



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 17 September 2019

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

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

J Bath  
Chief Executive Officer

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

Tuesday 11 September 2019

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**DEVELOPMENT APPLICATIONS COMMITTEE**  
**17 September 2019**

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

**CONFIRMATION OF PREVIOUS MINUTES**

**MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 20 AUGUST 2019**

**RECOMMENDATION**

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

**ATTACHMENTS**

**Attachment A:** 190820 Development Applications Committee Minutes

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

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### Attachment A

## CITY OF NEWCASTLE

**Minutes of the Development Applications Committee Meeting held in the Council Chambers, 2nd Floor City Hall, 290 King Street, Newcastle on Tuesday 20 August 2019 at 7.44pm.**

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### PRESENT

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

### IN ATTENDANCE

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

### APOLOGIES

#### MOTION

Moved by Cr Byrne, seconded by Cr Winney-Baartz

The apologies submitted on behalf of Councillors Clausen, Luke, Mackenzie and Rufo be received and leave of absence granted.

**Carried**

### DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Nil.

### CONFIRMATION OF PREVIOUS MINUTES

**MINUTES - EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE 25 JUNE 2019**

#### MOTION

Moved by Cr Church, seconded by Cr Byrne

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

**Carried**

**DEVELOPMENT APPLICATIONS**

**ITEM-9 DAC 20/08/19 - DA2019/00348 - 282 KING STREET NEWCASTLE - TOURIST AND VISITOR ACCOMODATION (ADAPTIVE REUSE AS A BOUTIQUE HOTEL) ALTERATIONS & ADDITIONS AND SIGNAGE**

**MOTION**

Moved by Cr Duncan, seconded by Cr Winney-Baartz

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.3, Height of Buildings, and considers the objection to be justified in the circumstances and consistent with the objectives of Clause 4.3 and the objectives for development within the B3 Commercial Core zone in which the development is proposed to be carried out; and
- B. That DA2019/00348 for alterations and additions to a public administration building and use of the building as a boutique hotel at 282 King Street Newcastle be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment B; and
- C. That permission be granted to the applicant to retain and display the existing Armorial Bearings of the City, above the revolving door entry to the CAC building, in order to reference the historic use of the building.
- D. That those persons who made submissions be advised of CN's determination.

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

**Against the Motion:** Nil.

**Carried**

**PROCEDURAL MOTION**

Moved by Cr White, seconded by Cr Winney-Baartz

Council recommit Item 9 - DA2019/00348 - 282 King Street Newcastle for discussion.

**For the Procedural Motion:** Lord Mayor, Cr Nelmes and Councillors Byrne, Church, Duncan, Dunn, Elliott, Robinson, White and Winney-Baartz.

**Against the Procedural Motion:** Nil.

**Carried**

**MOTION**

Moved by Cr Duncan, seconded by Cr Winney-Baartz

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.3, Height of Buildings, and considers the objection to be justified in the circumstances and consistent with the objectives of Clause 4.3 and the objectives for development within the B3 Commercial Core zone in which the development is proposed to be carried out; and
- B. That DA2019/00348 for alterations and additions to a public administration building and use of the building as a boutique hotel at 282 King Street Newcastle be approved and consent granted, subject to compliance with the conditions set out in the revised Draft Schedule of Conditions provided to Councillors as Attachment A, in a Memo distributed to all Councillors on 19 August 2019.
- C. That permission be granted to the applicant to retain and display the existing Armorial Bearings of the City, above the revolving door entry to the CAC building, in order to reference the historic use of the building.
- D. That those persons who made submissions be advised of CN's determination.

**For the Motion:**

Lord Mayor, Cr Nelmes and Councillors Byrne, Church, Duncan, Dunn, Elliott, Robinson and White and Winney-Baartz.

**Against the Motion:**

Nil.

**Carried**

**ITEM-10 DAC 20/08/19 - DA2018/01498 - 20 DENISON STREET, NEWCASTLE WEST - DEMOLITIONS OF EXISTING STRUCTURES, ERECTION OF A 20 STOREY MIXED USE DEVELOPMENT**

**MOTION**

Moved by Cr Church, seconded by Cr White

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of Newcastle Local Environmental Plan 2012, against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out; and
- B. That DA2018/01498 for demolition of structures and erection of a 20-storey mixed use development at 20 Denison Street Newcastle West be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment B.

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

**Against the Motion:** Nil.

**Carried**

**ITEM-11 DAC 20/08/19 - DA2017/01382 - 1 MEREWETHER STREET, NEWCASTLE - ERECTION OF NINE STOREY MIXED USE DEVELOPMENT WITH 48 RESIDENTIAL UNITS, TWO COMMERCIAL TENANCIES, ASSOCIATED CARPARKING AND LANDSCAPING**

**MOTION**

Moved by Cr Winney-Baartz, seconded by Cr White

- A. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and is consistent with the objectives of Clause 4.3 and the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out; and
- B. That the Development Applications Committee note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and is consistent with the objectives of Clause 4.4 and the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out; and
- C. That DA2017/01382 for the erection of a nine-storey mixed use development with 48 residential units, two commercial tenancies, two levels of associated carparking and landscaping be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at Attachment B; and
- D. That those persons who made submissions be advised of Council's determination.

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

**Against the Motion:** Nil.

**Carried**

**The meeting concluded at 7.57pm.**

**DEVELOPMENT APPLICATIONS**

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

**APPLICANT:**            **OWARCO 2303 PTY LTD TRUSTEE FOR THE OWARCO 2303 UNIT TRUST**

**OWNER:**                **N E SAUL & M E SAUL**

**NOTE BY:**              **GOVERNANCE**

**CONTACT:**             **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

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**PART I**

**PURPOSE**

An application has been received seeking consent for the demolition of a dwelling and outbuilding, erection of a three-storey, sixteen room boarding house and associated fencing.

The submitted application was assigned to Development Officer, Holly Hutchens, for assessment.

The application is referred to the Development Applications Committee for determination, due to the number of objections received (ie. 33 objections).

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



Subject Land: 147 Beaumont Street Hamilton NSW 2303

The proposed development was publicly notified in accordance with City of Newcastle's (CN) public participation policy and 34 submissions have been received in response, one of which was in support of the proposal. The objectors' concerns include:

- i) Bulk and scale
- ii) Visual privacy
- iii) Overshadowing
- iv) Character
- v) Car parking

- vi) Traffic generation
- vii) Suitability of the development
- viii) Overdevelopment of the site
- ix) Inadequate communal rooms
- x) Impact on heritage items
- xi) Lot width
- xii) Setbacks
- xiii) Solar access
- xiv) Crime Prevention Through Environmental Design
- xv) Amenity
- xvi) Management issues

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.

### Issues

- 1) Provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009.
- 2) 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* and is considered to be acceptable subject to compliance with appropriate conditions.

### RECOMMENDATION

- A. That DA2018/00609 for demolition of dwelling and outbuilding, erection of three-storey, sixteen room boarding house and associated fencing at 147 Beaumont Street Hamilton be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of CN's determination.

### Political Donation / Gift Declaration

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

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

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

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

## **PART II**

### **1.0 THE SUBJECT SITE**

The subject property comprises Lot 1 DP 164986, which is rectangular in shape and located on the eastern side of Beaumont Street. The lot has a frontage of 12.47m to Beaumont Street, a maximum depth of 40.74m and a total area of 499.5m<sup>2</sup>.

The site is relatively flat, with a minor slope towards Beaumont Street, and is occupied by a single-storey masonry dwelling house and associated outbuildings. The existing dwelling is bounded by hardstand area, with vehicle parking available at the front of the site. At the rear of the site is a garage that cannot be accessed by cars. There is no vegetation on the site, except for limited areas of lawn.

The site is located within close proximity to the commercial precinct of Hamilton and the area is characterised by a mixture of commercial and residential uses.

To the north of the site the area is characterised by development of a commercial nature, including a number of food and drink premises, entertainment venues, retail premises and smaller business premises. This development typically varies in height from two to three storeys.

To the south and west of the site are dwelling houses, residential flat buildings and other residential accommodation. This development varies in height from single storey to three storeys. A single storey commercial building is also located opposite the site in Beaumont Street.

To the rear (east side) of the site is an at-grade car park that is used in connection with nearby commercial premises.

### **2.0 THE PROPOSAL**

The applicant originally sought consent to carry out the demolition of the dwelling and outbuildings and erection of a three-storey, 18 room boarding house and associated fencing. Concerns were raised regarding compliance with car parking standards, privacy and overshadowing impacts on the adjoining properties.

The plans were amended in response to issues raised by CN officers and objectors. The amendments include a reduction in the proposal from 18 to 16 rooms, compliance with the prescribed car parking rate, an increase in the number and height of fixed privacy screens along the southern boundary and removal of a carport structure at the rear of the site.

Pedestrian and vehicular access has been proposed along the southern boundary, to provide greater separation to the neighbouring dwelling. The external walkways along the southern side will include a mixture of privacy screens, to minimise overlooking to the dwelling to the south.

The proposed balconies are located along the northern boundary of the site. The adjoining property to the north is a commercial dance studio, with no outdoor area. Privacy screens have been applied to the first-floor balconies to increase amenity and privacy for both the future tenants and the adjoining neighbour.

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

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

### **3.0 PUBLIC NOTIFICATION**

The original application was publicly notified in accordance with the requirements of CN's public participation policy. A total of 34 submissions were received in response, with 33 of those submissions containing objections and one being in support of the proposal. The concerns raised by the objectors in respect of the proposed development are summarised as follows:

- a) Amenity issues
  - i) Privacy – overlooking of adjoining properties
  - ii) Amenity for future tenants – private open space looking towards the Exchange Hotel
- b) Design and aesthetics issues
  - i) Bulk and scale
  - ii) Setbacks
  - iii) Over development of the site
  - iv) Inadequate lot width
  - v) Inadequate communal room design and size
  - vi) Impacts on a nearby heritage item
- c) Traffic and parking issues
  - i) Increase in traffic issues
  - ii) Inadequate parking
- d) Solar access
  - i) Overshadowing of the neighbouring dwelling's private open space
  - ii) Overshadowing of neighbouring dwelling's living room

- e) Character
  - i) The design is not in keeping with the character of Beaumont Street or neighbouring properties
  - ii) Suitability of the development both aesthetically and with regard to size, bulk and scale
- f) Crime Prevention Through Environmental Design
  - i) The assessment is flawed as the building does not meet the principles for safety and security
- g) Management issues
  - i) More information is required regarding management of the proposed development
- h) Miscellaneous
  - i) The proposed development will require an expensive upgrade of sewer to cope with the extra service it will need to supply

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

#### **4.0 ENVIRONMENTAL PLANNING ASSESSMENT**

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

#### **5.0 PLANNING ASSESSMENT**

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

##### **5.1 Provisions of any environmental planning instrument**

###### **State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55)**

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

SEPP 55 requires 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 purposes and CN's records do not identify any past contaminating activities on the site. The proposal is considered to be acceptable having regard to this policy.

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

A recent judgement in the Land and Environment Court (ref: [SHMH Properties Australia Pty Ltd v City of Sydney Council \[2018\] NSWLEC 66](#)) determined that boarding house rooms containing the essential components of a domicile, being sleeping, bathroom and kitchenette facilities, make a boarding house a 'BASIX affected building'. Consequently, the proposed development is a 'BASIX affected development', so the BASIX SEPP is applicable to the proposed boarding house.

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

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

A late submission, received in respect of the application, contends that SEPP 65 applies to Building Code of Australia Class 3 boarding houses. The proposed development is a Building Code of Australia Class 3 boarding house.

SEPP 65 applies to buildings of three or more storeys that contain four or more dwellings.

SEPP 65 also includes the following limitation on its application:

*“Unless a local environmental plan states otherwise, this Policy does not apply to a boarding house or a serviced apartment to which that plan applies.”*

Newcastle Local Environmental Plan 2012 (NLEP 2012) does not state that SEPP 65 is applicable to a boarding house.

During the assessment of this application, the NSW Department of Planning and Environment issued a fact sheet, dated February 2019, regarding State Environmental Planning Policy (Affordable Rental Housing) 2009, including “*general information about boarding houses*”. The fact sheet contains frequently asked questions, including the following:

*“Q: Does SEPP 65 apply to Building Code of Australia (BCA) Class 3 boarding house developments?”*

*A: No, clause 4(4) of SEPP 65 excludes the application of SEPP 65 to boarding houses.”*

It is considered that SEPP 65 does not apply to the proposed development.

Further to this, CN's Urban Design Consultative Group (UDCG) Charter 2012 does not list Boarding House developments as applications to be considered by the UDCG (ie. other than generally as buildings if they are located in the Newcastle City Centre or within other commercial centres).

**State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH)**

SEPP ARH contains provisions that a consent authority is required to take into consideration when assessing a proposed development for the purpose of a boarding house. An assessment of the development under the key requirements of SEPP ARH is provided in the table below:

State Environmental Planning Policy (Affordable Rental Housing) 2009 - Division 3 Boarding Houses	Assessment
<p><b>26 Land to which Division applies</b></p> <p>This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones:</p> <ul style="list-style-type: none"> <li>(a) Zone R1 General Residential,</li> <li>(b) Zone R2 Low Density Residential,</li> <li>(c) <b><u>Zone R3 Medium Density Residential</u></b></li> <li>(d) Zone R4 High Density Residential,</li> <li>(e) Zone B1 Neighbourhood Centre,</li> <li>(f) Zone B2 Local Centre,</li> <li>(g) Zone B4 Mixed Use.</li> </ul>	<p>The site of the proposed development is located in the R3 Medium Density Residential zone and therefore Division 3 of SEPP ARH applies to the site.</p>
<p><b>27 Development to which Division applies</b></p> <p>(1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.</p>	<p>Division 3 of SEPP ARH applies to the proposed boarding house development.</p>
<p><b>28 Development may be carried out with consent</b></p> <p>Development to which this Division applies may be carried out with consent</p>	<p>The proposed development is permissible, with consent.</p>
<p><b>29 Standards that cannot be used to refuse consent</b></p>	

<p>(1) A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the building when expressed as a floor space ratio are not more than:</p> <p>(a) The existing maximum floor space ratio for any form of residential accommodation permitted on the land, or</p> <p>(c) If the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item – the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus:</p> <p>(i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less</p>	<p>(1)(a) The Floor Space Ratio (FSR) of the proposed development, being 0.71:1, complies with the relevant FSR development standard in the Newcastle Local Environmental Plan 2012, which is 0.9:1.</p> <p>The proposed development cannot be refused on the grounds of density or scale.</p> <p>The bonus FSR provisions available to the development under the ARH SEPP have not been utilised in the proposed development.</p>
<p>(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:</p> <p>(a) building height If the building height of all proposed building is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,</p> <p>(b) landscaped area If the landscape treatment of the front setback area is compatible with the streetscape in which the building is located.</p> <p>(c) solar access Where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.</p>	<p>2)(a) The proposed building complies with the relevant 10m height of buildings development standard. The overall height of the building including the lift overrun is 9.2m.</p> <p>The proposed development cannot be refused on the grounds of height.</p> <p>(2)(b) The existing dwelling does not provide any landscaping, however, the development details adequate landscaping within the front setback. Given the context of the area, which is of a mixed commercial and residential nature, the amount of landscaping is considered appropriate.</p> <p>It is considered that the proposed development cannot be refused on the grounds of landscaped area.</p> <p>(2)(c) Three communal living areas are located on the north-eastern side of the building. The orientation of the</p>

<p>(d) private open space If at least the following private open space areas are provided (other than the front setback area):</p> <p>(i) one area of at least 20m<sup>2</sup> with a minimum dimension of 3 metres is provided for the use of the lodgers,</p> <p>(ii) if accommodation is provided on site for a boarding house manager-one area of at least 8 square metres with a minimum dimension of 2.5 metres is provided adjacent to that accommodation.</p> <p>(e) parking If:</p> <p>(iia) in the case of development not carried out by or on behalf of a social housing provider at least 0.5 parking spaces are provided for each boarding room</p> <p>(iii) in the case of any development - not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site.</p> <p>(f) accommodation size If each boarding room has a gross floor area (excluding any area used for the purpose of private kitchen or bathroom facilities) of at least:</p> <p>(i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or</p> <p>(ii) 16 square metres in any other case.</p> <p>(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.</p> <p>(4) A consent authority may consent to</p>	<p>communal rooms is suitable, however, the sunlight received in the ground floor room will be limited by the location of the existing building to the north.</p> <p>(2)(d)(i) The private open space area is identified as 25.1m<sup>2</sup> and is provided for the use of all lodgers. The communal open space is provided at ground level to the private open space area.</p> <p>(2)(d)(ii) no on-site manager is proposed.</p> <p>(2)(e)(iia) the development is not being carried out by or on behalf of a social housing provider, therefore the following rate is applied: 0.5 parking spaces for each boarding room (16 x 0.5) = 8 parking spaces.</p> <p>The proposed development provides for 8 parking spaces and complies with the standard.</p> <p>(2)(e)(iii) an on-site resident employed in connection with the development is not proposed.</p> <p>Room sizes (excluding kitchen and bathroom facilities):</p> <p>(2)(f)(i) Single rooms: 14 single rooms ranging from 12m<sup>2</sup> to 14.2m<sup>2</sup>. The proposed development complies with the standard.</p> <p>(2)(f)(ii) Double rooms: 2 double rooms 16.9m<sup>2</sup>. The proposed development complies with the standard.</p> <p>The development satisfies this provision.</p> <p>(3) Each boarding room provides private kitchen and bathroom facilities.</p>
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<p>development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).</p>	<p>(4) It is considered that the proposal complies with the standards.</p>
<p><b>30 Standard for boarding houses</b></p> <p>(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:</p> <p>(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,</p> <p>(b) no boarding room will have a gross floor area (excluding any area used for the purpose of private kitchen or bathroom facilities) of more than 25 square metres,</p> <p>(c) no boarding room will be occupied by more than 2 adult lodgers,</p> <p>(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,</p> <p>(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on-site dwelling will be provided for a boarding house manager,</p> <p>(f) (Repealed)</p> <p>(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,</p> <p>(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.</p>	<p>(1)(a) The development contains a communal area at ground floor level, first floor level, and second floor level. The proposed development complies.</p> <p>(1)(b) Rooms size range from 12m<sup>2</sup> to 16.9m<sup>2</sup>. The proposed development complies.</p> <p>(1)(c) The development proposes single and double rooms only. The development satisfies this provision. Conditions are recommended within <b>Attachment B</b> limiting the occupancy per boarding room.</p> <p>(1)(d) Each boarding room is provided with its own kitchenette and bathroom facilities. The proposed development complies.</p> <p>(1)(e) The development proposes a maximum of 18 residents. No on-site manager is required or proposed. However, the applicant is intending to identify one of the tenants who is prepared to act in the role as on-site manager.</p> <p>(1)(f) Noted.</p> <p>(1)(g) The subject site is R3 Medium Density Residential zoned land, so this clause does not apply.</p> <p>(1)(h) The proposal provides four motorcycle parking spaces and a shared zone for bicycle storage. The proposed development complies.</p>

**30A Character of local area**

A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.

