritage matters
- vi) the site is highly disturbed and it is very unlikely that the proposal will have any impact on "*cultural places, values, customs, beliefs and traditional knowledge of Aboriginals*"

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

This policy facilitates the effective delivery of infrastructure across the State. The development is subject to the following requirements of the policy.

The proposal was required to be referred to Ausgrid in accordance with Clause 45(2) of the ISEPP. The referral to Ausgrid generated no major concerns in respect of the application. The Ausgrid advice has been forwarded to the applicant for their information and future action.

Schedule 3 of the ISEPP relates to traffic generating development and requires certain applications to be referred to Roads and Maritime Services (RMS). The development is considered to be 'traffic generating'.

The application was referred to the RMS and written advice was received raising no objection to the proposal subject to conditions of consent. As detailed in this assessment report, it is considered that the proposal is satisfactory in relation to traffic.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

The provisions of State Environmental Planning Policy (Three Ports) 2013 prevails over any other environmental planning instrument to the extent of any inconsistency (i.e. Clause 6) and, as such, the majority of the provisions of the NLEP 2012 do not apply (e.g. land zonings).

It is further advised that the NLEP 2012 does not have provisions controlling aspects such as height, floor space ratio (FSR), minimum lot sizes or acid sulphate soils for the subject site.

Clause 5.10 - Heritage Conservation

Notwithstanding that the provisions of the SEPP (Three Ports) prevail over the NLEP 2012 in terms of any inconsistency, it is noted that there are no heritage items under the provisions of NLEP 2012 which are within the vicinity of the subject site. The closest items are approximately 400 metres away from the subject site and are separated by relatively large industrial buildings. It is considered that the proposal has no impact on these heritage items.

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.

Industrial Development - Section 3.13

The proposal is consistent with the surrounding industrial environment and the objectives of the NDCP 2012. The operation will rely on a combination of road and rail transport and is well situated to utilise these means without undue traffic impacts or impacts on residential areas. The proposal does not have any unreasonable amenity impacts (e.g. overshadowing or acoustic impacts) on nearby properties.

The proposal predominately utilises existing buildings which exceed the 5 metre front setback requirements. The only new proposed structure which is less than the 5 metres front setback is the trailing edge of the exit weight bridge which is considered to be acceptable having regard to its relative position and design in this instance. The proposal, consisting predominately of reuse of existing industrial buildings on the site, is considered to be acceptable in terms of height, bulk and scale.

Overall it is considered that the proposal is acceptable in terms of Section 3.13 of the NDCP 2012.

Flood Management - Section 4.01

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

"Flood Management

A flood information certificate was issued by Council on 17 November 2015. From Council's flood data the estimated 1% AEP flood level for the local catchment is 1.8m AHD on this site. The estimated 1% AEP ocean flood level is 2.2m AHD which includes a predicted sea level rise of 0.9m by the year 2100.

The recommended minimum floor level for occupiable rooms in new buildings is 2.5m AHD to protect the buildings from future ocean flooding.

According to the plans provided existing Building 1 has a floor level of 1.9m AHD, existing Building 2 has a floor level of 2.32m AHD and existing Building 3 has a floor level of 1.84m AHD.

The detention basin calculations provided predict a 1% AEP flood level of 1.68m AHD in the basin.

The applicant was asked to address the flood risk issues in the buildings. In response the applicant's consultants, ADW Johnston, replied:

"It is noted the available freeboard is less than the optimal amount though this is a function of site topography. As such, Buildings 1 and 3 are not proposed to house valuable flood sensitive goods. Any flood sensitive material can be stored on shelves or plinths with appropriate signage provided to advise of flood risk."

Accepting that the proposal is to reuse existing buildings and that the proposal is to house sensitive goods at a higher level the proposal is considered acceptable from a flood management perspective. An advisory condition is proposed with reference to the National Construction Code requirements for building in a Flood Hazard Area.'

Accordingly, the proposal is acceptable in relation to flooding and appropriate conditions to address these issues has been included in the Schedule of Conditions.

Bush Fire Protection - Section 4.02

The site is not identified as bushfire prone land.

Mine Subsidence - Section 4.03

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

Safety and Security - Section 4.04

The applicant has submitted a comprehensive Crime Prevention Through Environmental Design report which makes various recommendations in terms of security and management measures to be undertaken for the site.

