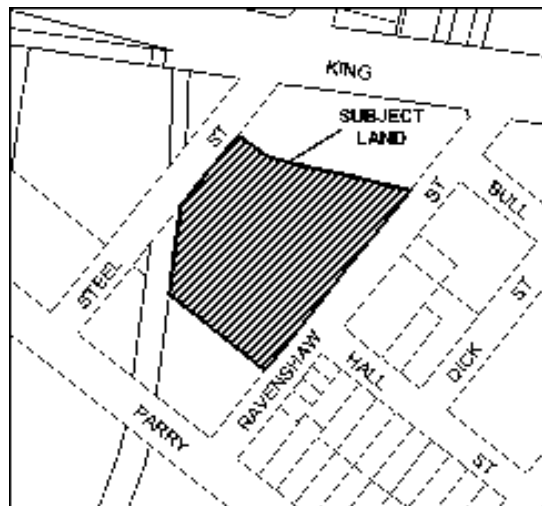


JRPP No:	Item 1 (2009HCC006)
DA No:	DA 09/1039
PROPOSED DEVELOPMENT	23 Steel Street, Newcastle West – Alterations and Additions to approved mixed use retail/commercial/residential development, including additional retail space, provision of a gym/fitness centre and an additional level of parking with commercial tenancies along the Ravenshaw Street frontage.
APPLICANT:	Gennie Holdings
REPORT BY:	Newcastle City Council
CONTACT:	DREW BULMER / STEVEN MASIA
TELEPHONE:	4974 2793 / 4974 2747

Assessment Report and Recommendation

*On 4 August 2006 Council approved the erection on the site of a mixed commercial/residential building comprising of a 2-level retail, commercial, carpark podium with upper level mixed commercial and residential development incorporating a seven cinema theatre complex, 7x2-storey townhouses and two residential towers (1x6-storey and 1x9-storey) containing a total of 11x1-bedroom, 88x2-bedroom and 32x3-bedroom dwelling units (total of 131 residential units) at 23 Steel Street, Newcastle Wes (DA05/1266). A copy of the approved development (as modified) is attached at **Attachment D**.*



Subject Land: Map 2 – G7 as Gregory's Street Directory, 27th Edition

The subject application has been received seeking consent for alterations and additions to the approved retail/commercial/residential development presently under construction, including additional retail space, provision of gym, deletion of four of the cinemas, deletion of the residential vehicular access from Ravenshaw Street and additional parking with commercial tenancies along the Ravenshaw Street frontage.

Following ongoing concerns raised by Council's Urban Design Consultative Group (SEPP 65 panel) in relation scale of the podium, built form, landscaping, amenity, safety and security and aesthetics the applicant submitted two amended proposals in response these issues. The changes predominantly involved amended detailing of the facades, increased green wall landscaping and an awning to Ravenshaw Street.

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

The proposed development has a Capital Investment Value in excess of 10 million dollars and accordingly under the State Environmental Planning Policy (Major Project), 2005 the application is to be determined by the Joint Regional Planning Panel (JRPP).

The proposed development has been notified in accordance with Council's Public Notification policy and 6 letters of objection have been received in response. The objectors' concerns include:

- *Excessive bulk and scale*
- *Traffic impacts*
- *Overshadowing*
- *Noise impacts*

*Details of the submissions received are summarised at Section 3.0 of **Part II** of this report and the concerns raised are addressed as part of the Environmental Planning Assessment at Section 4.0.*

Issues

- Whether the development is acceptable in relation to the design quality principles under State Environmental Planning Policy No 65—Design Quality of Residential Flat Development.
- Whether the development is acceptable in relation to the development standards of the Newcastle City Centre Local Environmental Plan 2008.
- Whether the development is acceptable in relation to the guidelines of the Newcastle Development Control Plan 2005.
- Whether the development is acceptable in relation to amenity impacts upon surrounding properties.

Conclusion

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

Accordingly, it is recommended that the application be approved on the basis of the amended plans, subject to the nominated conditions of consent.

Recommendation

The application for alterations and additions to approved retail/commercial/residential development, including additional retail space, provision of gym, deletion of four of the cinemas, deletion of residential vehicular access from Ravenshaw Street frontage, additional parking with commercial tenancies along the Ravenshaw Street frontage and use of cinemas as an entertainment venue to provide an overall development consisting of:

A four level retail/commercial/carpark podium with additional basement parking level and commercial/residential development above podium incorporating a five cinema theatre complex (entertainment venue), 7x2-storey townhouses and two residential towers (1x4-storey and 1x7-storey) containing a total of 17x1-bedroom; 49x2-bedroom and 26 x 3-bedroom (92 total) dwelling units;

be approved and consent granted, subject to compliance with the conditions set out in the draft schedule of conditions attached at **Attachment B**.

Part II

1.0 THE SUBJECT SITE

The subject property comprises Lot 1 DP1060087, 23 Steel Street, Newcastle West. The site is irregular in shape having an area of approximately 1.09 hectares with frontages of 54.66 metres and 137.98 metres to Steel and Ravenshaw Streets, respectively. The site also has a 52.90 metre frontage to the Cottage Creek concrete stormwater channel that forms part of the south-western side boundary. Approximately 50% of this adjacent channel is covered by a concrete slab that forms part of the car parking area of the adjacent Roads and Traffic Authority (RTA) premises.