The proposed development is consistent with the existing and likely future character of Beaumont Street, being a mixed commercial and residential area.

Within the immediate area are buildings of a similar height, including an older style residential flat building across the street to the west and the Exchange Hotel, to the north.

The development proposes additional landscaping treatment to the front setback, which is currently absent on the site. The provision of landscaping will not only soften the development but will contribute to the streetscape.

The adopted Local Planning Strategy describes Hamilton and Beaumont Street as the following:

*“Hamilton is a thriving and popular inner-city suburb with employment generating activities (commercial) along Beaumont Street. This commercial strip is Hamilton’s main cultural attraction. Hamilton is an easily accessible suburb from the centre of Newcastle with free buses running every 20 minutes within this region. Hamilton has been identified as a place of renewal where higher residential densities, mixed use development and greater commercial floor space are encouraged in well located areas along the Tudor Street renewal corridor.”*

*Vision and Objectives*

*“Vision: The benefits of Hamilton being a walkable, mixed use residential neighbourhood will be balanced with its value locally by preserving local services, and to Newcastle as a cultural and entertainment attraction.*

*Hamilton will continue to evolve as a viable mixed-use suburb, supporting a*

	<p><i>variety of land uses, increased residential densities and built form along Tudor Street that reaffirm the centre's hierarchy within the city, whilst respecting adjoining established neighbourhoods".</i></p> <p>The proposal satisfies the strategic vision for the Hamilton area by providing higher density housing and built form within the local area and Beaumont Street, while adding to the mix of land uses in the suburb.</p> <p>The overall scale, density, and nature of the building is compatible with the surrounding character of the area and meets this provision of SEPP ARH.</p>
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The following summarises an assessment of the proposal against the provisions of NLEP 2012 that are primarily relevant to the proposed development:

Clause 2.1 - Land Use Zones

The subject property is located within the R3 Medium Density Residential zone under the provisions of the NLEP 2012. The proposed development is permissible with CN's consent in this zone.

The proposed development is consistent with the objectives of the R3 Medium Density Residential zone, which include:

- “i) To provide for the housing needs of the community within a medium density residential environment.*
- ii) To provide a variety of housing types within a medium density residential environment.*
- iii) To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- iv) To allow some diversity of activities and densities if:*
  - (i) the scale and height of proposed buildings is compatible with the character of the locality, and*
  - (ii) there will be no significant adverse impact on the amenity of any existing nearby development.*
- vi) To encourage increased population levels in locations that will support the commercial viability of centres provided that the associated new development:*
  - (i) has regard to desired future character of residential streets, and*

*(ii) does not significantly detract from the amenity of any existing nearby development.”*

The development adds to the variety of housing types in the locality and allows for additional population within proximity to the commercial centre of Hamilton. The development is considered to have relatively minor impacts on the amenity of existing nearby development.

#### Clause 2.7 - Demolition Requires Development Consent

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

#### Clause 4.3 - Height of Buildings

The site has a height of buildings development standard of 10m. The overall height is including the lift overrun is 9.2m. The proposal complies with this development standard.

#### Clause 4.4 - Floor Space Ratio

The site has a floor space ratio (FSR) development standard of 0.9:1. The proposed FSR is 0.71:1 and complies with this development standard.

#### Clause 6.1 - Acid Sulfate Soils

The site is affected by Class 4 acid sulphate soils, subject to provisions regarding:

*“Works more than 2 metres below the natural ground surface. Works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface.”*

The proposed development is considered satisfactory in this regard as it will not impact on the watertable or involve works below two metres.

#### Clause 6.2 - Earthworks

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

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

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

### 5.3 Any development control plan

#### Newcastle Development Control Plan 2012 (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 amenity and safety on the site and creating a vibrant place for people to live in a compact and sustainable urban form.

Section 3.03 of the NDCP 2012 includes boarding houses as a development type to which the section applies but contains limited development controls that are applicable to boarding houses. The proposal is therefore largely dependent on the controls prescribed within State Environmental Planning Policy (Affordable Rental Housing) 2019 (SEPP ARH). The provisions of SEPP ARH take precedence over the provisions of the NDCP 2012, to the extent of any inconsistency.

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

##### *Principal controls (3.03.01)*

###### *A. Frontage widths*

The subject property has a frontage width of 12.47m, whereas the NDCP 2012 requires a minimum site frontage for a boarding house located within R3 Medium Density zone to be 15m.

The applicant advises that they have consulted with the adjacent property owners regarding the option of purchasing additional land to provide a wider and larger lot for the development, however, additional land has not been obtained.

The variation to the frontage width is supported as the proposal meets the height and FSR requirements of SEPP ARH, as well as the development standards that cannot be used as grounds for refusal.

While there is a minor encroachment (1.8m) of the balconies on the northern setback and the front setback (3.026m) the development does not cause significant impacts on the neighbouring premises by way of the variation to the frontage width.

###### *B. Front setbacks*

The front setback requirement is 4.5m for development where there is no established building line. The proposed development is proposing a 4.5m setback. However,

the balcony of unit 3 and unit 10 (first and second storey) encroach on this setback, being 3m from the street.

The building design provides for articulation and a landscaped area that addresses the street and adds to the streetscape. The encroachment of the two balconies into the front setback area is considered to be acceptable.

*C. Side and rear setbacks*

The following setbacks are proposed as part of the development.

<b>Ground floor setback:</b>	<b>Required</b>	<b>Proposed</b>
Side	1.5m	Northern boundary: 2.32m Southern boundary 4.18m
Rear	1.5m	16.6m (to the external wall of the lobby / communal room)
<b>First Floor</b>		
Side	3m	Northern boundary: 3m to the wall and 1.8 to the open balcony. Southern boundary: 2.83 - 3m
Rear	3m	3m
<b>Second Floor</b>		
Side	3m	Northern boundary: 3m to the wall and 1.8m to the open balcony. Southern boundary: 2.83 - 3m
Rear	3m	3m

Having regard for the existing streetscape and the established building types within the immediate vicinity, it is considered that the proposed development will not detrimentally impact the built form or visual amenity of the area. The proposed development will not adversely impact on the amenity of the adjoining properties with respect to privacy and solar access. Privacy screens have been proposed on the northern and southern elevations.

It is considered that the proposed side and rear building setbacks are satisfactory.

*D. Landscaped Area*

The existing dwelling has a small patch of grassed area along the northern boundary of the garage. The site is otherwise predominantly covered by a hardstand area.

The proposed landscaping is primarily concentrated in the front setback area and ground floor courtyards of the proposed development. The proposed landscaping is

considered to be appropriate for the context of the site and its setting and also appropriate for the nature of the proposed development.

*Conclusion – NDCP 2012 Residential Development provisions*

The proposed development is considered to achieve 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.

Flood Management - Section 4.01

The site is identified as being affected by flooding with a flood hazard level of RL 6.64m Australian Height Datum (AHD).

CN's Development Engineer has reviewed the proposal and advised that the proposal demonstrates that all floor levels will be above the required flood hazard level at RL 6.75m(AHD). No other concerns exist in relation to flooding and, accordingly, the proposal is considered to be acceptable in this regard.

Appropriate conditions to confirm flood risk requirements have been included in the Draft Schedule of Conditions (refer to **Attachment B**).

Mine Subsidence - Section 4.03

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

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

Safety and Security - Section 4.04

The proposal has been designed to adequately address safety and security and is considered to be consistent with this section.

The proposal achieves good surveillance by providing clear sight lines between private and public spaces, effective lighting of public places and attractive landscaping within the street frontage.

The overall building design and frontage to Beaumont Street increases casual surveillance of all surrounding footpath areas.

Social Impact - Section 4.05

It is considered unlikely that the provision of residential accommodation of the nature proposed would result in a significant increase in anti-social behaviour. The

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

Soil Management - Section 5.01

The proposal provides for above ground car parking, which has the effect of limiting potential site impacts resulting from excavation. Excavation is limited to piers required to support the structure, which results in minimal earthworks being required across the ground level of the site. Therefore, the proposal is consistent with this clause.

Relevant conditions relating to sediment and erosion control have been included the Draft Schedule of Conditions (refer to **Attachment B**).

Land Contamination - Section 5.02

Land contamination has been considered in this assessment report, in accordance with SEPP 55. The subject land is currently being used for residential purposes and CN's records do not identify any past contaminating activities on the site.

Landscape Open Space & Visual Amenity - Section 7.02

The proposed landscaping scheme for the development is consistent with the relevant aspects of this section, by providing landscaping appropriate within the context of the site and its setting and also appropriate for the nature of the development. Landscaping has been proposed within the frontage and northern boundary of the property.

Traffic, Parking & Access - Section 7.03

The proposal has been assessed by CN's Development Officer (Engineering) and is considered to be acceptable subject to conditions, as recommended. In reaching this recommendation CN's Development Officer (Engineering) has provided the following comments:

*Traffic Generation*

*According to Guide to Traffic Generating Developments by RMS, the traffic generation potential of the subject development can be estimated as follows:*

*Daily vehicle trips: 80*

*Weekday peak hour vehicle trips: 8*

*The above rates are based on the rates for medium density residential flat building.*

*The current road network should be able to cater for the additional traffic generated as a result of the development and no further information is required.*

Vehicular Access, Driveway Design, and Crossing Location

*The proposed vehicular crossing, access driveway, turning area and parking bays are considered satisfactory and in accordance with the AS2890.1. The site is relatively flat and the driveway should be able to be constructed in accordance with AS2890.1 in regard to the driveway grades.*

*Turning templates have been provided for the critical parking spaces on the site (car spaces 1, 2, 5 & 8) demonstrating sufficient ability to enter and exit the site in a forward direction.*

Parking Demand

*Under the ARHSEPP the following standard is applied;*

*“in the case of development not carried out by or on behalf of a social housing provider, at least 0.5 parking spaces are provided for each boarding room and not more than 1 space is provided for each person employed in connection with the development and who is resident on site.”*

*There is a total of 16 boarding rooms with no staff onsite proposed. A total of 8 car spaces are required under the SEPP. The development is to provide at least 8 car spaces, 3 bike spaces and 1 motorbike space.*

Public Domain

*The following public domain works are required in connection with the development, and will be subject to separate approval under Section 138 of the Roads Act 1993:*

*i) Reconstruction of street kerb and gutter. Reason: The existing kerb is 200mm in height which does not comply with current standards and it is in poor condition.*

*ii) Reconstruction of footway paving concrete full width. Reason: To enhance pedestrian amenity and safety due to increased pedestrian demand from development.*

*iii) Associated road pavement repair works. Reason: Complement kerb works.”*

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

The proposed development is considered acceptable with regard to its impact on local traffic conditions, parking, and traffic management.

Section 7.05 - Energy Efficiency

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

Stormwater - Section 7.06 & Water Efficiency - Section 7.07

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

- i. The StormTech modules at the rear in the undercover car park are to be removed.*
- ii. Hard stand overflows (rear under cover car park and driveway area) are to be directed to the pit and pipe system along the proposed driveway.*
- iii. Overflow from the 600x900mm grated pit at the front of the property are to be redirected and be connected into the front StormTech modules.*
- iv. All roof downpipes are to connect into the 5,000 litre rain water tank. The rainwater tank is to be plumbed to all new toilet cisterns, washing machine taps, irrigation system and a least one outdoor tap.*
- v. Overflows from the 5,000 litre rain water tank are to be discharged to Beaumont Street kerb and gutter.*
- vi. If the overflow discharge is to be a charged system, then the overflow outlet to the public drainage system is to be a separate outlet to the StormTech module outlet.*
- vii. If the overflow discharge is NOT a charged system, then the rainwater tank overflow and StormTech module overflow are to be combined as one outlet pipe to the street kerb and gutter.*
- viii. Any discharge to kerb must be clear of the driveway.*

Appropriate conditions to address these issues has been included in the Draft Schedule of Conditions (refer to **Attachment B**). Subject to the imposition of the recommended conditions, the proposal is considered to be satisfactory.

Waste Management - Section 7.08

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

A Waste Management Plan has been provided with the application. The proposal provides a storage area for bulk storage of bins. The bins will be wheeled out to the kerb for collection and back to a dedicated storage area within the site when empty.

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

Appropriate conditions to address this issue has been included in the Draft Schedule of Conditions (refer to **Attachment B**).

Public Participation - Section 8.0

The proposal was notified to in accordance with the provisions of CN's public participation policy. A total of 34 submissions to the proposal were received (ie 33 objecting to the proposal and one supporting the proposal).

Comments are provided in Section 5.8 below.

### Development Contributions

The *Environmental Planning and Assessment Act 1979* enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution of \$14,636.01, as detailed in CN's Development Contributions Plan.

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

#### **5.4 Planning agreements**

No planning agreements are relevant to the proposal.

#### **5.5 The regulations (and other plans and policies)**

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

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

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

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

The proposal will have direct positive social impacts, in providing a form of accommodation that adds to the variety of housing types in the locality. The proposal is also likely to have broad positive economic and social impacts in that it will create additional employment opportunities during the construction period, support the demand for local services and facilities, increase social activity and street activation within Hamilton.

Having regard to the surrounding area, it is considered that the proposed development is adequate in terms of the character of the area and satisfactorily responds to the attributes of the site, with its bulk and scale being satisfactory in the context of locality.

The character, bulk and scale of the proposed development have been discussed in this report, in the context of SEPP ARH Boarding House provisions, NLEP 2012, and NDCP 2012 controls. The proposal is considered to be acceptable in this regard.

### Traffic and Parking

It has been demonstrated that the current road network should be able to cater for the additional traffic generated as a result of the development. The proposed development is considered acceptable with regard to its impact on local traffic conditions, parking requirements, and traffic management.

### Disabled Access

The proposed boarding rooms on the ground floor are designed as accessible units, to comply with the relevant design requirements of AS 1428.1-2001 Design for Access and Mobility. The design is clear of any steps and provides clearance for wheelchair access within boarding rooms.

### Bulk and Scale

The proposed development is considered to be satisfactory with respect to building height and setbacks, having regard for the provisions of SEPP ARH, NLEP 2012 and the DCP. The resulting height is similar to other development along Beaumont Street. The bulk and scale resulting from the proposed development has been assessed as being acceptable with regard to the local context.

### Overshadowing

Shadow diagrams have been submitted with the application. The private open space area of the dwelling to the south has been identified and has been reviewed in terms of overshadowing impacts. The plans specify the extent of the proposed development's shadowing, the extent of the existing building's shadow and the amount of additional shadow cast by the proposal.

The application indicates that while some overshadowing will occur during any given day, an acceptable level of solar access will be maintained to the adjoining property, consistent with the relevant requirements.

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 other development in the area.

### Privacy

The proposal is considered to not pose a significant adverse impact on the visual or acoustic privacy of adjoining properties. The neighbouring dwelling to the south will continue to be afforded a reasonable level of privacy through the provision of privacy screening, setbacks, articulation, and building design. The adjoining property to the north is of a commercial nature, with no outdoor area, however, privacy screens have been provided for along the first floor balconies, to mitigate any potential viewing into the adjoining property.

Views

The proposed 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.

**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 is required to be granted by Subsidence Advisory NSW.

The site is suitable for the proposed development as it is located in proximity to the commercial precinct of Beaumont Street Hamilton, which is well serviced by public transport and community facilities. It is considered that adequate services and waste facilities are available to the development.

At-grade access to the site will be available for pedestrians, from adjacent roads and public transport. Having regard for the location and the availability of public transport services, it is considered that the proposed use is satisfactory in respect of its accessibility.

The constraints of the site have been considered in the proposed development, which includes flooding and acid sulfate soils. The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

**5.8 Any submissions made in accordance with this Act or the Regulations**

The application was notified in accordance with CN’s public participation policy. During the notification period 33 submissions were received objecting to the proposal and one in support.