The development is considered to be adequate in terms of the Crime Prevention Through Environmental Design (CPTED) principles of:

- a) surveillance
- b) access control
- c) territorial reinforcement
- d) space management.

The recommended measures are addressed as a condition included in the Schedule of Conditions.

Social Impact - Section 4.05

It is considered that, on balance, the proposal will have positive social and economic impacts in the area through the redevelopment of an underutilised industrial site. The proposal is considered to be an appropriate use of the site having regard to the zone and strategic goals for the area.

Land Contamination - Section 5.02

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

Vegetation Management - Section 5.03

Vegetation Management has been considered in this assessment report, in accordance with SEPP (Vegetation in Non-Rural Areas).

Aboriginal Heritage - Section 5.04

The site is highly disturbed, and it is very unlikely that the proposal will have any impact on any aboriginal heritage or on "*cultural places, values, customs, beliefs and traditional knowledge of Aboriginals*".

Heritage Items - Section 5.05

This issue is discussed under SEPP (Three Ports) and Clause 5.10 Heritage of NLEP 2012.

Archaeological Management - Section 5.06

The site is not specifically listed in the Newcastle Archaeological Management Plan 1997 or NLEP 2012 as an 'Archaeological Site'. The site is highly disturbed, and it is very unlikely that the proposal will have any impact on any items of archaeological value.

Landscape Open Space & Visual Amenity - Section 7.02

The applicant has submitted a landscape concept plan providing for a combination of plantings including 50 trees/shrubs. It is considered that the proposed landscaping is appropriate for the context of the site and is acceptable as compensatory planting has been proposed.

Traffic, Parking & Access - Section 7.03

The proposal has been assessed by CN's Senior Development Engineer and is considered to be acceptable subject to conditions of consent.

The officer's assessment is included below:

1. *“SEPP Infrastructure 2007*

The application was referred to RMS pursuant to Schedule 3 of the SEPP Infrastructure 2007.

2. *Traffic Generation*

The traffic consultant has estimated utilising RMS traffic generation rates that the proposed development will generate in the order of 32 additional vehicle trips per hour (vtph) in the AM & PM peak and around 190 vehicle trips per day (vtpd). The additional traffic generated by this development can be adequately catered for within the existing road network without adverse impact on either mid-block capacity or intersection performance.

3. *Parking*

41 car parking spaces, four motorcycle and seven bicycle storage spaces are proposed under this development which exceeds Council's DCP parking requirement of 39 car parking spaces, two motorcycle spaces and two bicycle storage spaces.

4. *Car park layout*

The proposed car parking layouts are deemed acceptable and an appropriate condition has been recommended for this application requiring compliance with the Australian Standard AS 2890.1 Parking Facilities in relation to parking bay dimensions and car park aisle widths.

5. *Site Access*

Two vehicle access driveways are proposed in both Everett and Parker Streets for site access. This is a direct result of the need to separate light and heavy vehicle activity in the interests of traffic safety and this is supported.

An appropriate condition has been recommended for this application requiring the driveway crossings to comply with Council's Standard A1300 for Industrial Driveway Crossings.”

Appropriate conditions to address these issues has been included in the Schedule of Conditions.

Stormwater- Section 7.06 & Water Efficiency - Section 7.07

The proposal has been assessed by CN's Senior Development Engineer and is considered to be acceptable subject to conditions of consent.

The officer's assessment is included below:

“Stormwater Management

A Water Cycle Management Plan has been prepared, by ADW Johnson, including drawings documenting the proposed new stormwater drainage system. The design includes an onsite stormwater detention basin designed to control stormwater runoff to pre-development rates. It also includes water quality controls designed to collectively satisfy Council's site discharge requirements.

It was identified that the development site did not benefit from easements over some of the downstream properties. The surveyors have resolved this issue with easements to drain now established through the downstream properties. Easements are required from the development site through 2 lots owned by the applicant to secure future rights should the lots ever be sold. A condition has been proposed to address this issue.”

Accordingly, the proposal is acceptable in relation to stormwater and water efficiency and appropriate conditions to address these issues has been included in the Schedule of Conditions.

Waste Management - Section 7.08

The applicant's consultants have submitted an amended waste management plan which confirms that the waste for plastic, cardboard, paper and food waste will be a maximum 1m³ each per week. It is considered that the proposal is acceptable subject to conditions included in the Schedule of Conditions.