The subject site is occupied by a partially constructed mixed use development approved under DA05/1266. Land on the corner of Ravenshaw and Parry Streets, adjacent to the south-western boundary of the subject property is occupied by a Housing NSW aged persons' unit complex, with the RTA Motor Registry on the Steel and Parry Street corner. The land to the north is occupied by a McDonalds drive-in and take away fast food outlet, with the Marketown Shopping Centre (in the same ownership) on the opposite side of Steel Street to the west, and commercial/residential development on the opposite side of Ravenshaw Street, to the east.

2.0 THE PROPOSAL

The applicants seek consent for alterations and additions to the approved retail/commercial/residential development. The submitted Statement of Environmental Effects (SEE) contains the following description of the proposed development.

"The proposal includes alterations and additions to the approved development for the purposes of retail, cinema, commercial and a new gym use.

In this regard, development consent is sought for the use as a gym (Recreational Facility (indoor)) and the reconfiguration of other approved uses.

The existing consent allows for the part use of the development as a cinema. However, given amendments to the Act since consent was granted, particularly with respect to definitions and how they relate to cinemas, consent is formally sought for the use of the cinema component of the development as a place of public entertainment.

Alterations to the finished levels and roof form of the podium including:

- *The deletion of the four approved cinemas along the south-west portion of the podium roof; and*
- *An overall increase in height of approximately 6m and the deletion of the lowermost two levels of Buildings 1 and 3.*

Internally, the following changes are proposed.

- *Ground Floor – The relocation of amenities from the ground floor to the mezzanine level.*
- *Level 1 – Additional retail space in place of half level of parking and the reconfiguration of the approved specialist retail tenancies;*
- *Level 2 (approved Level 1A) – Parking to extend across the whole floor across existing void over specialist retail tenancies below the new Gym/Fitness Centre use;*
- *Level 2A – New level of parking with commercial tenancies proposed along the Ravenshaw Street frontage.*

The reconfiguration of vehicular access and circulation arrangements, including the deletion of the residential driveway off Ravenshaw Street.

No changes are proposed to the footprint of the podium or the residential buildings. No works are proposed below ground level.”

Since the lodgement of the subject development application the Environmental Planning and Assessment Act 1979 has been amended to remove the definition of ‘*place of public entertainment*’. The cinema is now defined under the Environmental Planning and Assessment Regulations 2000 as an ‘*entertainment venue*’. The regulations have prescribed conditions of consent for entertainment venues that have been included in the draft schedule of conditions **Attachment B**.

The current design is an amendment to the originally submitted proposal. Following concerns raised by Council’s Urban Design Consultative Group (UDCG) in relation to scale of the podium, built form, landscaping, amenity, safety and security and aesthetics the applicant submitted an amended proposal which provided for amended detailing of the façade, increased ‘green landscaped wall’, and the inclusion of a pedestrian awning in Ravenshaw Street. The amended design was reconsidered by Council’s UDCG which maintained concern in relation to built form, safety and security, and aesthetics. The applicant subsequently submitted the current amended design in response to these concerns which provided for simplified detailing and colouring to the facades. The applicant has also lodged supplementary plans providing for additional commercial tenancies along the Ravenshaw Street frontage at street level following Council officers concern regarding lack of activation at street level.

The current amended proposal provides for the following overall development:

A four level retail/commercial/carpark podium with additional basement parking level and commercial/residential development above podium incorporating a five cinema theatre complex, 7x2-storey townhouses and two residential towers (1x4-storey and 1x7-storey) containing a total of 17x1-bedroom, 49x2-bedroom and 26 x 3-bedroom (92 total) dwelling units.

A copy of the current amended plans, including 3D images, is attached at **Attachment A**. A copy of the existing approved development DA05/1266 (as modified) is attached at **Attachment D** for comparison.

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

3.0 PUBLIC NOTIFICATION

The original application was publicly notified in accordance with Council’s Public Notification policy for a period of 14 days and 6 submissions were received in response. The current amended plans have not been publicly notified as the amendments do not result in any further impact upon surrounding properties.

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

- a) Excessive bulk and scale – Some objectors have indicated the increased podium height results in a bulkier building and overdevelopment of the site.
- b) Traffic impacts – Increased traffic movements and associated vehicular and pedestrian safety.
- c) Overshadowing impacts on adjacent residential developments.
- d) Noise impacts from plant, exhaust vents, general operation and construction.

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

4.0 ENVIRONMENTAL PLANNING ASSESSMENT

Should the subject application be approved there will be two development consents applying to the same site. The existence of two separate development approvals will create an unusual and arguably complex situation. The applicant has provided the following opinion on this matter.

“The granting of consent to the subject application will result in two consents applying to the same site....The detailed design of the current proposal will allow for the seamless on-going staged construction of the development.