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

Issue	Comment
Bulk and scale	The proposed development complies with the maximum height prescribed for this site and area. Bulk and scale considerations have been addressed in this report.
Visual privacy	As discussed in this report, it is considered that the proposal does not generate a significant impact on the adjoining properties, in terms of privacy and overlooking.
Amenity of surrounding area and future tenants	Beaumont Street Hamilton is a commercial precinct, with a mixture of existing uses. This includes food and drink premises, residential accommodation and commercial uses. The future tenants will have easy access to these

	<p>services.</p> <p>The boarding house provides individual private open space areas and three communal living rooms. This is compliant with the prescribed provisions of the SEPP ARH and will allow the tenants to have the options of using private or communal space, which allows acceptable amenity for the future residents.</p> <p>It is considered that the amenity of the adjoining properties will not be impacted as the development has been designed to provide setbacks to the adjoining residence and privacy screens have been added to both the balconies and access walkways.</p>
Solar access and overshadowing	The overshadowing of adjoining buildings and the surrounding area is considered to be acceptable.
Character	The character, suitability and density of the proposal have been discussed in this report, in the context of the SEPP ARH, NLEP 2012 and DCP controls.
Car parking	Parking considerations have been addressed in this report.
Traffic generation	Traffic considerations have been addressed in this report.
Overdevelopment of the site	<p>The site is zoned R3 Medium Density Residential and boarding houses are permitted with consent in this zone.</p> <p>The development complies with the prescribed height, FSR, and development standards of SEPP ARH.</p> <p>The character of Beaumont Street Hamilton is recognised as a commercial precinct with a mixture of food and drink premises, small businesses, commercial facilities and different forms of residential accommodation. Access to public transport is sufficient and similar development is located near to the subject site. It is considered that the subject site is suitable for the proposed development.</p>
Communal rooms	The proposed development provides three communal rooms, which complies with the provisions of SEPP ARH.
Proximity to a heritage item	A NLEP 2012 local heritage item 123 Exchange Hotel is located to the north of the subject property, separated by an existing single storey commercial property. The property is not located within a Heritage Conservation Area.

## CITY OF NEWCASTLE

	<p>The proposed development is of a similar bulk and scale to the Exchange Hotel. Towards the rear of the Exchange Hotel is an existing commercial car park and other surrounding development is a mixture of residential and commercial properties. It is considered that the development will not have a significant impact on the heritage significance of the nearby heritage item.</p>
The width of the lot	<p>The frontage width of the subject property does not comply with the DCP, however, as discussed in this report, the development complies with the prescribed requirements of SEPP ARH and the variation to the width is considered to be acceptable.</p>
Setbacks	<p>As discussed in this report, the proposal is considered to be acceptable having regard to the impacts on the adjoining land.</p>
Crime prevention through environmental design	<p>It is considered that the proposal includes sufficient measures to address potential crime and safety issues.</p>
Management issues	<p>A condition is recommended to be placed on the consent for a Plan of Management to be submitted prior to the release of the Construction Certificate, to address appropriate conduct and effective management and operation of the boarding house.</p> <p>Furthermore, the provisions of SEPP ARH do not require an on-site manager as the number of tenants proposed is below 20. However, it is the applicant's intention to identify one tenant who is prepared to act in the role as an on-site manager.</p>
Upgrading of sewer services	<p>Hunter Water Corporation (HWC) is required to consider this issue, however, it is noted that HWC has endorsed the plans submitted with the application.</p>
<p>CN received a letter dated 12 August 2019 from Valley Planning, detailing the following concerns:</p> <ul style="list-style-type: none"> <li>- Apartment Design Guide and SEPP 65 are applicable</li> <li>- BASIX</li> </ul>	<p>State Environmental Planning Policy No 65 Apartment Design Quality of Residential Apartment Development does not apply to Boarding House development.</p> <p>A BASIX certificate has been submitted with the</p>

requirements	application and will be conditioned.
- Character	The character of the proposed development has been discussed in this report.
- Amenity of the boarders and adjoining neighbours	The development complies with SEPP ARH room size requirements. The development includes communal rooms, a dedicated communal private open space and individual private open spaces. The applicant has provided shadow diagrams which detail that solar access requirements have been satisfied. Privacy screens have been incorporated into the development, with the external walkway being utilised as a walkway only, not as a private open space area.
- Traffic hazard	Traffic considerations have been addressed in this report.

**5.9 The public interest**

The proposed development is in the public interest in terms of providing additional and affordable rental housing to the Newcastle Local Government Area.

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(1) of the *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

**ATTACHMENTS**

**Attachment A:** Submitted Plans - Under Separate Cover – 147 Beaumont Street Hamilton

**Attachment B:** Draft Schedule of Conditions – 147 Beaumont Street Hamilton

**Attachment C:** Processing Chronology – 147 Beaumont Street Hamilton

## Attachment B

## DRAFT SCHEDULE OF CONDITIONS



<b>Application No:</b>	DA2018/00609
<b>Land:</b>	Lot 1 DP 164986
<b>Property Address:</b>	147 Beaumont Street Hamilton NSW 2303
<b>Proposed Development:</b>	Demolition of dwelling and outbuilding, erection of three-storey, 16 room boarding house and associated fencing

## SCHEDULE 1

## APPROVED DOCUMENTATION

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

Plan No / Supporting Document	Reference / Version	Prepared by	Dated
Site Plan	Sheet No. 01	SARM Architects	August 2019
Ground Floor Plan	Sheet No. 02	SARM Architects	August 2019
First Floor Plan	Sheet No. 03	SARM Architects	August 2019
Second Floor Plan	Sheet No. 04	SARM Architects	August 2019
Roof Plan	Sheet No. 05	SARM Architects	August 2019
Elevation & Section Plan	Sheet No. 06 & 07	SARM Architects	August 2019
Statement of Environmental Effects	147 Beaumont Street, Hamilton	Le Mottee Group	20 February 2019
Stormwater Management Plan	6986-SW-E	Le Mottee Group	5 April 2019
Landscaping Plan	LSDA, 101, 201, 301	Magnetic North	31 May 2018
BASIX Certificate	993357M	EMF Griffiths	14 February 2019
Acoustic Report	147 Beaumont Street, Hamilton	Acoustic Logic	6 June 2018
Hazardous Materials Assessment	147 Beaumont Street, Hamilton.	RCA Australia	7 June 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

- A total monetary contribution of \$14,636.01 is to be paid to City of Newcastle, pursuant to Section 7.12 of the *Environmental Planning and Assessment Act 1979*, such

contribution to be payable prior to the issue of a Construction Certificate in respect of the proposed development.

Note:

- a) This condition is imposed in accordance with the provisions of *The City of Newcastle S94A Development Contributions Plan 2009*. A copy of the plan may be inspected at City of Newcastle's Customer Enquiry Centre, ground floor of the City Administration Centre, 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 City of Newcastle's Customer Enquiry Centre for determination of the indexed amount of contribution on the date of payment.

- 3. On-site parking accommodation is to be provided for a minimum of 8 vehicles and such be set out generally in accordance with the minimum parking layout standards indicated in Element 7.03 '*Traffic, Parking and Access*' of City of Newcastle's adopted Newcastle Development Control Plan 2012. Full details are to be included in documentation for a Construction Certificate application.
- 4. 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.
- 5. All proposed driveways, parking bays, loading bays and vehicular turning areas are to be constructed with a basecourse of adequate depth to suit design traffic, being sealed with either bitumen seal, asphaltic concrete, concrete or interlocking pavers and being properly maintained. Full details are to be included in documentation for a Construction Certificate application.
- 6. Roof water is to be directed to a 5,000 litre water tank and be reticulated to any new toilet cisterns 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.

7. Overflows from the roof water tank are to be directed to City of Newcastle's drainage system by means of a charged system directly to the street gutter. Any additional discharge controls are to be directed separately to City of Newcastle's drainage system by means of an interallotment drainage line or underground pipe directly to the street gutter. Any discharge to the kerb must be clear of driveways. Full details are to be included in documentation for a Construction Certificate application.
8. All stormwater runoff from the proposed development being managed in accordance with the requirements of Element 7.06 '*Stormwater*' of Newcastle Development Control Plan 2012, the associated Technical Manual and the latest issue of AS 3500.3 as applicable, as indicated on the stormwater management concept plan prepared by Le Mottee Group, Job No: 6986 – SW – D, Rev: E, dated 05/04/19. Full details are to be included in documentation for a Construction Certificate application.
9. All new impervious surfaces, including driveways and paved areas are to be drained to the nominated discharge controls, full details are to be included in documentation for a Construction Certificate application.
10. 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.

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 waste in City of Newcastle approved wheel type bins and arrangements being made for regular removal and disposal of such wastes. The required garbage facility is to be suitable for the accommodation of City of Newcastle approved wheel type bins or bulk waste containers. Full details are to be included in documentation for a

Construction Certificate application.

13. 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.
14. A residential vehicular crossing is to be constructed across the road reserve, in accordance with the following criteria:
  - a) Constructed in accordance with City of Newcastle's A1300 - Driveway Crossings Standard Design Details.
  - b) The driveway crossing, within the road reserve, shall be a maximum of 3 metres wide
  - c) Letterboxes, landscaping and any other obstructions to visibility should be kept clear of or limited in height to 1.2 metre, in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance
  - d) The proposed driveway shall be a minimum of 3 metres clear of the trunk of any tree within the public reserve
  - e) The proposed driveway shall be a minimum of 750mm clear of the centre of any pole or obstruction within the public reserve and 1 metre clear of any drainage pit.

These works are not approved until consent under Section 138 of the *Roads Act 1993* has been granted by City of Newcastle.

15. A separate application must be lodged and consent obtained from City of Newcastle for all works within the road reserve pursuant to Section 138 of the *Roads Act 1993*. The consent must be obtained, or other satisfactory arrangements confirmed in writing from City of Newcastle, before the issue of a Construction Certificate.
16. The Developer designing and constructing the following works in connection with the proposed development within the Beaumont Street public road reserve, adjacent to the site, at no cost to City of Newcastle and in accordance with City of Newcastle's guidelines and design specifications:
  - a) Reconstruction of Beaumont Street kerb and gutter for the full width of the property frontage.
  - b) Reconstruction of full width concrete footway paving.
  - c) New driveway crossing
  - d) Associated road pavement repair works
  - e) Associated drainage works

Engineering design plans and specifications for the works being undertaken within the public road reserve are required to be prepared by a suitably qualified practising civil engineer with experience and competence in the related field and submitted to City of Newcastle for approval pursuant to Section 138 of the *Roads Act 1993*.

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

18. 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. Full details are to be included in documentation for a Construction Certificate application.
19. The 1500mm high fixed privacy slatted privacy screen of not more than 25% transparency shall be attached to the southern elevation of the walkway as detailed on the approved plans. The proposed aluminium privacy louvers shall be fixed and orientated vertical at a 45° angle facing toward Beaumont Street. Full details are to be included in documentation for a Construction Certificate application.
20. Prior to the release of the Construction Certificate the applicant shall prepare and submit an operational Plan of Management for the boarding house. The Operational Plan of Management shall address the following as a minimum:
  - (a) Maintenance and fire safety in the building.
  - (b) Measures to ensure that guest numbers do not exceed those proposed numbers.
  - (c) Measures to minimise unreasonable impact to the habitable areas of adjoining premises.
  - (d) Proposed staffing arrangements, including location and contact details of the site manager or resident caretaker.
  - (e) Prominent display of appropriate house rules eg guest behaviour, activities and noise, visitor policy, operating hours of outdoor common areas, use of alcohol and/or drugs.
  - (f) Waste minimisation and recycling.
  - (g) Professional cleaning details and vermin control (as a minimum, shared facilities such as kitchens and bathrooms shall be cleaned to a professional standard at least once a week.)
  - (h) Safety and security measures for all residents may include but not be limited to such things as: Internal signage indicating the property caretaker or manager and contact number, emergency contact numbers for essential services such as fire, ambulance, police, and utilities such as gas, electricity, plumbing, installation of perimeter lighting, appropriate fencing and secure gates, all residents to have own room keys, keys for security entrance doors be made available to essential services such as fire brigade in case of emergency and suitable provision be provided for residents to ring emergency services in the event of an emergency, ie provision of a landline telephone.
  - (i) Record keeping requirements eg receipts for tariffs and fees charged.
  - (j) Arrangements for establishing and managing tenancy agreements.
  - (k) Residents rights to service providers and advocates.
  - (l) Power of entry for monitoring purposes.

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

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

toilet for every 20 persons employed at the site.

Each toilet is to:

- a) Be a standard flushing toilet connected to a public sewer, or
  - b) Have an on-site effluent disposal system approved under the *Local Government Act 1993*, or
  - c) Be a temporary chemical closet approved under the *Local Government Act 1993*.
22. A Hazardous Substances Management Plan is to be prepared by a competent person for the building(s) or parts of the building(s) proposed to be demolished in accordance with Australian Standard 2601:2001 - The Demolition of Structures. A copy of the Hazardous Substances Management Plan is to be provided to City of Newcastle (marked to Attention: Regulatory Services) and the demolisher prior to commencement of work.
23. The demolition works are to be undertaken in accordance with Australian Standard 2601:2001 - The Demolition of Structures and the following requirements:
- a) Demolition works shall be conducted in accordance with the submitted Hazardous Substances Management Plan and a copy of the Hazardous Substances Management Plan shall be kept on-site for the duration of the proposed development
  - b) The removal, handling and disposal of any asbestos material is to be undertaken only by an asbestos removal contractor who holds the appropriate class of Asbestos Licence, issued by SafeWork NSW
  - c) A copy of all waste disposal receipts are to be kept on-site for the duration of the proposed development and made available to authorised City of Newcastle Officers upon request
  - d) Seven working days' notice in writing is to be given to City of Newcastle 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 City of Newcastle's contact telephone number (49742000) and the SafeWork NSW telephone number (49212900) and
  - e) On sites where asbestos materials are to be removed, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent position during asbestos removal works.
24. 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.
25. Any waste containers used in association with the proposed demolition are to be located on the site where possible.
- Note: Where this is not feasible, application must be made for City of Newcastle's approval to position the container on the adjacent public road in accordance with City of Newcastle's adopted Building Waste Container Policy.
26. 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.

27. The demolisher is to ensure that all demolition material is kept clear of the public footway and carriageway as well as adjoining premises.
28. Any demolition/waste building materials that are not suitable for recycling are to be disposed of at City of Newcastle's Summerhill Waste Management Facility or other approved site.
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*.

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 building work must be carried out in accordance with the provisions of the National Construction Code.
32. In the case of residential building work for which the *Home Building Act 1989* 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.

33. 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.
34. 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 City of Newcastle reserves including the road reserve is not permitted.
35. 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.
36. 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 City of Newcastle requirements, in accordance with Element 7.06 '*Stormwater*' of Newcastle Development Control Plan 2012.
37. On-site car parking accommodation is to be provided for a minimum of 8 vehicles and such being set out generally in accordance with the details indicated on the submitted plans except as otherwise provided by the conditions of consent.
38. 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.

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

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

40. 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 4<sup>th</sup> 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.
41. 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.
42. All necessary measures are to be undertaken to control dust pollution from the site. These measures must include, but not are limited to:
  - a) Restricting topsoil removal
  - b) Regularly and lightly watering dust prone areas (note: prevent excess watering as it can cause damage and erosion)
  - c) Alter or cease construction work during periods of high wind and

- d) Erect green or black shade cloth mesh or similar products 1.8m high around the perimeter of the site and around every level of the building under construction.
- 43. Where the proposed development involves the destruction or disturbance of any existing survey monuments, those monuments affected are to be relocated at no cost to City of Newcastle by a Surveyor registered under the *Surveying and Spatial Information Act 2002*.
- 44. All public trees that are required to be retained must be physically protected in accordance with the City of Newcastle Urban Forest Technical Manual '*Section 8.0 Protection Measures*'.

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

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

- 45. All commitments listed in the relevant BASIX certificate for the development are to be satisfactorily completed prior to the issue of an Occupation Certificate. Should there be any changes to the specifications of the dwelling that have implications for compliance with the approved certificate, except where restricted or excluded by any other condition of consent, an amended BASIX Certificate can be relied upon as having complied with this condition. A copy of any amended BASIX Certificate is to be provided to City of Newcastle within fourteen days of receipt.
- 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 City of Newcastle's satisfaction prior to the completion of demolition work or prior to the issue of any occupation certificate in respect of development involving building work.
- 47. All works within the road reserve required by this consent are to be completed prior to the issue of a Final Occupation Certificate.
- 48. Any redundant existing vehicular crossing is to be removed at no cost to City of Newcastle. The road reserve and kerb being restored to City of Newcastle's satisfaction, to match the existing infrastructure. Works are to be completed prior to the issuing of a Final Occupation Certificate for the proposed development.
- 49. 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.
- 50. 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

**CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT**

51. The proposed development is to be operated in accordance with the definition of a 'boarding house' contained in *State Environmental Planning Policy (Affordable Rental Housing) 2009*, being:  
"a building:
  - a) that is wholly or partly let in lodgings
  - b) that provides lodgers with a principal place of residence for 3 months or more
  - c) that may have shared facilities, such as a communal living room, bathroom, kitchen or laundry and
  - d) that has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,
  - e) but does not include backpackers' accommodation, a group home, a serviced apartment, seniors housing or hotel or motel accommodation".
52. The development having a maximum of 16 boarders in total.
53. The boarding house shall have a maximum of one boarder per boarding room that has an area of 12 square metres and two boarders per boarding rooms that has an area greater than 16 square metres.
54. The boarding house manager or nominated tenant contact details, including a mobile phone number, shall be available to the public by way of signage near the entrance of the boarding house. The contact details shall be kept up to date at all times.
55. Waste management (recyclable and non- recyclable) is to be collected from the waste storage areas, as identified on the approved plans and serviced kerbside on Beaumont Street and returned immediately to the storage area. Under no circumstances are garbage bins to remain at kerbside after collection.