Public Participation - Section 8.0

The application was publicly notified to neighbouring properties in accordance with the requirements of the *EP&A Act 1979*, the associated Regulation and the NDCP 2012 for a period of 14 days (i.e. 5-21 June 2017). No submissions were received as a result of the notification process.

Development Contributions

Sections 7.11 and 7.12 of the *EP&A Act 1979* enables Council to levy contributions for public amenities and services. The proposed development would attract a development contribution to Council, as detailed in Council's Development Contributions Plans.

A condition requiring this contribution to be paid has been included in the Schedule of Conditions.

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 *EP&A Act 1979* and 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

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including NLEP 2012 and NDCP 2012 considerations. In addition, the following impacts are considered relevant:

Acoustic Impacts

The applicant has submitted an acoustic report to address the potential impacts of the development.

The proposal has been assessed by CN's Senior Environmental Protection Officer and is considered to be acceptable subject to conditions of consent.

The officer's assessment is included below:

"Acoustics

A Noise Impact Assessment (NIA) has been prepared by Spectrum Acoustic dated October 2016 to support this application. The NIA has theoretically demonstrated that operations on site will satisfy the noise goals for the site without the need for any installed mitigation measures such as acoustic barriers given the distance to receivers and local geography. The NIA also demonstrated the project will satisfy the sleep disturbance criteria.

It is expected that only one train movement will be experienced over a 24-hour period. While it is anticipated that trains may arrive during the night time criteria (i.e. 10pm to 7am) unloading of the trains will only occur during day time hours (i.e. 7am – 6pm). As such the RSU will recommend a condition restricting the unloading of the trains to day time hours only."

Conditions addressing acoustic measures has been included in the Schedule of Conditions.

Overshadowing, Privacy & View Loss

The proposal will have no unreasonable impacts on surrounding properties in terms of overshadowing, privacy and view loss.

5.7 The suitability of the site for the development

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

The constraints of the site have been considered in the proposed development, which includes flooding, contamination, acid sulfate soils and heritage.

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

Onsite Sewage Treatment

The proposal is within a location which will need to rely on onsite sewage treatment. The proposal has been assessed by CN's Senior Environmental Protection Officer and is considered to be acceptable subject to conditions of consent.

The officer's assessment is included below:

“Onsite Sewage Treatment

An onsite waste water management plan has been prepared by Whitehead & Associates dated April 2017 to address the proposed Onsite Human Waste Treatment. The plan has demonstrated that the proposed primary and secondary treatment systems will meet the water balance requirements for the site.

Council is satisfied with the recommendations of the report; a separate s68 application will be required for the onsite system, this will need to be sought from Council prior to the issuing of a construction certificate and will be addressed by an appropriate condition of consent.

As such, the ESU will recommend a condition that the onsite system is installed in accordance with the Whitehead & Associates plan.”

Conditions addressing onsite sewage treatment have been included in the Schedule of Conditions.

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

The application was publicly notified, and no submissions were received.

5.9 The public interest

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

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

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

6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15 of the EP&A Act 1979 and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

ATTACHMENTS

Attachment A: Submitted Plans - 52 Parker Street & 9 Everett Street Carrington –
Distributed under separate cover

Attachment B: Draft Schedule of Conditions - 52 Parker Street & 9 Everett Street
Carrington

Attachment C: Processing Chronology - 52 Parker Street & 9 Everett Street
Carrington

Attachment B

SCHEDULE OF CONDITIONS



Application No:	DA2017/00629
Land:	Lot 1 DP 1102476 Lot 2 DP 1102476
Property Address:	52 Parker Street Carrington NSW 2294 9 Everett Street Carrington NSW 2294
Proposed Development:	Alterations and additions to existing industrial buildings, erection of associated weighbridges, siteworks and rail spur and use as a freight transport facility.

SCHEDULE 1

REASONS FOR CONDITIONS

- The conditions of this consent have been imposed in accordance with Section 7.12 of the *Environmental Planning and Assessment Act 1979* (NSW). The conditions relate to any matter referred to in Section 4.15 of relevance to the development the subject of the consent and are imposed to ensure that the development is undertaken in an orderly manner, with acceptable impacts on the natural and built environment.