In other words, any works authorised under this consent will be implemented concurrently with the works authorised under consent no. DA05/1266. Where any inconsistencies between the two consents occur, the proposal shall take precedence to the extent of any such inconsistency. This will ensure the orderly development of land with respect to the two consents applying to the land, a condition of consent may be imposed to this effect.

Whilst Council may consider this a complex means of achieving the desired built outcome, the proposed modifications to the approved development are clearly set out in the application for the purposes of assessment, whilst the responsibility to ensure that construction certification is consistent with the two consents is ultimately a matter for the applicant and the Principal Certifying Authority.”

Legal advice was sought by Council officers in relation to the nature and scope of assessment required for the subject development application. The legal advice agrees that under the Environmental Planning and Assessment Act 1979 it is open to an applicant to modify a development approval via a new development application. In terms of the scope of assessment required the advice concluded:

“..we think the matters to be considered by the JRPP in its assessment of the DA must relate to the substantive development as a whole having regard to the relevant matters for consideration listed in section 79C including the planning regime operating at the time of determination. It must not merely focus on the particular amendments sought to the consent.”

It was also advised:

“It is noted that the existence of the Consent (i.e. DA05/1266), which has been physically commenced, will in our view constitute a relevant consideration under section 79C(1)(e) as a matter of public interest.”

The application has therefore been assessed as a whole having regard to the relevant matters for consideration under the provisions of Section 79C(1) of the Environmental Planning & Assessment Act, 1979, including having regard to the already approved development on the site (DA05/1266), currently under construction.

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

4.1.1 State Environmental Planning Policies (SEPP)

- a) State Environmental Planning Policy No 65—Design Quality of Residential Flat Development (SEPP 65)

The provisions of SEPP 65 requires that the consent authority take into consideration the design quality of the residential flat development when evaluated in accordance with ten design quality principles, being:

- Context
- Scale
- Built form
- Density
- Resource, energy and water efficiency
- Landscape
- Amenity
- Safety and security
- Social dimensions and housing affordability
- Aesthetics

In this regard, SEPP 65 also requires the consent authority to consider the advice of the relevant design review panel concerning the design quality of the residential flat development. Council's design review panel, the 'Urban Design Consultative Group' (UDCG) have, reviewed the proposed development on three occasions, against the ten design quality principles. A copy of the UDCG advice is contained at **Attachment E**. The UDCG were generally comfortable with the proposal in terms of the design quality principles of context, resource and energy efficiency and social dimensions. The UDCG have however raised concern in relation to the remaining design quality principles.

(i) Scale:

In relation to the originally proposed design the UDCG were generally comfortable with the overall height of the development particularly given the height was not being changed. The Group did however raise concern in relation to the increased height of the podium section in two aspects.

"There are two separate but interrelated issues, the scale of the development at pedestrian level, and its broader impact in the city. As to the first, the height and form of the podium is critical, particularly in Ravenshaw Street. Whereas the podium in the approved scheme was of a more comfortable height to the RL 15.00 level, the amendment seeks to raise the podium by seven metres to RL 22.00 and approximately RL 23.00 to the top of the balustrade. This would be considerably less satisfactory and would create a bland and dominant wall effect in the street which would be unsympathetic to the scale of the street and the established buildings opposite. The effect might perhaps be ameliorated to some extent by introducing substantial variation in the height and form of the façade elements, and by providing a continuous awning above the footpath.

As to the second issue the main impact would be that of the very large and assertive party wall to the north which at approximately seven stories in height would be inconsistent with the character of the area and the city."

In response to these concerns the applicant submitted an amended design which included the following changes:

- Pedestrian awning within Ravenshaw Street.
- Greater detailing to the Ravenshaw Street facade.
- Increased vertical landscaping to the northern facade (adjacent to McDonalds).
- Integration of the eastern tower lift/entry section down through the podium to enable 'grounding of the tower and identification of the entry point'.

The UDCG reconsidered the amended design and provided the following comment

“An awning has been provided in Ravenshaw Street which will considerably improve amenity and ambience for pedestrians. The eastern façade addressing this street has been significantly developed and articulated and in principle has achieved a better outcome, -given the height and lack of activation, both of which remain matters of concern.”

In response to these ongoing concerns the applicant submitted the current amended design which provides for a more geometric detailing and simplified colouring, along with additional windows within the eastern facade facing Ravenshaw Street at the ‘back of house’ area within the major retail tenancy.

The UDCG reconsidered the current amended design and now consider the scale reasonable.

“The substantial increase in height of the podium which is sought by the amended application has posed the challenge of not making the towers appear somewhat truncated and ‘stumpy’. The solution proposed is to integrate the design of the podium and tower elements, and it is considered that this has been reasonably resolved.”

The scale of the development, particularly the podium section, is now considered to be acceptable. The issue of activation of the street is now also considered acceptable as discussed further below under the design principle Safety and Security.