**ADVISORY MATTERS**

- It is recommended that, prior to commencement of work, the free national community service 'Dial before you Dig' be contacted on 1100 or by fax on 1200 652 077 regarding the location of underground services in order to prevent injury, personal liability and even death. Inquiries should provide the property details and the nearest cross street/road.
- Any necessary alterations to public utility installations are to be at the developer/demolisher's expense and to the requirements of both City of Newcastle and any other relevant authorities. City of Newcastle and other service authorities should be contacted for specific requirements prior to the commencement of any works.
- It is an offence under the provisions of the *Protection of the Environment Operations Act 1997* to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.
- Failure to comply with the conditions of consent constitutes a breach of the *Environmental Planning and Assessment Act 1979*, which may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.
- 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.
- Prior to commencing any building works, the following provisions of Division 6.2 of the *Environmental Planning and Assessment Act 1979* are to be complied with:

- a) A Construction Certificate is to be obtained; and
  - b) A Principal Certifier is to be appointed for the building works and City of Newcastle is to be notified of the appointment; and
  - c) City of Newcastle is to be given at least two days notice of the date intended for commencement of building works.
- A Construction Certificate application for this project is to include a list of fire safety measures proposed to be installed in the building and/or on the land and include a separate list of any fire safety measures that already exist at the premises. The lists must describe the extent, capability and basis of design of each of the measures.
  - Prior to the occupation or use of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the proposed development. An application for an Occupation Certificate must contain the information set out in Clause 149 of the *Environmental Planning and Assessment Regulation 2000*.
  - A copy of the final Fire Safety Certificate (together with a copy of the current fire safety schedule) is to be given to the Commissioner of NSW Fire Brigades and a further copy of the Certificate (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.
  - An annual Fire Safety Statement in the form described in Clause 175 of the *Environmental Planning and Assessment Regulation 2000* is to be submitted to City of Newcastle and a copy (together with a copy of the current fire safety schedule) is to be given to the Commissioner of New South Wales Fire Brigades. A further copy of the Statement (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.

**END OF CONDITIONS**

**SCHEDULE 2**

**REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS**

The determination decision was reached for the following reasons:

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

**REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED**

The following conditions are applied to:

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

**Attachment C**

THE CITY OF NEWCASTLE  
Report to Development Applications Committee Meeting on  
17 September 2019



**PROCESSING CHRONOLOGY**

**DA2018/00609 – 147 Beaumont Street Hamilton**

15 June 2018	-	Application Lodged
21 June 2018	-	Public notification
15 August 2018	-	Request for additional Information
October 2018 & January 2019	-	Advice from applicant regarding status of the application
21 February 2019	-	Additional information received
March-April 2019	-	Additional information requested
9 April 2019	-	Additional information received
18 April 2019	-	Additional information requested
10 May 2019	-	Additional information received
16 July 2019	-	Application considered at Public Voice Committee meeting
9 August 2019 matters	-	Response received from applicant regarding raised at Public Voice Committee
22 August 2019	-	Additional information received

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

**APPLICANT:            HUNTER AND CENTRAL COAST DEVELOPMENT  
CORPORATION**  
**OWNER:                HUNTER AND CENTRAL COAST DEVELOPMENT  
CORPORATION**  
**CONTACT:             DIRECTOR GOVERNANCE / MANAGER REGULATORY,  
PLANNING AND ASSESSMENT**

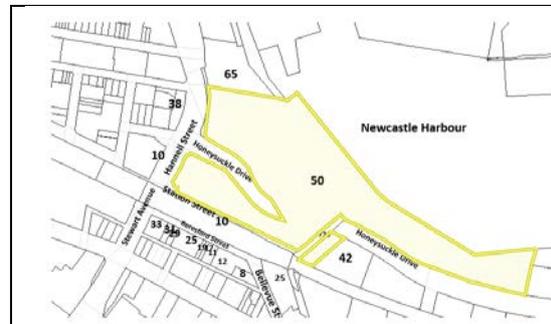
**PART I**

**BACKGROUND**

An application has been received seeking consent for a one lot into two lot subdivision and dedication of land for the purpose of road widening.

The submitted application was assigned to Engineering Assessment Coordinator, Steven Masia, for assessment.

The application is referred to the Development Applications Committee for determination, due to the proposed variation to the minimum subdivision lot size development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation (86% variation proposed).



**Subject Land:** 50 Honeysuckle Drive Newcastle

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

The proposed subdivision was publicly notified in accordance with City of Newcastle’s (CN) public participation policy and no submissions have been received in response.

**Issues**

1. Whether the proposed variation to the minimum subdivision lot size development standard, under NLEP 2012, is justified.
2. Whether the proposed road widening is acceptable.

## Conclusion

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

Section 4.33 of the *Environmental Planning and Assessment Act 1979* indicates that a consent authority, in respect of a development application made by or on behalf of the Crown, must not refuse its consent to the application, or impose a condition on its consent, except with the written approval of the Minister or the relevant Crown authority. Therefore, the proposed conditions will need to be referred for the applicant's approval in the first instance.

## RECOMMENDATION

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

## Political Donation / Gift Declaration

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

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

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

## PART II

### 1.0 THE SUBJECT SITE

The subject property comprises Lot 40 DP 1251908, No.50 Honeysuckle Drive Newcastle.

The site represents part of the residual portion of the Honeysuckle redevelopment area, being an irregular shaped allotment with portions situated on both the northern and southern sides of Honeysuckle Drive. The land is bounded by the harbour to the north, by Hannell Street to the west and the light rail corridor to the south (refer **Appendix A** for site location map).

The consolidated site has a total area of approximately 5Ha (50,927m<sup>2</sup>). The site is generally devoid of vegetation, with a gentle fall towards the harbour and Cottage Creek (the latter transects the land, partly within covered culverts). The wider site contains a number of buildings within the western portion, including a local heritage item. The site has extensive areas of at-grade hardstand areas, some of which is used for vehicle parking.

Existing land uses on adjoining sites comprise a vacant development site to the east (approved under DA2017/01371), the light rail corridor and Honeysuckle Drive to the south and a vacant site to the north (fronting Hannell Street).

### 2.0 THE PROPOSAL

The applicant seeks consent for a one lot into two lot Torrens Title subdivision of the site. Proposed Lot 5 will have an area of approximately 4.528Ha (45,280m<sup>2</sup>) and proposed Lot 4 will have an area of 5,647m<sup>2</sup>. The submitted Statement of Environmental effects includes the following explanation for the proposed subdivision:

*“The subject DA relates to a one into two lot subdivision of the site. The proposed lot will be excised to allow for future development consistent with Local and State government objectives for the area. The proposal will enable Proposed Lot 4 to be registered and sold to enable future development of this lot subject to separate application and consideration. The proposal will also enable future design upgrades to Honeysuckle Drive to achieve appropriate design outcomes. The current proposal does not include any works but relates to the ‘paper subdivision’ which will create these two proposed lots. The proposed lot sizes are as follows:*

- i) Proposed Lot 4 – 5,647m<sup>2</sup>*
- ii) Proposed Lot 5 – 4.528Ha (approximately)*
- iii) Dedication of road reserve of approximately 163m<sup>2</sup>.”*

The dedication for road widening is intended to accommodate future realignment of Honeysuckle Drive.

As outlined, the proposed subdivision does not involve any physical works.

The original subdivision proposal was amended to reflect the registration of the plan of subdivision DP 1251908, which occurred after lodgement of the subject Development Application. DP 1251908 created the adjoining development lot to the east, however it is noted that this allotment had already been shown on the original proposal, so the purpose of the amended plan was primarily for renumbering of allotments and the associated updated subdivision description.

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

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

### **3.0 PUBLIC NOTIFICATION**

The original application was publicly notified in accordance with CN's public participation policy. No submissions were received in response.

The amended plan of subdivision did not require further notification in accordance with the public participation policy.

### **4.0 INTEGRATED DEVELOPMENT**

The proposal is integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979*, as approval is required from Subsidence Advisory NSW under the *Mine Subsidence Compensation Act 1961*. The applicant has submitted plans with approval from 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(1) of the *Environmental Planning and Assessment Act 1979*, as detailed hereunder.

#### **5.1 Provisions of any environmental planning instrument**

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

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

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

The site is known to be contaminated, so a Preliminary Site Investigation was required, in accordance with the '*Guidelines for Consultants Reporting on Contaminated Sites*'.

The applicant has previously submitted a Preliminary Assessment indicating that remediation over the wider Honeysuckle area can be managed on a site by site basis as development progresses.

CN's Environmental Services Unit have previously reviewed this information and have advised that this is an appropriate approach to future remediation of development sites. There is no restriction to the proposed subdivision progressing on this basis and it is considered that the site is able to be made suitable for its intended use.

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

The subject site has a frontage to a classified regional road, as part of the site has a frontage to Hannell Street. Under the ISEPP:

*The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*

- (a) where practicable, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
  - (i) the design of the vehicular access to the land, or*
  - (ii) the emission of smoke or dust from the development, or*
  - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The proposed subdivision and road widening does not generate any issues in relation to the above matters. Proposed Lot 4 will have direct frontage to Honeysuckle Drive (rather than Hannell Street) and accordingly satisfies the above provisions. The land proposed to be set aside for road widening is also located in Honeysuckle Drive.

**State Environmental Planning Policy (Coastal Management) 2018\_(Coastal Management SEPP)**

The aim of the policy is to promote an integrated and coordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the

*Coastal Management Act 2016*. The policy is supported by mapping of the following coastal management areas that comprise the coastal zone:

- i. Coastal wetlands and littoral rainforests area
- ii. Coastal vulnerability area
- iii. Coastal environmental area
- iv. Coastal use area

The SEPP includes development controls that are applicable to development on land in each of the above areas, as well as development in the coastal zone generally.

The Coastal Management SEPP requires that development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to *cause increased risk of coastal hazards on that land or other land*. The proposed subdivision is not likely to cause increased risk of coastal hazards on the land or surrounding land, noting that an existing easement for a floodway is being maintained across proposed Lot 4.

The land is identified in the Coastal Environment Area and in the Coastal Use Area. The proposed subdivision is satisfactory in relation to the SEPP provisions, including that it will not adversely impact upon existing open space and safe access to and along the foreshore. All land zoned RE1 Public Recreation is located within the residual proposed Lot 5, including along the foreshore area. An existing easement for public access across proposed Lot 4 will ensure that pedestrian access is maintained between Honeysuckle Drive and the RE1 Public Recreation zoned foreshore area.

The proposed development has suitably addressed the relevant matters for consideration and development controls for development generally within the coastal zone and specifically within the Coastal Environment Area and Coastal Use Area as required under the Coastal Management SEPP.

### **Newcastle Local Environmental Plan 2012 (NLEP 2012)**

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

#### Clause 2.1 - Land Use Zones

The subject property is included within the B3 Commercial Core, B4 Mixed Use and RE1 Public Recreation zones under the provisions of NLEP 2012. Subdivision is permissible, with CN's consent, on all land to which NLEP 2012 applies.

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

B3 Commercial Core

- i) To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- ii) To encourage appropriate employment opportunities in accessible locations.*
- iii) To maximise public transport patronage and encourage walking and cycling.*
- iv) To provide for commercial floor space within a mixed-use development.*
- v) To strengthen the role of the Newcastle City Centre as the regional business, retail and cultural centre of the Hunter region.*
- vi) To provide for the retention and creation of view corridors.*

Comment - The B3 Commercial Core zoned land will be contained wholly within the residual proposed Lot 5. Future development would be able to satisfy the above objectives. An easement for public access, across proposed Lot 4, provides a view corridor to the harbour through the development lot, facilitating views from adjacent land to the south that is zoned B3 Commercial Core.

#### B4 Mixed Use

- i) To provide a mixture of compatible land uses.*
- ii) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- iii) To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.*

Comment - Proposed Lot 4 is for future development and will be located wholly within the B4 Mixed Use zone. The lot could support future development consistent with the above objectives. An existing easement for public access across this lot will maintain a view corridor to the harbour through the development lot.

#### RE1 Public Recreation

- i) To enable land to be used for public open space or recreational purposes.*
- ii) To provide a range of recreational settings and activities and compatible land uses.*
- iii) To protect and enhance the natural environment for recreational purposes.*

Comment - The proposed subdivision maintains the areas of RE1 Public Recreation within the residual proposed Lot 5.

Clause 2.6 Subdivision - consent requirements

This clause provides that the land can be subdivided subject to development consent.

Clause 4.1 - Minimum subdivision lot size

The objectives relating to the subdivision lot size development standard are as follows:

- a) *to provide subdivision lot sizes that meet community and economic needs, while ensuring that environmental and social values are safeguarded,*
- b) *to facilitate greater diversity in housing choice,*
- c) *to ensure that lots are of sufficient size to meet user requirements and to facilitate energy efficiency of the future built form,*
- d) *to ensure that the subdivision of land in Zone E4 Environmental Living:*
  - i) *will not prejudice its possible future development for urban purposes or its environmental conservation, and*
  - ii) *will conserve the rural or bushland character, and the biodiversity values or other conservation values, of the land.*

The proposed lot size and dimensions are appropriate to meet community and economic needs. The subdivision maintains all areas of public recreation within the residual Lot 5 and provides for a public access easement across the proposed lots, thereby securing community needs for access to the foreshore recreation land.

The size and dimensions of Lot 4 will facilitate future development, including energy efficiency of the future built form. The objective (d) applying to E4 Environmental Living is not relevant to this proposal. The proposed subdivision is acceptable in relation to the objectives of the subdivision lot size clause of NLEP 2012.

The clause requires that the size of any lot resulting from a subdivision of land to which the clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

Proposed Lot 4 has an area of 5,647m<sup>2</sup> and contains only B4 Mixed Use zoned land. There is no lot size specified under the Lot Size Map for this land. The proposed lot size is considered to be acceptable as it meets the zone objectives.

Proposed Lot 5 has an area of 5.528Ha and will contain B3 Commercial Core, B4 Mixed Use and RE1 Public Recreation zoned land. The land zoned B3 Commercial

Core and B4 Mixed Use zones do not have a minimum lot size under the Lot Size Map. The RE1 Public Recreation zoned land has a minimum lot size of 40Ha.

The combined RE1 Public Recreation zoned land within the subject site has an area of 9,800m<sup>2</sup> and therefore is already well below 40Ha in area. The RE1 Public Recreation zoned land on the site is not affected by the proposed subdivision as it is to be contained wholly within proposed Lot 5. While the RE1 zoned land is effectively not being subdivided, proposed Lot 5, at 5.528Ha, is less than the minimum size shown on the Lot Size Map, being 40Ha for the RE1 zoned land.

Therefore, proposed Lot 5, at 5.528Ha, represents an 86% variation to the minimum subdivision lot size of 40Ha, despite the fact that the RE1 zoned land is not being reduced in area. It is for this reason that the application has been referred to the Development Applications Committee for determination, due to the variation to the minimum subdivision lot size development standard being more than a 10% variation.

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

#### Clause 4.6 - Exceptions to development standards

The objective of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

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

1. Clause 4.1 (minimum subdivision lot size) is not expressly excluded from the operation of this clause; and
2. The applicant has prepared a written request, requesting that CN vary the development standard and demonstrating that:
  - a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
  - b) There are sufficient environmental planning grounds to justify contravening the development standard.

The applicant has submitted a written request contending that enforcing compliance with the minimum lot size requirements of clause 4.1 would be unreasonable and unnecessary in this case. A copy of the written request is appended at **Attachment D**. The applicant's written submission states in part:

*"In establishing that compliance with a development standard is unreasonable or unnecessary, the following principles have been addressed:*

- i) The underlying objective or purpose of the standard is not adversely impacted on as a result of the proposed variation. The proposal still results in a subdivision of appropriate density and consistent with the objectives of the zone and the surrounding area.*
- ii) The RE1 portion of the land is already below the minimum lot size prior to any subdivision.*

*The proposal demonstrates that the variation from the minimum lot size standard is positive when considering the objectives of the zone, and the variation to the minimum lot size of the RE1 zoned land is already below the minimum required lot size prior to the proposed subdivision.”*

### Comment

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

- a) It adequately addresses the matters required to be demonstrated by clause 4.6(3) of NLEP 2012; and
- b) The proposed development will be in the public interest because it is consistent with the objectives of the minimum lot size development standard along with the relevant objectives of the land use zones, as previously discussed under this report; and
- c) The Secretary's (ie. of the Department of Planning and Environment) concurrence to the exception to the minimum lot size development standard, as required by clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS18-003 of 21 February 2018; and
- d) The proposed subdivision is acceptable as it does not further reduce the area of RE1 Public Recreation zoned land within the site.