APPROVED DOCUMENTATION

- 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
Detailed Track Design Plans	Dwg No 21-18097-C001 & 21-18097-C002 Rev A	GHD	
Plans	Job No J5183 Dwg No: A1-01 Rev 2, A2-04 Rev 2, A2-05 Rev 2, A2-06 Rev 2, A3-01 Rev 2, A3-02 Rev 2 & A7-01 Rev 2.	Izzat Consulting Engineers	16/2/18
Plans	Job No J5183 Dwg No: A2-01 Rev 3	Izzat Consulting Engineers	16/2/18
Plans	Job No J5183 Dwg No: A2-02 Rev 1, A2-03 Rev 1, A2-07 Rev 1, A4-01 Rev 1, A4-02 Rev 1, A4-03 Rev 1, A4-04 Rev 1, A5-01 Rev 1, A5-02 Rev 1, A5-03 Rev 1, A5-04 Rev 1, A5-05 Rev 1	Izzat Consulting Engineers	16/2/18

	1, A5-06 Rev 1, A5-07 Rev 1, A5-08 Rev 1, A6-01 Rev 1.		
External Lighting Plan	Proj No 16401 Dwg No E01 Iss B	Electrical Projects Australia	19/12/16
Statement of Environmental Effects	Project 239384	ADW Johnson	May 2017
Landscape Plan	DA 01-DA 07 Page 1-7 of 7 Iss F	Octopus Garden Design	May 2017
Hazardous Materials Audit & Management Plan		RCA Australia	14 February 2017
CPTED Report		James Marshall & Co	March 2017

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.

- The development is to be undertaken in accordance with the General Terms of Approval issued by Subsidence Advisory NSW dated 15 August 2017 (Reference: - TBA17-42101N1).

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

- A total monetary contribution of \$159,420.00 is to be paid to Council, 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:

- This condition is imposed in accordance with the provisions of *The City of Newcastle S94A Development Contributions Plan 2009* (updated version operational from 15 March 2011). A copy of the plan may be inspected at Council's Customer Enquiry Centre, ground floor of the City Administration Centre, 282 King Street Newcastle 8.30 am to 5.00 pm, excluding public holidays.
- The City of Newcastle S94A Development Contributions Plan 2009 permits deferred or periodic payment of levies in certain circumstances. A formal modification of this condition will be required to enter into a deferred or periodic payment arrangement. Refer to the s94A Development Contributions Plan 2009.
- The amount of contribution payable under this condition has been calculated on the basis of the current rate as at the date of consent and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of Statistics (ABS). The CPI index rate is expected to rise at regular intervals and therefore the actual contribution payable is indexed and recalculated at the CPI rate applicable on the day of payment.

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

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 Council's Customer Enquiry Centre for determination of the indexed amount of contribution on the date of payment.

5. On-site parking accommodation is to be provided for a minimum of 41 vehicles and 4 motorcycles such be set out generally in accordance with the minimum parking layout standards indicated in Element 7.03 'Traffic, Parking and Access' of Council's adopted Newcastle Development Control Plan 2012. Full details are to be included in documentation for a Construction Certificate application.
6. The car park is to be designed to comply with AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking and AS/NZS 2890.6:2009 - Parking facilities - Off-street parking for people with disabilities. Details are to be included in documentation for a Construction Certificate application.
7. All proposed driveways, parking bays, loading bays and vehicular turning areas are to be constructed with a basecourse of adequate depth to suit design traffic, being sealed with either bitumen seal, asphaltic concrete, concrete or interlocking pavers and being properly maintained. Full details are to be included in documentation for a Construction Certificate application.
8. Kerbing or dwarf walls having a minimum height of 100mm are to be constructed along the edge of all garden or lawn areas adjacent to driveways and parking bays sufficient to discourage the encroachment of vehicles thereon. Full details are to be included in documentation for a Construction Certificate application.
9. 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 documented in the Water Cycle Management Plan prepared by ADW Johnson (dated January 2018). Full details are to be included in documentation for a Construction Certificate application.
10. 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.