(ii) Built Form

In relation to the original proposal the UDCG raised the following concerns:

“The nature of the forms now proposed is problematic. Rather than the conventional and usually acceptable solution of taller towers rising above a base which relates to the pedestrian scale, the proposed changes would result in the taller forms appearing stunted and the base being uncomfortably dominant. As proposed there appears to be little relationship between the towers and the base, particularly in the case of the eastern tower. A better resolution is proposed for the western tower where the base and taller residential tower are integrated to some extent, although here the detailed architectural forms are unduly complex. On the western side the development site fronts existing low-scale commercial/retail development on a large site which it must be assumed is likely also to be redeveloped to similar scale in the future. For this reason the relationship here is of less concern.”

Deletion of four cinemas and re-planning of the cinema area generally has resulted in some increase in setbacks at the upper level of the south facade, with some lessening of adverse impacts on the adjoining residential units to the south. The outcome in this respect is considered to be reasonable and acceptable.”

In response to these concerns the applicant submitted an amended design which included the following changes:

- Pedestrian awning within Ravenshaw Street.
- Greater detailing to the Ravenshaw Street facade and simplification of detailing to the Steel Street facade to provide a tripartite composition.
- Integration of the eastern tower lift/entry section down through the podium to enable ‘grounding of the tower and identification of the entry point’.

The UDCG generally felt the amendments had assisted to resolve the built form issues, particularly the integration of the eastern tower into the base had assisted in the issue of a relatively ‘squat’ building on a high base.

(iii) Density

The UDCG raised concern that the parking areas are excluded from the density calculations, as well as the extent of the service areas and very high floor to ceiling dimensions in the retail and cinema areas collectively contribute to the excessive visual bulk of the development.

While it agreed that these factors do contribute to the visual bulk the means of calculating density (FSR) is governed by the Newcastle City Centre Local Environmental Plan 2008. The proposal complies with the maximum FSR for the site and accordingly the actual density of the proposed development could not reasonably be considered excessive. It is considered that the more critical issues are whether the scale and built form are appropriate for the density proposed. As discussed above the scale and built form are now considered acceptable.

(iv) Landscaping

The UDCG noted that the landscaping on site and street tree planting were unchanged from the existing approved development and considered that the landscaping would provide an attractive component to the scheme. The group did note that the extent of the 'vertical landscaping' on the northern facade could be proportionally increased to reduce the visual impact of the increased podium wall on this facade.

In response to these comments the applicant submitted an amended design which provided for a larger green landscaping wall to the northern facade. In respect of the amended design the UDCG indicated that the increased green wall should '*significantly enhance the appearance of the development until such time as the adjoining site is redeveloped.*' The landscaping of the proposed amended development is therefore considered satisfactory.

(v) Amenity

The UDCG noted that the amenity of the proposed residential units would be essentially unchanged from the existing approved development and were therefore considered acceptable. The Group did raise concern in relation to possible increased overshadowing impacts and also impacts on the spatial character of the street.

The applicant has submitted detailed shadow diagrams which demonstrate that overshadowing impacts from the increased podium height are generally increased however still comply with the minimum requirements as outlined under the Residential Flat Design Code. Overshadowing impacts are discussed in greater detail in Section 4.2.2 of this report.

In response to the issue of spatial character the applicant submitted amended plans which provided for a pedestrian awning along the Ravenshaw Street frontage and greater detailing to the podium facades, particularly within Ravenshaw Street. The applicant has also submitted supplementary plans that provide for additional commercial tenancies along the Ravenshaw Street frontage at street level. It is considered that these amendments have adequately resolved the issue of spatial character of the street.

(vi) Safety and Security

In relation to the originally submitted design the UDCG raised concern in relation to lack of activation of the Ravenshaw Street frontage, noting that other than the residential entry that there are no active pedestrian uses and that the commercial spaces were too high above the street to provide active passive surveillance.

The current amended plans do provide some additional windows and detailing above street level; however they do not adequately address this issue with a lack of active uses at actual street level. The applicant initially argued that the entry points and vehicular access and egress provide adequate activation. Following continued concern raised by the UDCG and Council officers in relation to lack of activation at street level the applicant has submitted supplementary amended plans which provide for additional commercial tenancies at street level. While not providing an entirely active frontage it is considered that these commercial uses along with vehicular access/egress should provide adequate activation at street level for a development of this nature. Safety and security is now considered acceptable.

(vii) Aesthetics

The primary concern of the UDCG related to the visual bulk of the podium and the lack of integration with the towers above.

In response to these concerns the applicant submitted an amended design which included the following changes:

- Pedestrian awning within Ravenshaw Street.
- Greater detailing to the Ravenshaw Street facade and simplification of detailing to the Steel Street facade to provide a tripartite composition.
- Integration of the eastern tower lift/entry section down through the podium to enable *“grounding of the tower and identification of the entry point”*.

The UDCG felt these changes went some way to resolving the issues, particularly the integration of the eastern tower with the base. However the Group maintained concerns in relation to the excessively complex nature of the detailing and colours along with the apparent excessive advertising signs.

In response to these continual concerns the applicant submitted a further amended design which provided for a more consistent geometry to the detailing, simplified colouring and reduced signage.

The UDCG reconsidered the final (current) amended design and advised that the signage is now considered reasonable, so to is the detailing to both the Ravenshaw Street and Steel Street facades. The aesthetics of the current amended design are now considered acceptable.