The applicant has demonstrated that compliance with the development standard is unreasonable and unnecessary in this case as the RE1 Public Recreation zoned land is already below the minimum 40Ha lot size and will not be fragmented as a result of the proposed subdivision.

The request for a variation to the development standard is supported.

### Clause 5.10 - Heritage Conservation

The site contains a heritage item of local significance located within the south-west portion of the site (former School of Arts - 80 Honeysuckle Drive). Proposed Lot 4 is located at the eastern extremity of the subject land and will not adversely impact upon the heritage significance of this item.

Clause 6.1 - Acid Sulphate Soils

The site is affected by Class 3 acid sulphate soils and the proposed development is considered to satisfy the requirements of this clause, as no soil disturbance is proposed.

Part 7 Additional local provisions - Newcastle City Centre

The site is located within the Newcastle City Centre. There are a number of requirements and objectives for development within the City Centre, which includes promoting the economic revitalisation of the City Centre, facilitating design excellence and protecting the natural and cultural heritage of Newcastle. The proposal is consistent with the objectives of Part 7 of NLEP 2012, being able to support appropriate future development.

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

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

**5.3 Any development control plan**

**Newcastle Development Control Plan 2012 (NDCP 2012)**

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

Subdivision - Section 3.01

The proposed subdivision is consistent with provisions of this section, satisfying the aims of the Section, including:

- (a) That all lots are physically capable of development.
- (b) Lots have appropriate levels of amenity, services and access.
- (c) To achieve efficient use of the land.

The proposed lots can support future development, including facilitating appropriate amenity, services and access. An efficient use of the land can be achieved.

The subdivision also includes an area along Honeysuckle Drive frontage to be dedicated for road widening, to accommodate future realignment of Honeysuckle Drive. This matter has been considered by CN's Asset Section which raised no objection to the dedication of the land for road widening.

Flood Management - Section 4.01

The land is identified as flood prone. The subdivision itself is acceptable and future development will be subject to the provisions of the DCP.

The current flood study for the Honeysuckle area is the Honeysuckle Redevelopment Area Flood Study (March 2018). The subdivision maintains an existing 20m wide easement for floodway which is a requirement under this Flood Study. Based on the Flood Study, future development would be able to be accommodated on the land while appropriately managing flood risks for the development and wider community.

Mine Subsidence - Section 4.03

The site is located within a proclaimed Mine Subsidence District. The proposed subdivision has been issued approval from Subsidence Advisory NSW.

Land Contamination - Section 5.02

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

Aboriginal Heritage - Section 5.04

The applicant has submitted a search conducted under the Aboriginal Heritage Information Management System. The search result confirmed that there are no sites of Aboriginal significance recorded on the site, while six sites were recorded in the locality. The subject subdivision involves no physical works and is therefore considered acceptable.

Heritage Items - Section 5.05

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

Archaeological Management - Section 5.06

The subject subdivision involves no physical works and is therefore considered acceptable.

Part 6.00 Locality Specific Provisions

Newcastle City Centre - Section 6.01

The proposed subdivision is considered acceptable in relation to the provisions of this Section, including maintaining appropriate access to the foreshore by the use of easements for public access.

Public Participation - Section 8.0

The proposal was notified in accordance with this section and no submissions were received.

### Development Contributions

The proposed subdivision is not subject to development contributions. Future development of the site may be subject to contributions.

#### **5.4 Planning agreements**

No planning agreements are relevant to the proposal.

#### **5.5 The regulations (and other plans and policies)**

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000*. The proposal does not generate any significant issues in this respect.

#### **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.

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 within a proclaimed Mine Subsidence District. Approval for the proposed development has been granted by Subsidence Advisory NSW.

The site is suitable for the proposed development as it is in the City Centre, which is well serviced by public transport and community facilities. Adequate services are available to the land.

At-grade access to the site will be available for pedestrians, from adjacent roads and public transport. Having regard for the City Centre location and the availability of public transport services, the proposal is satisfactory in respect of accessibility.

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

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

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

The application was notified in accordance with CN's public participation policy. 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 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(1) of the *Environmental Planning and Assessment Act 1979*. The Section 4.6 exception to the development standard of NLEP 2012, against the minimum lot size is noted and supported. The proposed dedication of land for road reserve is considered to be acceptable. The proposed subdivision is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued, noting that such conditions will need to be agreed with the applicant (ie the Crown).

### **ATTACHMENTS**

**Attachment A:** Submitted Plans - Under Separate Cover - 50 Honeysuckle Drive Newcastle

**Attachment B:** Draft Schedule of Conditions - 50 Honeysuckle Drive Newcastle

**Attachment C:** Processing Chronology - 50 Honeysuckle Drive Newcastle

**Attachment D:** Clause 4.6 Variation - 50 Honeysuckle Drive Newcastle

**Attachment B**

**DRAFT SCHEDULE OF CONDITIONS**



<b>Application No:</b>	DA2019/00506
<b>Land:</b>	Lot 40 DP 1251908
<b>Property Address:</b>	50 Honeysuckle Drive Newcastle NSW 2300
<b>Proposed Development:</b>	One lot into two lot subdivision and road widening

**SCHEDULE 1**

**REASONS FOR CONDITIONS**

- 1 The conditions of this consent have been imposed in accordance with Section 4.17 of the *Environmental Planning and Assessment Act 1979*. The conditions relate to any matter referred to in Section 4.15(1) of relevance to the development the subject of the consent and are imposed to ensure that the development is undertaken in an orderly manner, with acceptable impacts on the natural and built environment.

**APPROVED DOCUMENTATION**

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

Plan No / Supporting Document	Reference / Version	Prepared by	Dated
Location Plan	9274	de Witt Consulting	19/03/2019
Zoning Plan	9274	de Witt Consulting	19/03/2019
Plan of proposed subdivision	9274		Cover letter dated 14/08/2019
Statement of Environmental Effects	9274	de Witt Consulting	3/05/2019

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

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

- 3 An application is to be made for a Subdivision Certificate. The application is to be supported by a survey plan of subdivision, five copies thereof and a Section 50 Certificate from the Hunter Water Corporation.
- 4 An appropriate notation is to be placed on the plan of subdivision and an instrument under Section 88B of the *Conveyancing Act 1919* being submitted to City of Newcastle setting out the terms of easements as required by this consent. City of Newcastle, in addition to the owner of the land benefited by the easement,

# CITY OF NEWCASTLE

## ADVISORY MATTERS

- Any necessary alterations to public utility installations are to be at the developer/demolisher's expense and to the requirements of both City of Newcastle and any other relevant authorities.
- House numbers are allocated to the proposed lots as follows:

Unit/ Dwelling/ Lot Number on plan	Council Allocated Street Addresses			
	House Number	Street Name	Street Type	Suburb
Proposed Lot 4	45	Honeysuckle	Drive	Newcastle
Proposed Lot 5	50	Honeysuckle	Drive	Newcastle

END OF CONDITIONS

**SCHEDULE 2**

**REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS**

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; *Newcastle Local Environmental Plan 2012* and applicable State Environmental Planning Policies.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Newcastle Development Control Plan 2012.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- City of Newcastle has considered and accepted the proposed development standard variation made under Clause 4.6 of the *Newcastle Local Environmental Plan 2012*. The proposed variation is considered acceptable in the particular circumstances of this case as the variation will not adversely affect the size of the development lot or reduce the extent of public recreation land on the site.
- No objections were received and no negative neighbour impacts are anticipated.

**REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED**

The 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; and
- Provide for the ongoing management of the development.

**Attachment C**

THE CITY OF NEWCASTLE  
Report to Development Applications Committee Meeting on  
17 September 2019



**PROCESSING CHRONOLOGY**

**DA2019/00506 - 50 Honeysuckle Drive Newcastle**

- |                |  |
|----------------|--|
| 7 May 2019     | - Application lodged   |
| 21 May 2019    | - Application publicly notified  |
| 2 August 2019  | - Request for further information on contamination, road widening and updated subdivision plan |
| 13 August 2019 | - Further information submitted regarding contamination and road widening                      |
| 15 August 2019 | - Amended subdivision plan submitted   |

## Attachment D

**Clause 4.6 Exception to Development Standards Written Request**

This Correspondence has been prepared utilising Newcastle City Council's application requirements to vary a Development Standard and this proposed variation is proposed in relation to a new Development Application being submitted to Newcastle City Council for assessment.

**1. Planning Instrument**

The relevant Planning Instrument that applies to the site is *Newcastle Local Environmental Plan 2012*.

**2. Clause 4.6 Exception to Development Standards**

Pursuant to Clause 4.1 of *Newcastle Local Environmental Plan 2012* (LEP 2012) a Minimum subdivision lot size of 40 hectares applies to the *RE1 Public Recreation* portion of the site. The site is zoned part *B3 Commercial Core*, *B4 Mixed Use* and *RE1 Public Recreation*. Whilst the areas in this location zoned B4 and B3 have no mapped minimum lot size however, as indicated the RE1 zone also includes a minimum Lot size of 40ha.

It is important to recognise the proposed subdivision does not intend on altering the existing boundaries of the lands identified as *RE1 Public Recreation*.

The portion of the site requiring an exemption is zoned **RE1 Public Recreation** pursuant to LEP 2012. The objectives of the **RE1 zone** are as follows:

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*

The proposed development standard to be varied relates to Minimum subdivision lot size which is identified in Clause 4.1 of LEP 2012.

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

- (a) *to provide subdivision lot sizes that meet community and economic needs, while ensuring that environmental and social values are safeguarded,*
- (b) *to facilitate greater diversity in housing choice,*
- (c) *to ensure that lots are of sufficient size to meet user requirements and to facilitate energy efficiency of the future built form,*
- (d) *to ensure that the subdivision of land in Zone E4 Environmental Living:*
  - (i) *will not prejudice its possible future development for urban purposes or its environmental conservation, and*
  - (ii) *will conserve the rural or bushland character, and the biodiversity values or other conservation values, of the land.*

(2) *This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*

**(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.**

(4) *This clause does not apply in relation to the subdivision of any land:*

- (a) *by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or*



*(b) by any kind of subdivision under the Community Land Development Act 1989.*

*(4A) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size for the purposes of subclause (3).*

The existing lot size control relating to this portion of the site is 40 hectares.

The proposed subdivision of land will result in a 2 lots being created, however the RE1 zoned portion of land will not be subdivided and will be retained on Proposed Lot 5. This will result in the area of RE1 zoned land not actually being reduced as it will be located within the residual lot (Lot 5). It is important to recognise the RE1 portion of the site is already below 40 hectares minimum size.

Clause 4.6 of the LEP enables Council to consider a variation to development standards including Minimum subdivision lot size. The clause provides flexibility in applying certain development standards and aims to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

This correspondence aims to satisfy the requirements of Clause 4.6 to facilitate the proposed subdivision of the site which also includes lands zoned RE1 which have an existing minimum Lot size of 40ha.



**3. Justification**

The proposed variation is made having consideration for each component of Clause 4.6 and in accordance with the NSW Department of Planning and Infrastructure (DP&I) guideline *Varying Development Standards: A Guide* and has incorporated relevant principles of *Four2Five Pty Limited v Ashfield Council* [2015] NSWLEC 90 and *Wehbe v Pittwater Council* [2007] NSWLEC 827.

Each component of the Clause is addressed below.

**Table 1** Justification against the requirements of Clause 4.6

Clause	Response / Justification
<b>Clause 4.6 (1)</b> <i>The objectives of this clause are as follows:</i>	
<i>(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,</i>	The current minimum lot size for the RE1 zoned land is 40 hectares.  Noted. As outlined below, flexibility in the application of the minimum lot size standard is considered reasonable and appropriate in the circumstances of this application.
<i>(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</i>	The LEP requires a minimum lot size of 40 hectares (frontage not specified) in the RE1 Public Recreation zone.  The RE1 Public Recreation zoned portion within Proposed Lot 5 will have an area of approximately 9,800 m <sup>2</sup> , which does not comply with the development standard. However this approximate area of this RE1 portion of the site is not proposed to be altered. The proposed subdivision of the greater site will enable the site to be better utilised for development consistent with the zone objectives.
<b>Clause 4.6 (2)</b> <i>Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.</i>	The development standard is not expressly excluded from the operation of Clause 4.6.
<b>Clause 4.6 (3)</b> <i>Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:</i>	This document comprises the written request to vary the development standard.
<i>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.</i>	Strict compliance with the development standard in this instance is considered to be unreasonable and unnecessary as variation to the minimum lot size of the RE1 zoned land is already below the minimum required Lot size prior to the proposed subdivision  The outcomes will not adversely impact on the characteristics of the site or surrounding area that would warrant such a limitation when having regard to the



Clause	Response / Justification
	<p>existing and proposed built form, visual impacts, views to and from the site and positive social impacts, and therefore the standard is unreasonable and unnecessary, as discussed in further detail in this table.</p> <p><b>Zoning Objectives</b></p> <p>The RE1 zone aims to enable land to be used for public open space or recreational purposes that also enhance other nearby land uses such as the adjacent commercial core zone. Increased development opportunities at the site will allow for increased usage of the land for a range of recreational settings and activities and compatible land uses, which will enable the protection and enhancement of the natural environment for recreational purposes.</p> <p><b>Visual impacts</b></p> <p>There will be no adverse visual impacts as a result of the proposed subdivision.</p> <p><b>Views</b></p> <p>There will be no change to the current views available on site as a result of the proposed subdivision.</p> <p><b>Departure from the standard</b></p> <p>In establishing that compliance with a development standard is unreasonable or unnecessary, the following principles have been addressed:</p> <ul style="list-style-type: none"> <li>• The underlying objective or purpose of the standard is not adversely impacted on as a result of the proposed variation. The proposal still results in a subdivision of appropriate density and consistent with the objectives of the zone and the surrounding area</li> <li>• The RE1 portion of land is already below the minimum lot size prior to any subdivision.</li> </ul> <p><b>Summary</b></p> <p>The proposal demonstrates that the variation from the minimum lot size standard is positive when considering the objectives of the zone, and the variation to the minimum lot size of the RE1 zoned land is already below the minimum required Lot size prior to the proposed subdivision</p>
<p><i>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</i></p>	<p>The proposed minimum lot size does not affect the ability to comply with all other relevant development standards and controls. As a result, the proposal retains the amenity of the site and surrounding area.</p>
<p><b>Clause 4.6 (4)</b> <i>Development consent must not be granted for development that contravenes a development standard unless:</i></p>	
<p><i>(a) the consent authority is satisfied that:</i></p> <p><i>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</i></p> <p><i>(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within</i></p>	<p>This correspondence aims to adequately address the matters required to be addressed in sub clause (3).</p> <p>Clause 4.6(4)(a)(ii) requires consideration of the objectives of the development standard and the zone objectives. Pursuant to Clause 4.6(4)(a)(ii) Council may be satisfied that the proposed subdivision will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for</p>



Clause	Response / Justification
<p><i>the zone in which the development is proposed to be carried out, and</i></p>	<p>development within the zone in which the development is proposed to be carried out.</p> <p>The objectives of the minimum subdivision lot size standard are:</p> <p>(1) <i>The objectives of this clause are as follows:</i></p> <p>(a) <i>to provide subdivision lot sizes that meet community and economic needs, while ensuring that environmental and social values are safeguarded,</i></p> <p>(b) <i>to facilitate greater diversity in housing choice,</i></p> <p>(c) <i>to ensure that lots are of sufficient size to meet user requirements and to facilitate energy efficiency of the future built form,</i></p> <p>(d) <i>to ensure that the subdivision of land in Zone E4 Environmental Living:</i></p> <p>(i) <i>will not prejudice its possible future development for urban purposes or its environmental conservation, and</i></p> <p>(ii) <i>will conserve the rural or bushland character, and the biodiversity values or other conservation values, of the land.</i></p> <p>(2) <i>This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.</i></p> <p><b>(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.</b></p> <p>(4) <i>This clause does not apply in relation to the subdivision of any land:</i></p> <p>(a) <i>by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or</i></p> <p>(b) <i>by any kind of subdivision under the Community Land Development Act 1989.</i></p> <p>(4A) <i>If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size for the purposes of subclause (3).</i></p> <p>The information in this document demonstrates that the proposed minimum lot size is appropriate to the location having regard to the surrounding area that is of a similar scale, response to the scenic qualities of the site, compliance with development controls and protection of amenity whilst respecting the transport opportunities of the surrounding area.</p>
<p><i>(b) the concurrence of the Secretary has been obtained.</i></p>	<p>Noted. Council is responsible for obtaining consent of the secretary if not issuing the consent under delegation.</p>
<p><b>Clause 4.6 (5)</b> <i>In deciding whether to grant concurrence, the Secretary must consider:</i></p>	
<p><i>(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</i></p>	<p>It is considered that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.</p>
<p><i>(b) the public benefit of maintaining the development standard, and</i></p>	<p>As demonstrated throughout this correspondence, the contravention of the development standard will result in minimal environmental and social impacts. The public benefit of maintaining the standard is largely irrelevant as the proposed subdivision is in keeping with the zone objectives, will result in a better outcome for the public and will provide improved recreation options in an area serviced by public transport that is adjacent to commercial activities.</p>



Clause	Response / Justification
<i>(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.</i>	Noted.
<b>Clause 4.6 (6)</b> <i>Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living ...</i>	The proposed subdivision of land is not within any of the stated zones.
<b>Clause 4.6 (7)</b> <i>After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).</i>	Noted.
<b>Clause 4.6 (8)</b> <i>This clause does not allow development consent to be granted for development that would contravene any of the following:</i>  <i>(a) a development standard for complying development,</i>  <i>(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which <a href="#">State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</a> applies or for the land on which such a building is situated,</i>  <i>(c) clause 5.4,</i>  <i>(ca) clause 2.8, 6.1 or 6.2.</i>	Noted.