11. 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.
12. Adequate facilities are to be provided in a screened location within the premises for the storage of garbage, discarded or returnable packaging or other forms of trade wastes and arrangements being made for regular removal and disposal of same. The required garbage facility is to be suitable for the accommodation of Council approved wheel type bins or bulk waste containers. Full details are to be included in documentation for a Construction Certificate application.
13. The proposed floodlighting of the premises is to be designed, positioned, and installed, including appropriate shielding and orientation of the lighting fixture, as to not give rise to obtrusive light, interfere with traffic safety or detract from the amenity of surrounding properties in accordance with Australian Standard 4282:1997 - Control of the obtrusive effects of outdoor lighting. Full details are to be included in the documentation for a Construction Certificate application.
14. Prior to the issue of a Construction Certificate an approval for the installation of a waste treatment device or human waste storage facility shall be obtained from Council. An approval to operate a system of sewage management shall also be obtained from Council prior to the use of the system. Separate applications shall be made to Council under Section 68 of the *Local Government Act 1993* with payment of the applicable fees for the individual approvals.
15. All requirements of Ausgrid, as detailed in their advice dated 21 September 2017, being addressed prior to the issue of the Construction Certificate. Full details are to be submitted with the required Construction Certificate.
16. The existing consent given under DA2018/1787 is required to be surrendered in accordance with Clause 4.17 of *Environmental Planning and Assessment Act, 1979* and Clause 97 of the *Environmental Planning and Assessment Regulation 2000*, prior to the issue of any Construction Certificate.

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

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

Each toilet is to:
 - a) Be a standard flushing toilet connected to a public sewer, or
 - b) Have an on-site effluent disposal system approved under the *Local Government Act 1993* (NSW), or
 - c) Be a temporary chemical closet approved under the *Local Government Act 1993* (NSW).
18. A Hazardous Substances Management Plan is to be prepared by a competent person for the building(s) or parts of the building(s) proposed to be demolished in accordance

with Australian Standard 2601:2001 - The Demolition of Structures. A copy of the Hazardous Substances Management Plan is to be provided to Council (marked to Attention: Compliance Services) and the demolisher prior to commencement of work.

19. The demolition works are to be undertaken in accordance with Australian Standard 2601:2001 - The Demolition of Structures and the following requirements:
 - a) Demolition works shall be conducted in accordance with the submitted Hazardous Substances Management Plan and a copy of the Hazardous Substances Management Plan shall be kept on-site for the duration of the proposed development.
 - b) The removal, handling and disposal of any asbestos material is to be undertaken only by an asbestos removal contractor who holds the appropriate class of Asbestos Licence, issued by the WorkCover Authority of NSW.
 - c) A copy of all waste disposal receipts are to be kept on-site for the duration of the proposed development and made available to authorised Council Officers upon request.
 - d) Seven working days' notice in writing is to be given to Council and the owners/occupiers of neighbouring premises prior to the commencement of any demolition works. Such written notice is to include the date demolition will commence and details of the name, address, contact telephone number(s) and licence details (type of licences held and licence numbers) of any asbestos removal contractor and demolition contractor. Notification to owners/occupiers of neighbouring premises shall also include Council's contact telephone number (49742000) and the Workcover Authority of NSW telephone number (49212900) and
 - e) On sites where asbestos materials are to be removed, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent position during asbestos removal works.
20. The demolisher is to ensure that all services (i.e. water, telecommunications, gas, electricity, sewerage etc), are disconnected in accordance with the relevant authority's requirements prior to demolition.
21. Any waste containers used in association with the proposed demolition are to be located on the site where possible.

Note: Where this is not feasible, application must be made for Council's approval to position the container on the adjacent public road in accordance with Council's adopted Building Waste Container Policy.
22. The demolisher is to ensure that all demolition material is kept clear of the public footway and carriageway as well as adjoining premises.
23. Any demolition/waste building materials that are not suitable for recycling are to be disposed of at Council's Summerhill Waste Management Facility or other approved site.
24. Waste management shall be implemented in accordance with the approved Waste Management Plan. At a minimum, the following measures shall be implemented during the construction phase:
 - a) A waste container of at least one cubic metre capacity shall be provided, maintained and regularly serviced from the commencement of operations until the completion of the building for the reception and storage of waste generated by the construction of the building and associated waste

- b) The waste container is to be, at minimum, constructed with a 'star' picket (corners) and weed control mat (sides), or equivalent. The matting is to be securely tied to the pickets
- c) Appropriate provision is to be made to prevent windblown rubbish leaving the site and
- d) Footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

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

- 25. 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.
- 26. An application is to be made to and approved by Council for the erection of a hoarding or part closure of the footway prior to construction being commenced. Such overhead structure or protective fence shall comply with the *Work Health and Safety Act 2011* (NSW), *Work Health and Safety Regulation 2011* (NSW) and any relevant approved industry code of practice. Notice of intention of commencement must be given to WorkCover New South Wales.
- 27. The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- 28. 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.