In summary, while it would be desirable to have greater activation, particularly at street level, within Ravenshaw Street, the final amended design results in a reasonable outcome for a development of this nature. The development is now considered satisfactory in relation to the ten design quality principles of SEPP 65.

The proposal is not contrary to any other relevant State Environmental Planning Policies including SEPP 64 – Advertising and Signage and SEPP 71 – Coastal Protection.

4.1.2 Newcastle City Centre Local Environmental Plan 2008

The subject property is included within the B4 Mixed Use zone under the provisions of the Newcastle City Centre Local Environmental Plan (NCCLEP), 2008, within which zone the proposed development is permissible with Council's consent. The proposed development is also consistent with the zone objectives.

- Height of Buildings - Clause 21

The LEP nominates a maximum height limit of 35m.

The proposed development has a height of approximately 46m and therefore does not comply. The actual height is not varied from the existing approved development DA05/1266 and the applicant is not proposing any changes above the 35m height limit. Nevertheless legal advice has indicated that the assessment must apply to the development as a whole and cannot just apply to the specific changes sought under the DA. Accordingly an exemption from development standards is required pursuant to Clause 28 of the LEP which is discussed in greater detail following.

The provisions of the NCCLEP 2008 relating to building height constitute a 'development standard' and Clause 28 of the LEP allows an applicant to formally request that consent be granted to a proposal notwithstanding that it would contravene a development standard.

Subclause 28(3) requires that the applicant's request justify the contravention of the development standard by demonstrating:

- "(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard."*

Subclause 28(4) stipulates that consent *"must not be granted for development that contravenes a development standard unless:*

- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by Subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Director General has been obtained."*

For the information of the JRPP, the objectives of the building height control set out under Clause 21 are:

- (a) To allow sunlight access to key areas of the public domain by ensuring that further overshadowing of certain parks and community places is avoided or limited during nominated times,*
- (b) To ensure that the built form of the Newcastle city centre develops in a coordinated and cohesive manner,*
- (c) To ensure that taller buildings are appropriately located,*
- (d) To nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,*
- (e) To ensure the preservation of view corridors that are significant for historic and urban design reasons.*

It is considered that the applicant's written request seeking to justify the contravention of the development standard (**Attachment F**) has adequately addressed the matters under subclause 28(3). Council's legal advice has indicated that it is reasonable to place weight on the existing approved development under construction. The height is not being varied from the approved development (DA05/1266) and it is considered that the height generally satisfies the height objectives under Clause 21.

On 15 December 2009 the Director General granted concurrence to the height exemption.

In summary it is considered reasonable in the circumstances of the case to grant an exemption from the height development standard.

- Floor Space Ratio - Clause 23

The LEP allows a maximum FSR on the site of 3:1 if the proposed development excludes any "*commercial activity*" and 4:1 if the development is used only for "*commercial activity*". In the case of development that comprises a combination of "*commercial activity*" and one or more other activities, the maximum allowable FSR on the site is determined by means of a specified formula that takes into account the proportion of floor space devoted to the respective uses. "Commercial activity" is defined under the LEP as the use of a building "*for the purposes of office premises, retail premises, business premises, hotel accommodation (but not hotel accommodation that is subdivided under a strata scheme) or other like uses or a combination of such uses.*"

Total commercial GFA = 22,756m²
Total residential GFA = 10,149m²
Total GFA = 32,905m²

(Equates to 69% commercial, 31% residential)

Maximum FSR = ((3 x 31/100) + (4 x 69/100)) = **3.69:1**

Site area is 10,350m².

Proposed FSR = (32,905/10,350):1 = **3.18:1**

Clause 26(3) of the NCCLEP requires parking in excess of the Development Control Plan (DCP) requirements to be included in GFA. The carparking element of the DCP indicates that Council may vary the carparking rates of the DCP on the circumstances of the case. Discussions with Council's traffic engineer indicates that the rate of parking proposed by the applicant for the nature of this development is actually more appropriate than the DCP 'blanket' rate of 1 space per 60m² GFA which is typically applied to development within the city centre. Therefore, on merit the proposed development provides essentially the correct amount of parking and therefore the FSR on merit should not be affected. Nevertheless, an assessment of the impact of additional GFA based upon 1 space per 60m² GFA has been carried out to ensure the proposal still complies.

The DCP requires a total of 110 spaces for the residential component and 120 spaces provided, therefore 10 spaces excess. This equates to an extra floor area of 129.6m².

The DCP requires 380 spaces for commercial and 625 spaces provided, therefore 245 spaces excess. This equates to an extra floor area of 3,439m²

The total additional excess parking area to be included in GFA is 3,569m². This gives a total floorspace is 36,474m². The proposed FSR when accounting for surplus carparking is (36,474m²/10350m²):1 = **3.52:1**.

Therefore, the proposed development still complies with the maximum FSR of 3.69:1 for the site even when accounting for excess parking.

- Car parking - Clause 26

Subclause 26(1) of the NCCLEP requires carparking in accordance with the following requirements of the Newcastle DCP 2005:

- **Commercial**

Total commercial GFA of 22,756m² at 1 space per 60m² of GFA requires 380 parking spaces.