**4. Objects of the EP&A Act**

Objects of the *Environmental Planning and Assessment Act 1979* (EP&A Act) are provided in Section 5 of the Act. Two objects relevant to the Clause 4.6 variation are 1.3(a), (b) and (c) and are discussed below.

Section 1.3(a) aims to *promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources.*

The proposed subdivision will improve development opportunity in an existing commercial environment. Improved options in an area that has access to transport, employment and recreation opportunities will promote social and economic welfare to assist local businesses. There will also be minimal environmental impact due to the proposed subdivision.

Section 1.3(b) aims to *facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

Section 1.3(c) aims to *promote the orderly and economic use and development of land,*

Development of an existing urban site in a mixed use zone will promote orderly and economic use of the land. The site has access to services and infrastructure and is appropriately placed to allow development and recreational options in an existing urban environment.

**5. Conclusion**

Whilst the proposed development results in a variation minimum lot size controls, the proposed exception to a development standard will result in a better planning outcome than not allowing the exception. The proposed subdivision will result in a minor non-compliance in relation to minimum lot size of the RE1 zoned land. Furthermore, the proposed changes do not adversely impact on the development being consistent with zone objectives.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'M. de Witt', is written over a light blue horizontal line.

**Matthew de Witt**  
Senior Town Planner

# CITY OF NEWCASTLE

Development Applications Committee Meeting 17 September 2019

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

**APPLICANT:**            **GWH DARBY PLAZA PTY LTD**  
**OWNER:**                **HUNTER AND CENTRAL COAST DEVELOPMENT CORPORATION**  
**REPORT BY:**            **GOVERNANCE**  
**CONTACT:**             **DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT**

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## PART I

### BACKGROUND

An application has been received seeking consent for an eight-storey commercial building, comprising basement level parking, two levels of above ground parking, ground floor retail/business, five levels of commercial office space, a café kiosk and associated site works.

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

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

1. The construction value of the proposed development (\$18.95M) being in excess of the staff delegation limit of \$10M.
2. A proposed variation to the height of buildings development standard of the Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation (13% variation proposed).

The plans were amended in response to issues raised by City of Newcastle's (CN) Urban Design Consultative Group (UDCG). These amendments included the deletion of residential apartments and an overall reduction in building height from 35.5m to 27.15m (ie 8.35m reduction).

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

The proposed development was publicly notified in accordance with CN's public participation policy and no submissions were received in response.



**Subject Land:** 352 Hunter Street Newcastle

## Issues

- 1) The proposed development does not comply with the height of buildings development standard of 24m under NLEP 2012. The maximum height of the proposed building is 27.15m and this equates to a 13% variation to the height of buildings development standard.

## Conclusion

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

## RECOMMENDATION

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

## Political Donation / Gift Declaration

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

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

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

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**PART II**

**1.0 THE SUBJECT SITE**

The land is identified as Lot 6 DP 1251435, No. 352 Hunter Street Newcastle. The site has an area of 2,142m<sup>2</sup> and is located at the junction of Darby Street and Hunter Street. The site is currently vacant with the exception of an electrical sub-station located in the south-western corner.

The subject site includes a section of the former rail corridor. The site is currently owned by Hunter and Central Coast Development Corporation (HCCDC) and has been sold to the developer following an expression of interest process.

Immediately adjacent to the site on Hunter Street are commercial buildings ranging in size from two to eight storeys. Development on the opposite side of Hunter Street is similar, with a variety of commercial and retail buildings, including the Tax Office building. Further to the west, along Hunter Street, are the Court House and University buildings, which are both prominent CBD built form features.

Adjacent to the northern boundary of the site is a property that is currently being used as an at-grade car park. There is also a multi-level car park and commercial building located to the north-east of the site.

To the east of the site is a heritage item of local significance, known as '*Former Tramway Substation*'. Further to the north of the site, beyond Centenary Road, is '*Argyle House*', which is a heritage item of State significance.

**2.0 THE PROPOSAL**

The application seeks consent for an eight-storey commercial development.

Specifically, the works associated with the proposed development include:

- i) One x level of basement car parking
- ii) Two x levels of above ground car parking
- iii) Five x levels of office premises
- iv) Two x ground floor retail or business premises
- v) One x kiosk in an outdoor area
- vi) Delivery of a privately-owned portion of the outdoor area known as '*Darby Plaza*'
- vii) Site remediation

The plans were amended in response to issues raised by CN's UDCG. These amendments included the deletion of residential apartments and an overall reduction in building height from 35.5m to 27.15m (ie a reduction of 8.35m).

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

### **3.0 PUBLIC NOTIFICATION**

The application was publicly notified in accordance with CN's public participation policy.

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

### **4.0 INTEGRATED DEVELOPMENT**

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

### **5.0 PLANNING ASSESSMENT**

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

#### **5.1 Provisions of any environmental planning instrument**

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

SEPP 55 requires consideration to be given to previous uses on the site and whether the site needs to be remediated for future uses and that, where land is contaminated, CN must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

The site has been identified as being contaminated due to its previous use as a heavy rail corridor. The site has also been subject to a contamination investigation as part of the wider assessment of the rail corridor.

A Remedial Action Plan has been provided with the application, which involves the excavation and disposal of contaminated soil.

CN's Senior Environmental Protection Officer considers the proposal to be acceptable and has recommended a number of conditions be imposed on a consent granted regarding the remediation of the site (refer to **Attachment B**).

The proposal is considered to be acceptable having regard to this policy.

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

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

It is considered that the proposed development will not have a significant impact on the coastal zone. Access to public areas within the coastal use area will not be adversely impacted by the proposed development.

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

Due to the site's proximity to the Newcastle Light Rail, the proposed development required concurrence from the rail authority, Transport for New South Wales (TfNSW), under the ISEPP, before CN can approve the application. Clause 86 of the ISEPP requires TfNSW to take into consideration:

- (a) *the potential effects of the development (whether alone or cumulatively with other development or proposed development) on.*
  - i. *the safety or structural integrity of existing or proposed rail infrastructure facilities in the rail corridor, and*
  - ii. *the safe and effective operation of existing or proposed rail infrastructure facilities in the rail corridor, and*
- (b) *what measures are proposed, or could reasonably be taken, to avoid or minimise those potential effects.*

TfNSW has undertaken an assessment and has granted concurrence to the proposal, subject to conditions of consent (refer to **Attachment B**).

**Newcastle Local Environmental Plan 2012 (NLEP 2012)**

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

Clause 2.1 - Land Use Zones

The property is located within the B4 Mixed Use zone under the provisions of NLEP 2012. The proposed development is permissible in the zone and is consistent with the objectives of the zone, providing a commercial development within a City Centre location. The site is located in close proximity to services and amenities and public transport, making this an ideal site for the proposed development.

The proposed development will promote the economic revitalisation of Newcastle City Centre by providing a high quality and multi-functional commercial premises on a prominent site, that will activate a currently vacant site to form part of 'Darby Plaza'. It will provide local employment opportunities during both the construction and operational phases.

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

The proposed development does not comply with the height of buildings development standard of 24m under NLEP 2012.

The maximum height of the proposed building is 27.15m and this equates to a 13% variation to the height of buildings development standard.

The applicant has submitted a clause 4.6 variation request to this standard, as discussed under Clause 4.6 Exceptions to Development Standards below.

Clause 4.4 - Floor Space Ratio

Under NLEP 2012 the site has a 4:1 floor space ratio (FSR) development standard. The proposed FSR is 3.86:1 and complies with this requirement.

Clause 4.6 - Exceptions to development standards

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

1. Clause 4.3 (Height of Buildings) is not excluded from the operation of this clause; and
2. The applicant has prepared a written request (as per Clause 4.6(3), requesting that CN vary the development standard and demonstrating that:
  - a) *Compliance with the development standards is unreasonable or unnecessary in the circumstances of the case, and*
  - b) *There are sufficient environmental planning grounds to justify contravening the development standard.*

The applicant's written submission contends that enforcing compliance with the 24m building height development standard is unnecessary in the circumstances. An extract of the applicant's request to vary the Development Standards is provided below.

*“What are the objectives of the development standard?”*

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

- a) *to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,*

b) *to allow reasonable daylight access to all developments and the public domain.*

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

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

Height

<i>LEP Clause</i>	<i>Control</i>	<i>Proposal</i>	<i>Variation</i>
<i>Clause 4.3</i>	<i>– 24m</i>	<i>27.15m</i>	<i>3.15 (13%)</i>
<i>Building Height</i>			

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

- i) *It is considered that strict compliance with the development standard is unnecessary given the current development within the site's vicinity, the remaining development potential of the surrounding land and minimal impact that the proposed variation will have on neighbouring sites and public domain.*

*Located within close proximity to the site, both the University Building and the Court House have a height greater than 24m. Both these developments contribute positively to the streetscape and skyline. The proposed development will have the capacity to accommodate up to 500 workers and this will assist significantly towards reinforcing Newcastle's Central Business District as the Hunter Region's commercial centre.*

*Under Clause 4.3 'Heights of buildings' and the NLEP 2012 Maps the subject site is allocated a height limit of 24m. The allocation of this height limit supports the desired bulk and scale of development within the area. A variation to Clause 4.3 will allow the proposed development to meet the objectives by ensuring the development can contribute to the building density, bulk and scale required to make a positive contribution towards the areas desired built form.*

*The proposed variation to the height limit of the proposed development will have minimal impact on daylight access to neighbouring developments and the public domain. The proposed top floor of the development has been set back from the boundary. When viewed from street level along Hunter Street the top floor will largely be unseen. A shadow diagram is provided as part of the Architectural Plans, as well as a shadow diagram with the top storey of the proposed development removed. This clearly demonstrates that the impact of the top floor is negligible and will not increase the impact of daylight access to adjoining developments nor the public domain.*

Are there Sufficient Environmental Planning Grounds?

*“It is considered that the proposed variation supports the overall objectives and underlying goals of the Newcastle Local Environmental Plan 2012 and CN’s Development Strategies and Plans.”*

Officer's comment

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

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

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

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

The request for the height of the proposed building to exceed the 24m building height is supported.

Clause 5.10 - Heritage Conservation

Clause 5.10 is applicable to the site given its location within the Newcastle City Centre Heritage Conservation Area and the heritage items in the vicinity of the site, including:

1. A heritage item of local significance, known as '*Former Tramway Substation*', located to the east of the site.
2. A heritage item of State significance, known as '*Argyle House*', located further to the north of the site, beyond Centenary Road.

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

Clause 6.1 - Acid Sulfate Soils

The site is affected by Class 4 acid sulphate soils. A requirement for an assessment of acid sulfate soils is to be undertaken during excavation and construction works is included as a recommended condition. The proposed development is considered satisfactory in this regard.

Clause 6.2 - Earthworks

The proposed development will include excavation for one level of basement parking and footings. The level of earthworks proposed to facilitate the development is considered to be acceptable having regard to this clause.

Part 7 Additional local provisions - Newcastle City Centre

The site is located within the Newcastle City Centre. There are a number of requirements and objectives for development within the City Centre, which includes promoting the economic revitalisation of the City Centre, facilitating design excellence and protecting the natural and cultural heritage of Newcastle. The proposal is considered to be consistent with the objectives of Part 7 of NLEP 2012.

Clause 7.4 - Building Separation

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

Clause 7.5 - Design excellence

CN's UDCG reviewed the application on two occasions. A preliminary scheme for development of the subject site, included a 10-storey building (55 residential apartments, two levels of commercial space and parking) was initially reviewed by

the UDCG in November 2018. The Panel recommended that a number of issues be addressed, particularly the height exceedance, before resubmission of the design.

An amended scheme comprising an eight-storey building (8,222m<sup>2</sup> of commercial space and parking), but with no residential component, was re-submitted to the Panel.

In response to the amended design, the Panel noted the following:

*“The basic plan as now proposed is in principle satisfactory. Although the height marginally exceeds the LEP control, the non-compliant top level is set back approximately 4 metres from the Hunter Street frontage so that visual and overshadowing impacts should be acceptable, and the step-down of the frontage at the western end assists the transition to the lower adjacent buildings. The non-compliance with height is not of concern, particularly in view of the FSR being within the LEP control.”*

*“The public space has the potential to be very attractive for meeting and socialising and the ground floor commercial area could be a lively café/restaurant activity opening to the colonnade with outdoor seating.”*

The urban design merits of the proposal are considered to be acceptable having regard to the comments received from the UDCG.

The amended proposal provides an acceptable level of amenity within the context of the area and is generally consistent with State and local guidelines relating to building design and amenity. As such, the amended proposal is considered to be an acceptable form of development within the context of the site and location.

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

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

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

## **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.

##### Commercial Uses - Section 3.10

It is considered that the development is consistent with the aims and objectives of this section of the NDCP 2012. The subject site is considered to be an ideal location for the proposed commercial premises which is in close proximity to public transport, services, retail and recreational areas.

The proposal has been architecturally designed and will provide an active street frontage, with visual connection into retail uses at ground level. A cafe kiosk is located within the private plaza space to encourage use and activation of the space.

The proposed development is of an appropriate scale and form in the context of the City Centre area and in terms of height, FSR and setback provisions.

The proposal will contribute to the viability of the Newcastle City Centre.

##### Flood Management - Section 4.01

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

*"The proposed ground floor level has been set at 3.20m AHD. The car parking entry to the basement and the ground level car park has been set at 2.90m AHD. Potential sea level rise of flood planning has been considered.*

*The proposed Café Kiosk and Electricity Substations are to be set at 2.90m AHD based on the Flood Certificate (FL2019/00006).*

*The development is required to provide flood refuge areas at first floor level."*

Accordingly, the proposal is acceptable in relation to flooding.

##### Mine Subsidence - Section 4.03

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

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

##### Safety and Security - Section 4.04

The proposed landscaping increases the aesthetics of the overall development and the development is designed to allow casual surveillance of all public accessible areas. Adequate lighting will be provided to the parking area, building entries and plaza space

Soil Management - Section 5.01

Relevant conditions relating to sediment and erosion control have been included in the Draft Schedule of Conditions (refer to **Attachment B**).

Land Contamination - Section 5.02

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

Aboriginal Heritage - Section 5.04

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

Heritage Items - Section 5.05

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

Archaeological Management - Section 5.06

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

The site does not contain any recorded Aboriginal archaeological sites. However, the project area has a high degree of potential to contain Aboriginal archaeological material within relatively undisturbed sub-surface. It is recommended that further investigations and consultation be undertaken prior to construction. A condition relating to an archaeological study to be reviewed by the Local Aboriginal Land Council is included in the Draft Schedule of Conditions (refer to **Attachment B**).

Heritage Conservation Areas - Section 5.07

As previously stated under clause 5.10 of NLEP 2012, the proposal is considered acceptable, as it will not unduly impact on the heritage significance of the Newcastle City Centre Heritage Conservation Area.

Newcastle City Centre - Section 6.01

The proposed development will have a positive effect on the City Centre and surrounding precinct by delivering a high quality and functional commercial building in a section of Hunter Street that is currently being revitalised through redevelopment of the former rail line and opening of the new light rail. The proposed development

will facilitate the precinct known as '*Darby Plaza*' and will provide an important link between Darby Street and Newcastle Harbour. A cafe kiosk is proposed within the plaza space to encourage use and activation of the space.

A high standard of architectural design has been achieved through the building façade treatments and variation in materials and finishes. The proposed development provides excellent street activation at the ground floor. A visual connection into the business / retail uses at ground level has been achieved through extensive glazing.

The top level of the proposed building is set back from the Hunter Street frontage so that visual impacts and overshadowing are minimised and the step-down of the building at the western end assists in the transition to the lower building adjacent.

The form and external appearance of the development significantly improves the quality and amenity of the public domain. Continuous awning coverage along the footpath on Hunter Street, which links to the new plaza, provides amenity for pedestrians and an inviting entrance to the new public space.

The proposed concept was discussed at two meetings of the UDCG, on 21 November 2018 and on 21 February 2019. Overall the UDCG were supportive of the proposed development.

Car parking is well integrated into the overall building design through the use of appropriate materials and facade treatments. High quality, durable materials are proposed.

The proposed development does not adversely impact on any public or private view corridors. The building does not significantly affect solar access to public spaces.

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

#### Landscape Open Space and Visual Amenity - Section 7.02

A new public and private plaza will be delivered as part of the overall development and will provide tenants, workers and the wider community an attractive and functional outdoor plaza.

The private part of the plaza will be provided by the developer of this site and as part of this application, prior to Occupation Certificate. An easement for public access throughout the private plaza is also required to be provided.

A landscape plan has been provided as part of the application, which contains the concept design of both components of Darby Plaza. CN's Senior Landscape Architect and Asset Officer have reviewed the submitted concept design and the locations of the proposed Ausgrid Substations within the proposed Plaza and have confirmed that the concept proposal is acceptable.

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

Traffic, Parking and Access - Section 7.03

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

Energy efficiency - Section 7.05

The proposal is acceptable having regard to this section.