- 29. All building work must be carried out in accordance with the provisions of the National Construction Code.
- 30. 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.
- 31. All building materials, plant and equipment is to be placed on the site of the development so as to ensure that pedestrian and vehicular access in public places is not restricted and to prevent damage to the road reserve. The storage of building materials on Council reserves including the road reserve is not permitted.

32. Prior to commencement of site works the developer is to submit to Council for approval a Construction Traffic Management Plan addressing traffic control measures to be utilised in the public road reserve during the construction phase.
33. 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.
34. All parking bays are to be permanently marked out on the pavement surface.
35. The proposed visitor parking bays are to be clearly indicated by means of signs and/or pavement markings.
36. The vehicular entrance and exit driveways and the direction of traffic movement within the site are to be clearly indicated by means of reflectorised signs and pavement markings.
37. 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.

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

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

39. Any excavated material to be removed from the site is to be assessed, classified, transported and disposed of in accordance with the Department of Environment and Climate Change's (DECC) 'Waste Classification Guidelines Part 1: Classifying Waste'.
40. Any fill material imported into the site is to be Virgin Excavated Natural Material or material subject to a Resource Recovery Order that is permitted to be used as a fill material under the conditions of the associated Resource Recovery Exemption, in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment (Waste) Regulation 2014*.
41. Documentation demonstrating the compliance with the conditions of the appropriate Resource Recovery Order and Resource Recovery Exemption must be maintained for any material received at the site and subsequently applied to land under the conditions of the Resource Recovery Order and Exemption. This documentation must be provided to Council officers or the Principal Certifying Authority on request.
42. 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.

43. 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.
44. 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.
45. Where the proposed development involves the destruction or disturbance of any existing survey monuments, those monuments affected are to be relocated at no cost to Council by a Surveyor registered under the *Surveying and Spatial Information Act 2002* (NSW).
46. 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.
47. Industrial type vehicular crossings being constructed in the road reserves in locations detailed on the submitted engineering plans by Izzat Consulting Engineers Job No. J5183 Drg A2-01 Rev D and A2-05 Rev A dated 30 March 2017, in accordance with the following criteria:
 - a) Constructed in accordance with Council's A374 - Driveway Crossings Industrial Design Details.
 - b) The driveway crossings, within the road reserve, shall be a maximum of 3.0m and 6.0 metres wide in Parker and Everett Streets.
 - 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 driveways
 - d) The proposed driveways shall be a minimum of 3 metres clear of the trunk of any tree within the public reserve.
 - e) The proposed driveways shall be a minimum of 750mm clear of the centre of any pole or obstruction within the public reserve and 1 metre clear of any drainage pit.

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

48. 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.

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

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

50. All public footways, footpaving, kerbs, gutters and road pavement damaged during the works are to be immediately repaired following the damage, to a satisfactory state that provides for safe use by pedestrians and vehicles. Full restoration of the damage is to be carried out to Council's satisfaction prior to the completion of demolition work or prior to the issue of any Occupation Certificate.
51. All works within the road reserve required by this consent are to be completed prior to the issue of any Occupation Certificate.
52. 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 any Occupation Certificate.
53. The whole of the land, Lot 2 DP 1102476 & Lot 1 DP 1102476 52 Parker Street & 9 Everett Street, Carrington, the subject of this development application, is to be consolidated into a single title and documentary evidence of the lodgement for registration of a survey plan of consolidation with NSW Government Land & Property Information being submitted to Council prior to the issuing of any Occupation Certificate for the proposed development.
54. 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.
55. 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.
56. Appropriate acoustic treatment is to be implemented in accordance with the recommendations set out in the report prepared by Spectrum Acoustics, dated October 2016. Written final certification confirming the recommended acoustic treatment has been implemented in accordance with the requirements of the above report is to be submitted to the Principal Certifying Authority and Council prior to the issue of an Occupation Certificate.

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

57. An appropriate notation is to be placed on the plan of subdivision and an instrument under Section 88B of the *Conveyancing Act 1919* (NSW) being submitted to Council

setting out the terms of easements as required by this consent. Council in addition to the owner of the land benefited by the easement is to be a party whose consent is needed to release or vary easements.