- **Residential**

17 X 1-Bed at 0.6 spaces per unit = 10.2

49 x 2-bed at 0.9 spaces per unit = 44.1

26 x 3-bed at 1.4 spaces per unit = 36.4

Total units = 90.7 spaces

Visitor parking = 19 spaces

Total residential demand = 110 spaces

The total parking demand is 490 spaces.

The proposed development includes 625 commercial spaces and 120 residential spaces (total 745 spaces) and therefore readily complies

- Building separation - Clause 27

Subclause 27(1) requires buildings that the distance from the proposed building to any other building is not less than 24m at 45m or higher above ground level.

The proposal complies as the eastern (Ravenshaw Street) tower is the only tower over 45m in height. Regardless separation between the two towers within the development is over 24m anyway.

- Ecologically sustainable development - Clause 33

The LEP requires the consent authority to have regard to ESD principles based on a 'whole of building approach' by considering:

- (a) greenhouse gas reduction, and
- (b) embodied energy in materials and building processes, and
- (c) building design and orientation, and
- (d) passive solar design and day lighting, and
- (e) natural ventilation, and
- (f) energy efficiency and energy conservation, and
- (g) water conservation and reuse, and
- (h) waste minimisation and recycling, and
- (i) reduction of car dependence, and
- (j) potential for adaptive reuse.

The proposed development supports urban consolidation which generally supports the principles of ESD. The proposed residential units have generally good solar orientation and natural ventilation, thereby promoting energy efficiency. The stormwater management plan for the development reuses harvested water on-site and conditions have been recommended to ensure adequate motorcycle and bicycle parking to encourage alternative forms of transport. In summary the proposed development is considered acceptable in relation to ESD principles.

- Design Excellence - Clause 36

This clause applies to new buildings or significant alterations to existing buildings as is applicable in this case.

Subclause 36(2) requires that the proposal exhibit design excellence by having regards to the following matters:

- (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
- (b) whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain,*
- (c) whether the proposed development detrimentally impacts on view corridors identified in Newcastle Development Control Plan 2005,*
- (d) how the proposed development addresses the following matters:*
 - (i) heritage issues (including archaeology) and streetscape constraints,*
 - (ii) the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
 - (iii) bulk, massing and modulation of buildings,*
 - (iv) street frontage heights,*
 - (v) environmental impacts, such as sustainable design, overshadowing, wind and reflectivity,*
 - (vi) the achievement of the principles of ecologically sustainable development,*
 - (vii) pedestrian, cycle, vehicular, service and public transport access, circulation and requirements,*
 - (viii) impact on, and any proposed improvements to, the public domain.*

The critical factor in terms of design excellence is considered to be the form and external appearance of the development in terms of its interface with the public domain. Council's Urban Design Consultative Group (UDCG) have maintained concern as to the appearance of the Ravenshaw Street facade. However, the UDCG do concede that this issue is inherent with the nature of the development proposed being a shopping centre development containing large retail tenancies and parking. It is considered that the most problematic aspect was lack of activation at street level within Ravenshaw Street. The applicant has subsequently submitted supplementary plans dated 23 December 2009 which provide for some additional commercial space at street level. This combined with the residential and commercial entry lobbies is considered to provide sufficient activation for the secondary street frontage of the proposed development. The proposed development also includes a pedestrian awning which will provide improved amenity for pedestrians. In summary the current design is now considered acceptable in relation to the design excellence provisions.

- Development within the coastal zone - Clause 41

The proposed development is considered acceptable in relation to the matters for consideration which are essentially the same matters for consideration as those under SEPP 71.

- Development on flood prone land - Clause 43

The site is subject to flooding. The proposed development does not increase flood risk to the development. Any applicable conditions / requirements in this regard from DA05/1266 are also applicable to this development.

- Heritage conservation - Clause 46

The subject site is located within the Newcastle City Centre Heritage Conservation Area. The consent authority must, before granting consent under this clause, consider the effect of the proposed development on the heritage significance of the heritage conservation area

concerned. Council's Heritage officer has reviewed the proposed development and has raised no concerns or conditions.

4.2 Merit Considerations

4.2.1 Relevant Strategic Policies

The proposed development is considered to be generally consistent with the Newcastle City Centre Vision 2006 being the strategic document that formed the basis of the NCCLEP 2008.

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

The relevant elements of the Newcastle Development Control Plan (NDCP) 2005 are discussed below.

a) Carparking – Element 4.1

The proposed car parking readily complies with the DCP requirements as previously discussed in Section 4.1.2 of this report. The DCP now requires specific parking for motorcycles and bicycles and Council's traffic engineer raised concern regarding the lack of parking in this regard. The applicant has agreed to have these issues addressed via conditions of consent. A condition has been included in the draft schedule of conditions **Attachment B** requiring 15 motor cycle and 35 bicycle parking spaces.

b) Landscaping – Element 4.4

The DCP requires the submission of a landscaping plan for the development. Notwithstanding the landscaping proposal for the site is essentially unchanged from the existing approved development (DA05/1266) other than increased areas of 'green wall'. Accordingly it was not considered necessary to seek another landscaping plan. A copy of the currently approved landscaping plan has been attached at **Appendix A**. The landscaping design includes extensive planting at the podium rooftop level that will provide good levels of amenity for the residential component of the development. Conditions have also been included for street tree planting within Steel and Ravenshaw Street as per the existing approval.

c) City West - Element 6.3

This element provides the principle design guidelines for the City West area in support of the NCCLEP 2008. It is considered that the proposed development is generally satisfactory in relation to the guidelines under this element with the most relevant clauses and any areas of non-compliance discussed in detail below.