Stormwater - Section 7.06 and Water Efficiency - Section 7.07

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

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

Waste Management - Section 7.08

A waste management plan has been submitted. The site is commercial in nature and waste will be serviced by a 5.7m private pick-up vehicle. The traffic report and plans have demonstrated that a small rigid vehicle (ie 6.4m truck) is able to manoeuvre within the ground floor parking area, pick-up waste and exit in a forward direction. No bins will be presented to the street.

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

Public Participation - Section 8.0

The proposal was notified to neighbouring properties for 14 days in accordance with CN's public participation policy. No submissions objecting to the proposal were received.

Development Contributions

The *Environmental Planning and Assessment Act 1979* enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution, as detailed in CN's Contributions Plan.

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

### **5.5 The regulations (and other plans and policies)**

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

The site is identified as being within the coastal zone and this is discussed under the provisions of the relevant policy State Environmental Planning Policy (Coastal Management) 2018.

### **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**

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

The proposal is likely to have broad positive social and economic impacts in that it will create additional employment opportunities, support the demand for local services and facilities and increase social activity and street activation within this central City Centre location, close to existing amenities and public transport services.

The character, bulk and scale of the proposal have been discussed in this report, in the context of NLEP 2012 and DCP controls. The proposal is considered to be acceptable in this regard.

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

It is considered that the amended plans are acceptable having regard to the proposed height, external appearance, character, bulk and scale. The proposal has been assessed by the UDCG and is considered to be acceptable with regard to urban design merit.

#### **b) Traffic, Access and Parking**

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

#### Vehicular Access, Driveway Design and Crossing Location

*“The vehicular access for the site is proposed from the Argyle Street frontage. There is an existing driveway which will need to be removed and reconstructed*

*as part of the development of the Darby Plaza. However, this driveway can be used during the construction process for access to the site.*

*The access to the basement has been designed to mitigate flood risks and the levels proposed for the basement are acceptable.*

*The proposed driveway will be at the interface of the proposed Darby Plaza and the area will need to be designed with pedestrians having right of access over the footpath / Plaza area.”*

#### Parking Demand

*“The proposed development Traffic report has indicated a total of 138 parking spaces. The DCP requires a total of 137 parking spaces for the proposed 8,266m<sup>2</sup> of commercial/retail area based on CBD parking rate of 1 space per 60m<sup>2</sup> of GFA. Two disabled parking spaces has been provided which complies with the DCP.”*

Comment: The proposed development is considered to be acceptable with regard to its impacts on local traffic conditions, pedestrian safety and traffic management measures. Appropriate conditions in this regard requiring 137 parking spaces to be provided.

#### **c) Amenity (Privacy, Overshadowing and Views)**

##### Views

The proposal does not have a significant adverse impact on the surrounding properties in terms of views. The development will alter the general outlook due to the proposed changes in size and scale, but this is considered to be reasonable having regard to the allowable height and scale for development under relevant planning policies.

##### Overshadowing

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

#### **5.7 The suitability of the site for the development**

The site is suitable for the proposed development as it is located in the City Centre, which is well serviced by public transport and community facilities. It is considered that adequate services and waste facilities are available to the development.

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

### **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 will make a significant contribution to the revitalisation of the Civic Centre Precinct within the Newcastle City Centre. The proposal will activate the link between Darby Street and Newcastle Harbour.

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

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

### **6.0 CONCLUSION**

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

### **ATTACHMENTS**

**Attachment A:** Submitted Plans - Under Separate Cover - 352 Hunter Street Newcastle

**Attachment B:** Draft Schedule of Conditions - 352 Hunter Street Newcastle

**Attachment C:** Processing Chronology - 352 Hunter Street Newcastle

Attachment B

DRAFT SCHEDULE OF CONDITIONS




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<b>Application No:</b>	DA2019/00247
<b>Land:</b>	Lot 6 DP 1251435
<b>Property Address:</b>	352 Hunter Street Newcastle NSW 2300
<b>Proposed Development:</b>	Commercial Premises (eight storey including carparking) and outdoor Kiosk

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SCHEDULE 1

APPROVED DOCUMENTATION

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

Plan No / Supporting Document	Version	Prepared by	Dated
Architectural Plan No. A102; A601 – A607	Rev (6)	GWH	23/08/2019
Landscape Plan No. L100(G); L001(G); L002(G); L003(G); L004(H); L005(H); L006(G) & L007(E)	Rev (H)	Terras Landscape Architects	09/06/2019
Stormwater Management Plan – Job No. 190399 Dwg No's C01 – C05	Issue (2)	MPC Consulting Engineers	04/09/2019
Flood Impact Assessment R.N21231.001.03	Rev (3)	BMT	23/08/2019
Traffic Impact Assessment – Ref No. 192931	-	Northern Transport Planning	21/02/2019
Waste Management Plan	Rev (A2)	Symbietrics	05/03/2019
Statement of Environmental Effects Ref No. DV200224	-	GWH	

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

- The Developer designing and constructing the following works in connection with the proposed stormwater and drainage diversion works within the private property and public road reserve generally in accordance with the concept flood impact assessment prepared by BMT Ref No. R.N21231.001.03 Rev 3 dated 23/08/2019, at no cost to City of Newcastle and in accordance with City of Newcastle's guidelines and design specifications:
  - Detailed drainage modelling for the proposed drainage culvert diversion

- b) Detailed design of drainage culvert system including longitudinal sections and cross sections, pits and pipes and any private and road drainage connections.
  - c) Structural and civil design for the drainage diversion works
  - d) Details relating to the impact on existing infrastructure and proposed scope of works within road reserve
  - e) Drainage Easement and relevant subdivision plans required within private property and interface with the road reserve
  - f) Protection of existing culvert drainage infrastructure during any bulk excavation, ground anchors and piling process.
  - g) Provide certifications for any structural works, as-built plans and CCTV footage for the new drainage works
  - h) Full width foot paving reconstruction (if required)
  - i) Associated drainage works and road works
3. On-site parking accommodation is to be provided for a minimum of 137 vehicles, 41 secured bicycle spaces (Class 2) and 7 Motorbike spaces and meet the minimum parking layout standards indicated in Element 7.03 '*Traffic, Parking and Access*' of City of Newcastle's adopted Newcastle Development Control Plan 2012. Details are to be included in documentation for a Construction Certificate application.
  4. The proposed garage roller door openings for the ground level parking is to be a minimum height of 3.5m clear. This is to allow for a small rigid vehicle access into the car park for loading/unloading purposes. Full details are to be included in documentation for a Construction Certificate application.
  5. 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.
  6. Traffic management devices in the form of a safety mirrors, Stop and Give Way to pedestrian signs and Line markings is to be installed within the property. Such devices are to be constructed in accordance with AS/NZS 2890.1:2004: Parking facilities – Off-street car parking. Full details are to be included in documentation for a Construction Certificate application.
  7. Letterboxes, landscaping and any other obstructions to visibility are to be kept clear of or limited in height to 1.2m in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance in accordance with AS/NZS 2890.1:2004: Parking facilities – Off-street car parking. Full details are to be included in documentation for any Construction Certificate application.
  8. Roof water is to be directed to the proposed water tank and be reticulated to any new toilet cisterns and cold-water washing machine taps in the basement level, ground floor and for Landscaped areas on the ground level. 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.
  9. A structural engineer is to determine the location and depth of the proposed underground tank and certify that it will not adversely affect any building foundation footings or slabs when the tank is empty. Stormwater Management Plan is to be designed in accordance with current Newcastle Development Control Plan 2012 Section 7.06 Stormwater Management and The City of Newcastle's Stormwater and Water Efficiency Technical Manual. Full details are to be included with documentation for a construction certificate.

10. Overflows from the roof water tank and any additional discharge controls (if required) are to be directed to City of Newcastle's drainage system by means of an interallotment drainage line or underground pipe directly to the street gutter. Full details are to be included in documentation for a Construction Certificate application.
11. All stormwater runoff from the proposed development being managed in accordance with the requirements of Element 7.06 'Stormwater' of Newcastle Development Control Plan 2012, the associated Technical Manual and the latest issue of AS 3500.3 as applicable, as indicated on the stormwater management concept plan prepared by MPC Consulting Engineers Job No. 190399 Dwg No's C01 – C05 Issue 2 dated 04/09/2019. Pit P3 on the ground floor is to be fitted with SPEL type or similar pit inserts. Full details are to be included in documentation for a Construction Certificate application.
12. All new impervious surfaces, including driveways and paved areas are to be drained to the nominated discharge controls, full details are to be included in documentation for a Construction Certificate application.
13. The ground floor level of the proposed building is to be as indicated on the stormwater management plan prepared by MPC Consulting Engineers Job No. 190399 Dwg No's C04 – Issue 2 dated 04/09/2019 and the Kiosk (Café) and Ausgrid Substations if to be set at minimum 2.90m AHD and being indicated on the plans for any Construction Certificate application. The ground floor levels are to be certified by a registered Surveyor prior to the placement of the floor slab and a copy of the Surveyor's Certificate is to be forwarded to the Principal Certifying Authority.
14. The whole of the proposed structure below known flood level (level 2.90m Australian Height Datum) is to be constructed in materials and finishes that are resistant to damage from floodwaters/tidal waters. Any new machinery or equipment, electrical circuitry or fitting, storage unit or similar items likely to be damaged by floodwaters/tidal waters being installed above the said height or alternatively being of materials and functional capability resistant to the effects of floodwaters/tidal waters. Full details are to be included in documentation for a Construction Certificate application
15. 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.

16. 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.
17. The proposed lighting including car park lighting of the premises is to be designed, positioned, and installed, including appropriate shielding and orientation of the lighting fixture, as to not give rise to obtrusive light, interfere with traffic safety or detract from the amenity of surrounding properties in accordance with Australian Standard AS 4282: 1997 *Control of the obtrusive effects of outdoor lighting*. Full details are to be included in the documentation for a Construction Certificate application.
18. Working drawings and specifications of the proposed building are to be submitted to the NSW Mine Subsidence Board for approval prior to an application for a Construction Certificate and any requirements of the Board are to be included in the documentation for a Construction Certificate application.
19. A commercial vehicular crossing is to be constructed across the road reserve, in accordance with the following criteria:
  - a) Constructed in accordance with City of Newcastle's A1300 – Driveway Crossings Standard Design Details.
  - b) Letterboxes, landscaping and any other obstructions to visibility should be kept clear of or limited in height to 1.2 metre, in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance.
  - c) The proposed driveway shall be a minimum of 3 metres clear of the trunk of any tree within the public reserve.
  - d) The proposed driveway shall be a minimum of 750mm clear of the centre of any pole or obstruction within the public reserve and 1 metre clear of any drainage pit.

These works are not approved until consent under Section 138 of the *Roads Act 1993* has been granted by City of Newcastle.

20. A separate application must be lodged and consent obtained from City of Newcastle for all works, required and proposed, within the road reserve pursuant to Section 138 of the *Roads Act 1993*, before the issue of a Construction Certificate. The consent must be obtained, or other satisfactory arrangements confirmed in writing from City of Newcastle, before the issue of a Construction Certificate.
21. A dilapidation report prepared by a suitability qualified person is to be submitted to the Certifying Authority and City of Newcastle prior to the issue of any Construction Certificate for the proposed building works. The dilapidation report shall document and photograph the current structural condition of the drainage culvert, infrastructure and roads.
22. A total monetary contribution of \$379,028.64 is to be paid to City of Newcastle, pursuant to Section 7.12 of the *Environmental Planning and Assessment Act 1979*, such contribution to be payable prior to the issue of a Construction Certificate in respect of the proposed development.

Note:

- a) This condition is imposed in accordance with the provisions of the City of Newcastle's *Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019*.

- b) The City of Newcastle's *Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019* permits deferred or periodic payment of levies in certain circumstances. A formal modification of this condition will be required to enter into a deferred or periodic payment arrangement.
- c) The amount of contribution payable under this condition has been calculated on the basis of the current rate as at the date of consent and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of Statistics (ABS). The CPI index rate is expected to rise at regular intervals and therefore the actual contribution payable is indexed and recalculated at the CPI rate applicable on the day of payment.

CPI quarterly figures are released by the ABS on a date after the indexation quarter and as a guide, these approximate dates are 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 City of Newcastle's Customer Enquiry Centre for determination of the indexed amount of contribution on the date of payment.

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

- 23. In relation to the proposed drainage culvert diversion works prior to the proposed building works (except for bulk excavation, ground anchors and any pier/pile driving works) separate approval is to be obtained in writing from City of Newcastle and all associated construction works are to be completed.
- 24. Building demolition is to be planned and carried out in accordance with Australian Standard 2601:2001 - The Demolition of Structures.
- 25. During construction works, an assessment of acid sulfate soils is to be undertaken in the area of excavation. If acid sulfate soils are found to be present, soils are to be treated in accordance with the New South Wales Acid Sulfate Soil Management Advisory Committee's '*Acid Sulfate Soil Manual*'.
- 26. An assessment of the likelihood of the presence of any Aboriginal sites in relation to the proposed development area is to be undertaken to comply with the requirements of the *National Parks and Wildlife Act 1974* and the significance and requirements for the protection of any sites being incorporated into the documentation for a Construction Certificate application. Written confirmation that the National Parks and Wildlife Service's requirements have been met shall be submitted to City of Newcastle prior to engineering works commencing. Any submitted archaeological study shall be accompanied by a letter from the appropriate Local Aboriginal Land City of Newcastle stating that they are satisfied with the study process and that appropriate arrangements are in place for continued consultation during development of the site.  
  
 Note: It is illegal to knowingly damage, deface or destroy a 'relic' or Aboriginal Place without the Director's prior written consent.
- 27. Any waste containers used in association with the proposed demolition are to be located on the site where possible.

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

28. 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*.

29. 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.

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

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

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

31. An application is to be made to and approved by City of Newcastle for the erection of hoarding or part closure of the footway prior to construction being commenced. Such overhead structure or protective fence shall comply with the *Work Health and Safety Act 2011*, *Work Health and Safety Regulation 2011* and any relevant approved industry code of practice. Notice of intention of commencement must be given to SafeWork NSW.

32. 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.

- 33. All building work must be carried out in accordance with the provisions of the National Construction Code.
- 34. Under no circumstances is onsite remediation treatment to be carried out.
- 35. Remediation being carried out in accordance with Section 7.5 as set out in the submitted Remediation Action Plan prepared by JM Environments dated 13 February 2019.
- 36. Any soils identified as exceeding the validation criteria during the remediation works (as specified by the RAP prepared by JM Environments dated 13 February 2019) are to be removed offsite.
- 37. Any structure on or over the public road reserve, including balconies and awnings, is to be the subject of a separate consent from City of Newcastle, under Section 138 of the *Roads Act 1993*, prior to commencement of work.

Note: A separate approval from City of Newcastle must be obtained for all structures within the public road reserve pursuant to Section 138 of the *Roads Act 1993*. For further information contact City of Newcastle's Assets and Projects section to request a Road Consent. A fee will be payable in this regard.

- 38. All excavations and backfilling are to be executed safely in accordance with appropriate professional standards and excavations are to be properly guarded and protected to prevent them from being dangerous to life and property.
- 39. Certification is to be prepared by a Registered Surveyor and submitted to the Principal Certifying Authority at the stages of construction indicated:
  - a) On completion of ground floor construction, confirming that the floor levels are in accordance with the approved levels.
  - b) On completion of each subsequent floor level, confirming that the floor levels are in accordance with the approved levels.
  - c) When the roof has been completed, confirming that the building does not exceed the approved levels.
- 40. Prior to commencement of site works the developer is to submit to City of Newcastle for approval a Construction Traffic Management Plan addressing traffic control measures to be utilised in the public road reserve during the construction phase.
- 41. 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.
- 42. 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.
- 43. 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 City of Newcastle requirements, in accordance with Element 7.06 '*Stormwater*' of Newcastle Development Control Plan

2012.

44. All external items of air conditioning and mechanical plant are to be screened or positioned in such a manner as to not detract from the visual presentation of the building
45. City of Newcastle's 'PREVENT POLLUTION' sign is to be erected and maintained in a conspicuous location on or adjacent to the property boundary so it is clearly visible to the public or at other locations on the site as otherwise directed by City of Newcastle for the duration of demolition and construction work.

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

46. Any excavated material to be removed from the site is to be assessed, classified, transported and disposed of in accordance with the Department of Environment and Climate Change's *'Waste Classification Guidelines Part 1: Classifying Waste'*.
47. 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*.
48. 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 City of Newcastle officers or the Principal Certifying Authority on request.
49. 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:
  - 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 4<sup>th</sup> Edition - Vol. 1* (the 'Blue Book') published by Landcom, 2004.
50. 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.
51. All necessary measures are to be undertaken to control dust pollution from the site. These measures must include, but not are limited to:
  - a) Restricting topsoil removal
  - b) Regularly and lightly watering dust prone areas (note: prevent excess watering as it can cause damage and erosion)
  - c) Alter or cease construction work during periods of high wind and

- d) Erect green or black shade cloth mesh or similar products 1.8m high around the perimeter of the site and around every level of the building under construction.
- 52. Where the proposed development involves the destruction or disturbance of any existing survey monuments, those monuments affected are to be relocated at no cost to City of Newcastle by a Surveyor registered under the *Surveying and Spatial Information Act 2002*.
- 53. The premises are to be constructed, including the installation of all equipment, fixtures and fittings, in accordance with the requirements of Australian Standard 4674:2004 - Design, construction and fit-out of food premises.