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

The minimum numeral height shall be 75mm.

59. Drainage easements to be created over Lots 3105 and 3106 DP 755247 benefiting the development site prior to the issue of any Occupation Certificate.

An appropriate notation is to be placed on the plan of subdivision and an instrument under Section 88B of the *Conveyancing Act 1919* (NSW).

60. Following completion of the remediation works, a validation report being prepared by a suitably qualified consultant in accordance with the relevant Environment Protection Authority Guidelines and submitted to the Principle Certifying Authority and Council prior to the issuing of any Occupation Certificate.

61. Prior to the issuing of any Occupation Certificate the following documentation is to be submitted to Principle Certifying Authority and Council;

- Site Audit Statement in accordance with the NSW Site Auditor Scheme (site audit form) in relation to:
- To determine land use suitability

62. A long-term Site Management Plan is to be prepared and approved by the Site Auditor to address remaining site contamination risks and to be provided to the Principle Certifying Authority and Council prior to the issuing of any Occupation Certificate.

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

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

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

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

Should Council consider that unreasonable levels of air impurities have been emitted from the premises, the owner/occupier will be required to engage a suitably qualified consultant to recommend measures to control emissions of air impurities to an acceptable level and such measures being implemented within a nominated time period. Furthermore, written certification from the suitably qualified consultant will be required

to be submitted to Council confirming that air impurity emissions from the premises do not interfere unreasonably with the amenity of neighbouring premises and/or other sensitive receptors before the expiration of the nominated period.

65. No goods or advertising signs are to be displayed or allowed to stand on the public footpath or street.
66. The landscaped areas are to be kept free of parked vehicles, stored goods, garbage or waste material and being permanently maintained.
67. The driveway crossing, parking areas and stormwater management system are to be properly maintained for the life of the development.
68. Vehicles are to be loaded or unloaded standing wholly within the premises and within loading bays designated on the submitted plans or as otherwise provided in accordance with the conditions of this consent and under no circumstances are vehicles to be loaded or unloaded at the kerbside, across the public footpath or in a manner which obstructs vehicular access to the site.
69. Any vehicle or plant owned or operated by the occupants of the premises in connection with the conduct of their business is to be parked within the confines of the site in spaces designated on the submitted plans, or otherwise provided in accordance with the conditions of this consent.
70. Proposed parking areas, vehicle bays, driveways and turning areas are to be maintained clear of obstruction and be used exclusively for purposes of car parking, loading and unloading, and vehicle access, respectively. Under no circumstances are such areas to be used for the storage of goods or waste materials.
71. Any liquid wastes from the premises, other than stormwater are to be either discharged to the sewers of the Hunter Water Corporation in accordance with an approved Trade Waste Agreement or collected and disposed of by a licensed waste transport contractor in accordance with the Department of Environment and Climate Change 'Waste Classification Guidelines Part 1: Classifying Waste'.
72. Prior to any site works commencing, the Developer preparing a Construction Management Plan (CMP) such to be designed and implemented to manage all environmental aspects associated with the construction works, including off site impacts such as transport to and from the site. Two copies of the CMP are to be provided to the Principal Certifying Authority and the CMP is to be maintained on site during all site works and be made available to Authorised Officers upon request. The CMP is to include but not be limited to:
 - A site management strategy, identifying and addressing issues such as environmental health and safety, site security, and traffic management.
 - A soil and water management strategy, detailing erosion and sediment control, management of soil stockpiles, control and management of surface water and groundwater. Procedures should be included to ensure that all roads adjacent to the site are kept free and clear from mud and sediment.
 - A dust management strategy, detailing procedures to minimise dust generation, with particular reference to control techniques and operational limits under adverse meteorological conditions.
 - A waste minimisation strategy that aims to avoid production of waste and maximise reuse, recycling or reprocessing of potential waste material.