- Street frontage heights

The DCP requires a maximum street wall height of 12m to 22m. The Ravenshaw Street wall rises to a maximum height of 19m so complies. The Steel Street wall rises to a maximum of 20m so complies.

- Boundary setbacks and building separation

The podium section of the development is generally proposed to the side boundaries as required by the DCP. Unfortunately, the northern side wall adjacent to the McDonalds restaurant presents an approximately 20m high wall that will be very visible from King Street. The wall is proposed to be covered by a 'green landscaped wall'.

The dominance and detailing of this wall was considered closely by Council's UDCG and the applicant provided amended plans which increased the extent of the 'green landscaping

wall'. The UDCG have advised that the increased green wall should “*significantly enhance the appearance of the development until such time as the adjoining site is redeveloped*”.

In terms of minimum setbacks for the residential component of the development the DCP provides the following guidelines.

Zone	Building height & uses	Front (upper level) setback	Side setback	Rear Setback
Commercial Core & Mixed Use	Residential uses up to 12m height	Street setback	0m	0m
	Residential uses between 12-25m height	6m*	4.5m	4.5m
	- non-habitable rooms - habitable rooms	6m*	9m	9m
	Residential uses between 25-45m height			
	- non-habitable rooms - habitable rooms	6m* 6m*	6m 12m	6m 12m
	Residential uses over 45m height			
	- Non-habitable rooms - Habitable rooms	6m* 6m*	12m 12m	12m 12m

The residential towers of the proposal do not comply with these setbacks. The proposed towers are essentially aligned to the street front instead of the required 6m setback required above podium level. Furthermore, the habitable rooms of the towers should be setback 12m from the northern boundary but are setback 8m and 9m to the west and east towers, respectively.

Nevertheless the front upper level, side and rear setbacks of the residential towers above podium level are not changed from the existing approved development and on this basis could not reasonably be considered unsatisfactory. It is also noted that Council's UDCG actually felt the towers should be better integrated into the base of the building, a concept that could not readily be achieved if a 6m upper front setback was in place.

The boundary setbacks and building separation are therefore considered acceptable.

- Mixed use buildings and Active street frontages

The DCP requires active street frontages to both Steel and Ravenshaw Street.

Steel Street is the principle entry to the shopping centre within the podium section of the development and provides a highly active street frontage. The Ravenshaw Street frontage however is more problematic being essentially the rear of the shopping centre. The lack of activation has been an ongoing concern raised by the UDCG. The supplementary plans

submitted 23 December 2009 provide some additional active uses at street level on the Ravenshaw Street frontage. While it would be desirable to have a more active frontage the outcome is considered acceptable for a development of this nature. Furthermore the current approved development does not provide an active street front having no commercial at actual street level, so the proposed development is considered an improvement.

- Awnings

The DCP requires continuous street frontage awnings to both Steel Street and Ravenshaw Street frontage. The Steel Street frontage maintains an awning as per the approved development. A new awning has been proposed to Ravenshaw Street which is considered highly desirable for pedestrian amenity.

- Residential development controls

In addition to other controls in the DCP, the provisions in the Residential Flat Design Code associated with SEPP 65 are adopted in the DCP to apply to residential development. In particular, the following:

Part 2

- Site Configuration
- Site Amenity
- Site Access

Part 3

- Building Configuration
- Building Amenity – including daylight access – 70% of units should receive 3 hours sunlight between 9am and 3pm mid winter. In dense urban areas a min 2 hours may be acceptable.
- Building Form
- Building Performance

These matters have generally been considered by Council's UDCG as part of SEPP 65 consideration discussed previously within this report.

The amenity of the residential buildings is essentially unchanged from the approved development (DA05/1266) and therefore no further assessment is considered necessary. The issue of overshadowing has been further discussed in Section 4.2.3 of this report following.

- Heritage items and heritage conservation areas

The subject site is within the Newcastle City Centre Heritage Conservation area. As previously discussed in Section 4.1 of this report Council's Heritage Officer has reviewed the proposed development and raised no objection or special conditions.

The proposed development is considered acceptable in relation to any other relevant elements of the NDCP 2005.

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

a) Height and Bulk

Objection was raised to the proposed development on the grounds that the increased podium height results in a bulkier building and an overdevelopment of the site.