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

- 54. All public footways, footpaving, kerbs, gutters and road pavement damaged during the works are to be immediately repaired following the damage, to a satisfactory state that provides for safe use by pedestrians and vehicles. Full restoration of the damage is to be carried out to City of Newcastle's satisfaction prior to the completion of demolition work or prior to the issue of any occupation certificate in respect of development involving building work.
- 55. All works within the road reserve required by this consent are to be completed prior to the issue of the first Occupation Certificate.
- 56. 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 Principal Certifying Authority and City of Newcastle prior to the issuing of Occupation Certificate.
- 57. Any redundant existing vehicular crossing is to be removed at no cost to City of Newcastle. The road reserve and kerb being restored to, City of Newcastle's satisfaction, to match the existing infrastructure. Works are to be completed prior to the issuing of a Final Occupation Certificate for the proposed development.
- 58. The publicly accessible areas around the frontages of the site known as Darby Plaza is to be the subject of a public right of footway and/or carriageway and easement for services over the access corridor. A detailed survey plan and accompanying instrument under Section 88B of the Conveyancing Act being shall be registered with NSW Government Land & Property Information prior to the issuing of any Occupation Certificate. The Section 88B instrument is to provide that the right-of-way is unable to be relinquished, varied or modified without the concurrence of the City of Newcastle.
- 59. An easement to drain water minimum 3.0m wide over the proposed stormwater pipeline within the subject property is to be created. Such easement is to be in favour of City of Newcastle and created prior to the issue of any Occupation Certificate for the proposed development.  
  
Note: All associated survey and legal expenses will be undertaken by City of Newcastle at City of Newcastle's expense upon receipt of written request by the owner but City of Newcastle will not bear the cost of private surveys.
- 60. 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.
- 61. A Landscape Practical Completion Report is to be submitted to the Principal Certifying Authority prior to the issue of the first 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.

- 62. An application is to be made for a Subdivision Certificate. The application is to be supported by a survey plan of subdivision, the Administration Sheet and a Section 50 Certificate from the Hunter Water Corporation.

**CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT**

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

Unit/ Dwelling/ Lot Number on plan	City of Newcastle Allocated Street Addresses			
	House Number	Street Name	Street Type	Suburb
Proposed Kiosk	348	Hunter	Street	Newcastle
Proposed Commercial (Ground floor - South-West)	350	Hunter	Street	Newcastle
Proposed Commercial (Ground floor - South)	354	Hunter	Street	Newcastle
Proposed Commercial (Level 3)	301/352	Hunter	Street	Newcastle
Proposed Commercial (Level 4)	401/352	Hunter	Street	Newcastle
Proposed Commercial (Level 5)	501/352	Hunter	Street	Newcastle
Proposed Commercial (Level 6)	601/352	Hunter	Street	Newcastle
Proposed Commercial (Level 7)	701/352	Hunter	Street	Newcastle

- 64. Waste management (recyclable and non-recyclable) is to be collected from the carpark refuse storage areas, as identified on the approved plans, serviced from Argyle Street and returned immediately to the refuse storage areas. Under no circumstances are garbage bins to be presented to the street for kerbside collection or remain at kerbside after collection.

- 65. The hours of operation or trading of the premises, including the kiosk are to be not more than from:

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

unless a separate application to vary the hours of operation or trading has been submitted to and approved by Council.

**SCHEDULE 2**

**TRANSPORT FOR NSW CONDITIONS**

**GENERAL CONDITIONS**

1. The applicant must comply with all Keolis Downer Hunter or any subsequent operator of Newcastle Light Rail (Newcastle Light Rail Operator) policies, rules and procedures when working in and about the Newcastle Light Rail corridor;
2. The applicant must comply with the requirements of T HR CI 12080 ST External Developments version 1.0 and Development Near Rail Corridors and Busy Roads- Interim Guidelines;
3. Activities of the applicant must not affect and/or restrict Newcastle Light Rail operations without prior written agreement between the applicant, Transport for NSW (TfNSW) and the Newcastle Light Rail Operator, and it is a condition precedent that such written agreement must be obtained no later than two (2) months prior to the activity. Any requests for agreement are to include as a minimum the proposed duration, location, scope of works, and other information as required by the Newcastle Light Rail Operator;
4. The applicant must apply the Newcastle Light Rail Operator for any required network shutdowns four (4) months prior to each individual required network shutdown event. Each request for network shutdown must include as a minimum the proposed shutdown dates, duration, location, scope of works, and other information as required by the Newcastle Light Rail Operator. The Newcastle Light Rail Operator may grant or refuse a request for network shutdown at its discretion;
5. The applicant shall provide safe and unimpeded access for Newcastle Light Rail patrons traversing to and from the Newcastle Light Rail stops at all times;
6. TfNSW, and persons authorised by it for this purpose, are entitled to inspect the site of the approved development and all structures to enable it to consider whether those structures on that site have been or are being constructed and maintained in accordance with these conditions of consent, on giving reasonable notice to the principal contractor for the approved development or the owner or occupier of the part of the site to which access is sought;
7. During all stages of the development extreme care shall be taken to prevent any form of pollution entering the light rail corridor. Any form of pollution that arises as a consequence of the development activities shall remain the full responsibility of the applicant;
8. The relocation of any TfNSW services or infrastructure is to be at the applicants cost and to TfNSW Requirements and Standards.
9. All works/regulatory signage associated with the proposed development are to be at no cost to TfNSW/Roads and Maritime Services. All TfNSW and Newcastle Light Rail Operator's costs associated with review of plans, designs and legal must be borne by the applicant.

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

Review and endorsement of documents

Prior to the issue of any construction certificate or any preparatory, demolition or excavation works, whichever is the earlier, the applicant should consult with TfNSW and the Newcastle Light Rail Operator to confirm the timing of the each construction certificate and associated documentation and activities prior to preparation of requested documentation. The applicant should provide the information to TfNSW for review and endorsement. The Principal Certifying

Authority (PCA) is not to issue the relevant Construction Certificate until received written confirmation from TfNSW that the following conditions have been complied with.

10. Required Documentation:

- a) Final geo-technical and structural report / drawings, to include:
  - any potential impact on the light rail corridor located adjacent to the subject development site, easement and substratum;
  - calculations or direction of movement of the impact of potential excavation movements to determine if further structural / serviceability assessment is required on the impact to the rail track structural slab; and
  - the expected groundwater level with respect to the bottom of the excavation should be confirmed, including tidal impacts, if any.
- b) Final construction methodology with construction details pertaining to structural support during excavation or ground penetration;
- c) Final cross sectional drawings showing ground surface, rail tracks, sub soil profile, proposed basement excavation and structural design of sub ground support adjacent to the Rail Corridor located adjacent to the subject development site. Cross sectional drawings should also include the accurate RL depths and horizontal distances from assets (tracks, overhead lines, structures and cables) to the nearest point of excavation or ground penetration works. All measurements are to be verified by a Registered Surveyor;
- d) A vibration and movement monitoring system and trigger response plan that will be in place before excavation commences; and
- e) Detailed survey plan.

The Certifying Authority (CA) shall not issue the relevant Construction Certificate until written confirmation has been received from TfNSW confirming that this condition has been satisfied.

11. Pre-construction Work Dilapidation Report

A pre-construction work Dilapidation Report of the Newcastle Light Rail and its assets shall be prepared by a qualified structural engineer. The dilapidation survey shall be undertaken via a joint site inspection by the representatives of the Newcastle Light Rail Operator, TfNSW and the applicant. These dilapidation surveys will establish the extent of existing damage and enable any deterioration during construction to be observed.

12. Vibration and Movement Monitoring System

Instrumentation is to be installed between the site and the alignment to assess if ground movements, vibrations, and / or dewatering are occurring and a trigger response plan developed to reduce potential impacts to the alignment if they occur. TfNSW should approve the plan prior to the start of construction. The instrumentation and monitoring targets shall be installed and operating prior to construction so that baseline readings can be developed.

13. Acoustic Assessment

The final acoustic assessment is to be submitted to the CA prior to the issue of the relevant Construction Certificate demonstrating how the proposed development, if applicable, will comply with the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads- Interim Guidelines". All recommendations of the acoustic assessment are to be incorporated in the construction documentation.

14. Electrolysis Assessment

Prior to any works commencing or the issuing of any Construction Certificate, the applicant is to engage an Electrolysis Expert to prepare a report on the Electrolysis Risk to the development from stray currents. The applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the CA with the application for the relevant Construction Certificate.

## 15. Anti-throw Measures

Given the possible likelihood of objects being dropped, thrown or blown onto the rail corridor from balconies, windows and other external features (eg roof terraces and external fire escapes) that face the rail corridor, the Applicant is required to install measures (eg awning windows, louvres, enclosed balconies etc) which prevent the throwing of objects onto the rail corridor. The Principal Certifying Authority shall not issue the Construction Certificate until it has confirmed that these measures are to be installed and have been indicated on the Construction Drawings;

## 16. Reflectivity Report

Prior to the issue of the relevant Construction Certificate, the applicant shall design lighting, signs and surfaces with reflective materials, whether permanent or temporary, which are (or from which reflected light might be) visible from the rail corridor limiting glare and reflectivity to the satisfaction of TfNSW and the Newcastle Light Rail Operator

## 17. Insurance

Prior to the issuing of any Construction Certificates or any works commencing, the applicant must hold current public liability insurance cover for a sum to be determined by TfNSW. This insurance shall not contain any exclusion in relation to works on or near the rail corridor, or rail infrastructure. The applicant is to contact TfNSW to obtain the level of insurance required for this particular proposal. Prior to issuing the relevant Construction Certificate the CA must witness written proof of this insurance in conjunction with TfNSW's written advice to the applicant on the level of insurance required.

## 18. Interference with Light Rail Operation

Prior to any works commencing or any Construction Certificate being issued, the applicant shall enter into an Interface Agreement(s) with TfNSW and, if appropriate, the Newcastle light rail operator. The Interface Agreement(s) shall address matters including, but not limited to:

- Pre and post construction dilapidation reports;
- The need for track possessions;
- TfNSW and the Newcastle Light Rail Operator's recovery of costs from the applicant for costs incurred by these parties in relation to the development (e.g. review of designs and reports, legal, shutdown /power outages costs including alternative transport, customer communications, loss of revenue etc) risk assessments and configuration change processes;
- Review of the machinery to be used during excavation/ground penetration / construction works;
- The need for track monitoring;
- Design and installation of lights, signs and reflective material;
- Access by representatives of TfNSW to the site of the approved development and all structures on that site;
- Endorsement of Risk Assessment/Management Plan and Safe Work Method Statements (SWMS);
- Endorsement of plans regarding proposed craneage and other aerial operations;
- Erection of scaffolding/hoarding;
- Light Rail Operator's rules and procedures; and
- Alteration of rail assets such as the OHW along of track and associated hoarding demarcation system, if undertaken by the applicant.

The CA is not to issue the relevant Construction Certificate until written confirmation from TfNSW has been received confirming that this condition has been complied with.

## 19. Consultation Regime

Prior to any excavation or the issuing of any Construction Certificate, a detailed regime is to be prepared for consultation with and approval by, TfNSW for the excavation of the site and the construction of the building foundations (including ground anchors) for the approved development, which may include geotechnical and structural certification in the form required by TfNSW.

## 20. Protection of TfNSW Infrastructure

Prior to the issuing of any Construction Certificate, the applicant is to liaise with TfNSW to ascertain its requirements in relation to the protection of TfNSW's infrastructure. The applicant is to submit to TfNSW all relevant documentation as requested by TfNSW and obtain TfNSW's written endorsement.

### During Construction

- All piling and excavation works are to be supervised by a geotechnical engineer experienced with such excavation projects;
- No rock anchors/bolts (temporary or permanent) are to be installed into the light rail corridor;
- No metal ladders, tapes and plant/machinery, or conductive material are to be used within 6 horizontal metres of any live electrical equipment unless a physical barrier such as a hoarding or structure provides separation;
- During all stages of the development extreme care shall be taken to prevent any form of pollution entering the light rail corridor. Any form of pollution that arises as a consequence of the development activities shall remain the full responsibility of the applicant;
- The applicant must mitigate all noise and vibration to the extent possible and provide vibration monitoring equipment and provide the results to the Newcastle Light Rail Operator at intervals required by TfNSW and the Newcastle Light Rail Operator, and immediately implement corrective actions in the event that the noise or vibration exceeds acceptable limits;
- Rainwater from the roof must not be projected and/or falling into the rail corridor/assets and must be piped down the face of the building which faces the rail corridor. Given the site's location next to the rail property, drainage from the development must be adequately disposed of/managed and not allowed to be discharged into the corridor unless prior approval has been obtained from TfNSW and the Newcastle Light Rail Operator (or the delegated authority); and
- No scaffolding is to be used within 6 horizontal metres of the rail corridor unless prior written approval has been obtained from the Newcastle Light Rail Operator and TfNSW and a physical barrier such as a hoarding or structure provides separation. To obtain approval the applicant will be required to submit details of the scaffolding, the means of erecting and securing this scaffolding, the material to be used, and the type of screening to be installed to prevent objects falling onto the rail corridor.

### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

## 21. Post--construction Dilapidation Report

Prior to the Issue of the Occupation Certificate, a post-construction dilapidation survey shall be undertaken via a joint inspection with representatives from TfNSW, the Newcastle Light Rail Operator and the applicant. The dilapidation survey will be undertaken on the rail infrastructure and property in the vicinity of the project. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The submission of a detailed dilapidation report to TfNSW and the Newcastle Light Rail Operator will be required unless otherwise notified by TfNSW. The applicant needs to undertake rectification of any damage to the satisfaction of TfNSW and the Newcastle Light Rail Operator and if applicable the local City of Newcastle.

21. Reflectivity Report

Prior to the Issue of the Occupation Certificate, the applicant shall demonstrate that lights, signs and reflective materials, whether permanent or temporary, which are (or from which reflected light might be) visible from the rail corridor were installed limiting glare and reflectivity to the satisfaction of TfNSW and the Newcastle Light Rail Operator.

**END OF CONDITIONS**

## ADVISORY MATTERS

- Separate approval for a Groundwater Licence, from the Dept. of Primary Industries (previously known as NSW Office of Water) under the Water management Act 2000, will be required prior to the commencement of any extraction of groundwater.
- Groundwater is not to be discharged into adjoining roads stormwater system, sewerage system etc. without the controlling authority's approval and/or owner's consent/s. Approval from the controlling authority and any requirements of the approving authority is to be complied with prior to the commencement of any extraction of groundwater.
- Any proposed business identification sign or advertising sign should be designed in accordance with the provisions of Newcastle Development Control Plan 2012 and be the subject of a separate Development Application approved prior to erection or placement in position.
- Any necessary alterations to public utility installations are to be at the developer/demolisher's expense and to the requirements of both City of Newcastle and any other relevant authorities. City of Newcastle and other service authorities should be contacted for specific requirements prior to the commencement of any works.
- Prior to commencing any building works, the following provisions of Division 6.2 of the *Environmental Planning and Assessment Act 1979* are to be complied with:
  - a) A Construction Certificate is to be obtained; and
  - b) A Principal Certifier is to be appointed for the building works and City of Newcastle is to be notified of the appointment; and
  - c) City of Newcastle is to be given at least two days notice of the date intended for commencement of building works.
- Prior to the occupation or use of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the proposed development. An application for an Occupation Certificate must contain the information set out in Clause 149 of the *Environmental Planning and Assessment Regulation 2000*.
- A copy of the final Fire Safety Certificate (together with a copy of the current fire safety schedule) is to be given to the Commissioner of NSW Fire Brigades and a further copy of the Certificate (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.
- An annual Fire Safety Statement in the form described in Clause 175 of the *Environmental Planning and Assessment Regulation 2000* is to be submitted to City of Newcastle and a copy (together with a copy of the current fire safety schedule) is to be given to the Commissioner of New South Wales Fire Brigades. A further copy of the Statement (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.
- It is an offence under the provisions of the *Protection of the Environment Operations Act 1997* to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ('*on-the-spot fine*') or prosecution.

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

**SCHEDULE 3**

**REASONS FOR THE DETERMINATION & CONSIDERATION OF COMMUNITY VIEWS**

The determination decision was reached for the following reasons:

- The proposed development, subject to the recommended conditions, is consistent with the objectives of the applicable environmental planning instruments, being; *Newcastle Local Environmental Plan 2012* and applicable State Environmental Planning Policies.
- The proposed development is, subject to the recommended conditions, consistent with the objectives of the Newcastle Development Control Plan 2012.
- The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality.
- The proposed development has appropriate management and mitigation of impacts through conditions of consent.
- The proposed development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments.
- The proposed development is a suitable and planned use of the site and its approval is within the public interest.
- The proposed height of buildings development standard variation, made under clause 4.6 of the Newcastle Local Environmental Plan 2012, has been considered and accepted.

**REASONS WHY THE CONDITIONS HAVE BEEN IMPOSED**

The following conditions are applied to:

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

**Attachment C**

THE CITY OF NEWCASTLE



Report to Development Applications Committee Meeting on 17 September 2019

**PROCESSING CHRONOLOGY**

**DA2019/00247 - 352 Hunter Street Newcastle**

21 November 2018 - First visit to UDCG (pre lodgement)

21 February 2019 - Second visit to UDCG

5 March 2019 - Application lodged

08 March 2019 - Public notification

23 August 2019 – Amended information submitted

04 September 2019 – Additional engineering information submitted