- A community relations plan that aims to inform local residents and other local stakeholders of the proposed nature and timeframes for construction activities together with contact details for site management.
 - A noise management strategy detailing measures to minimise the impact of the construction phase on the amenity of the locality, in accordance with Australian Standard AS 2436, 1981 'Guide to Noise control on Construction, Maintenance and Demolition Sites'. Noise monitoring during the construction phase should be incorporated into the program.
 - A site management strategy for dealing with any identifying potential for Acid Sulphate Soils (ASS) to be encountered and measures and techniques to be followed in the event that ASS are encountered.
73. A suitably qualified hygienist is to be engaged to prepare an Asbestos Management Plan to address any potential asbestos risks during civil works. The suitably qualified hygienist is to recommend any necessary corrective actions required to be implemented to address exceedances of relevant guidelines during the civil works. Records and any actions taken are to be kept on site and made available upon request by Council Officers or other relevant agencies
74. Remediation being carried out in accordance with Section 4.3 of Coffey Services Australia Remediation Action Plan dated 10 December 2018, and any requirements of the appointed NSW accredited Site Auditor and the conditions of this consent.
75. Trains are to be unloaded/loaded only between the hours of 7:00am - 6:00pm seven days a week.
76. The operation of the site at no times involving any materials, by nature or volume, which would result in the operation constituting *hazardous or offensive development* under the terms of *State Environmental Planning Policy No 33 - Hazardous and Offensive Development*.
77. Any external storage of shipping containers, or similar, are to be limited to 3 container high stacks (i.e. containers being stacked horizontally) and all shipping containers are to be stored at least 3 metres from any boundary.

ADVISORY MATTERS

- Any proposed business identification sign or advertising sign should be designed in accordance with the provisions of Newcastle Development Control Plan 2012 and be the subject of a separate Development Application approved prior to erection or placement in position.
- It is recommended that, prior to commencement of work, the free national community service 'Dial before you Dig' be contacted on 1100 or by fax on 1200 652 077 regarding the location of underground services in order to prevent injury, personal liability and even death. Inquiries should provide the property details and the nearest cross street/road.
- Any necessary alterations to public utility installations are to be at the developer/demolisher's expense and to the requirements of both Council and any other relevant authorities. Council and other service authorities should be contacted for specific requirements prior to the commencement of any works.
- Prior to commencing any building works, the following provisions of Division 6.2 of the *Environmental Planning and Assessment Act 1979* are to be complied with:

- a) A Construction Certificate is to be obtained; and
 - b) A Principal Certifier is to be appointed for the building works and Council is to be notified of the appointment; and
 - c) Council is to be given at least two days notice of the date intended for commencement of building works.
- A Construction Certificate application for this project is to include a list of fire safety measures proposed to be installed in the building and/or on the land and include a separate list of any fire safety measures that already exist at the premises. The lists must describe the extent, capability and basis of design of each of the measures.
 - 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* (NSW) will be required if design amendments that cause the proposal to be inconsistent with the development consent are necessary to comply with the provisions of the Building Code of Australia.
 - Prior to the occupation or use of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the proposed development. An application for an Occupation Certificate must contain the information set out in Clause 149 of the *Environmental Planning and Assessment Regulation 2000* (NSW).
 - 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* (NSW) is to be submitted to Council and a copy (together with a copy of the current fire safety schedule) is to be given to the Commissioner of New South Wales Fire Brigades. A further copy of the Statement (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.
 - It is an offence under the provisions of the *Protection of the Environment Operations Act 1997* (NSW) to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.
 - Failure to comply with the conditions of consent constitutes a breach of the *Environmental Planning and Assessment Act 1979* (NSW), which may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.
 - For the purpose of applying the provisions of the National Construction Code for class 1, 2, 3, 4, 9a (health care) and 9c (aged care) buildings, it is advised that the proposed building is located in a Flood Hazard Area and the:
 - a) Defined Flood Level (DFL) is 2.2m Australian Height Datum (AHD)
 - b) Flood Hazard Level is 2.5m AHD (Freeboard is 300mm above DFL)

Maximum Flow Velocity of floodwaters for the Defined Flood Event is 0.1m/s

END OF CONDITIONS

SCHEDULE 2

REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS

The determination decision was reached for the following reasons:

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

REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED

The following conditions are applied to:

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

Attachment C

THE CITY OF NEWCASTLE
Report to Development Applications Committee Meeting on 9 April 2019

PROCESSING CHRONOLOGY

DA 2017/00629 – 52 Parker & 9 Everett Street, Carrington

- | | | |
|------------------|---|------------------------------------|
| 31 May 2017 | - | Application lodged |
| 5 June 2017 | - | Public notification of application |
| 19 June 2017 | - | Request for additional information |
| 13 February 2019 | - | Additional information received |