Comment

It is agreed that the increased podium height results in a bulkier building. However the podium height does comply with the streetwall height nominated under the Newcastle DCP 2005 and the FSR complies with the NCCLEP 2008. Therefore the development could not reasonably be considered too high or an overdevelopment of the site per se. Nevertheless the detailing and activation of the higher facades has been an issue with the proposed development and was not considered acceptable under the originally submitted proposal. As discussed in Section 4.1 of this report the applicant has submitted a number of amended proposals that have progressively improved the detailing and activation aspects of the higher façade. The final amended design is considered to have adequately resolved these issues to an acceptable level and the development is now generally considered satisfactory in relation to height and bulk.

b) Overshadowing

Objection was raised to the proposed development on the grounds that it would increase overshadowing impacts on surrounding residential properties.

Comment

The issue of overshadowing has been assessed against the guidelines of the Newcastle DCP 2005 which adopts the solar requirements from the Residential Flat Design Code. Therefore the DCP requires that 70% of the proposed units should receive 3 hours sunlight between 9am and 3pm in mid winter. In dense urban areas a minimum of 2 hours may be acceptable. The subject area has a height limit of 35m and is therefore considered a dense urban area where 2 hours should be acceptable. While these requirements technically apply to the subject development itself it is considered reasonable that the development should maintain equivalent solar access to adjoining properties.

The applicant has submitted detailed shadow diagrams which have been reviewed against those submitted for the existing approved development to provide a comparison. There are 3 nearby existing residential developments that are affected by overshadowing from the proposed development.

- Townhouses at 16 to 22 Ravenshaw Street (south east of site) – The shadow diagrams indicate that the north-west windows of these townhouses facing Ravenshaw Street will receive direct sunlight from at least 10am but will be overshadowed from 12 noon onwards. These windows will therefore not receive 3 hours of sunlight but should receive approximately 2 hours of sunlight. The current approved development design does provide in excess of 3 hours of sunlight to the same windows. Notwithstanding a review of the building plans for this development identified that these windows are to bedrooms. The principle concern for this development is maintaining sunlight to central void areas which permit solar access into the living areas at ground level. These void areas will maintain at least 3 hours of sunlight and therefore the overshadowing on this development is considered to still be within acceptable limits.
- Department Housing townhouses at 128 Parry Street (south of site) – The shadow diagrams in plan view demonstrates that overshadowing will be slightly improved from the current approval under DA05/1266. This would be expected due to the deletion of the southern cinemas.
- Mixed use residential flat building (Westcourt apartments) at 4 Ravenshaw Street (east of site) – There are 18 units facing Ravenshaw Street that will be impacted by the development. The existing approved development maintains at least 3 hours of sunlight to 61% of these units. All others maintain at least 2 hours. Therefore the existing

approved development complies as it provides over 70% of units with at least 2 hours sunlight with a fair proportion of units receiving at least 3 hours. If one were to take the view to analyse total units within the Westcourt apartment building then under the existing approved development on the subject site the Westcourt apartments would still have at least 70% of total units within the entire building receiving at least 2 hours of sunlight.

The proposed development would result in only 22% of units facing Ravenshaw Street maintaining 3 hours of sunlight. However 89% would still receive at least 2 hours of sunlight. Two of the units in the bottom south-west corner will receive below 2 hours of sunlight (11% of total). If one were to take the view to analyse total units within the Westcourt apartment building under the proposed development the Westcourt apartments would still have 73% of total units within the building receiving at least 2 hours of sunlight.

In summary the overshadowing impacts increase in some aspects compared to the approved development under DA05/1266 which is undesirable; however given that at least 70% of units within the building still receive at least 2 hours of sunlight in accordance with the Residential Flat Design Code it is concluded that the overshadowing impacts are still within acceptable limits.

c) Noise

Council's Compliance Services Unit (CSU) has reviewed the issue and noise impacts and advised the following:

"The CSU has reviewed this application, including the submitted noise impact assessment, and is satisfied that the proposed amendments will not significantly alter the potential environmental and acoustic impacts of this development. The impacts have already been assessed and the development approved subject to a number of conditions to ensure that unreasonable acoustic impacts to nearby residents are prevented.

A number of objections have been raised in relation to this application regarding potential acoustic impacts which can be summarised as;

- 1. An increase in traffic and deliveries,*
- 2. A change to the position of ventilation plant room and louvers which could cause increased impacts.*

Regarding the first matter, the submitted acoustic report assesses the issue of increased traffic generated with the amended development in accordance with applicable DECCW (NSW EPA) criteria. The increase in noise generated by the development via such changes as larger parking areas is predicted to be imperceptible at most nearby sensitive receptors or just perceptible during peak times at some receptors and in accordance with appropriate guidelines. The CSU therefore considers that this matter has been satisfactorily addressed.

In relation to the second matter, in accordance with the consent condition 3.32 of DA 05/1266 an acoustic consultant is required to assess all plant on site and recommend any acoustical treatment required to ensure compliance with appropriate noise criteria prior to the issue of a construction certificate. Also a compliance report is also required to be carried out prior to the issue of the occupation certificate. As such the CSU is satisfied this matter has been satisfactorily addressed.

An objection was also made regarding potential noise impacts on residents along Ravenshaw St from the pumping out of the grease arrestor. This aspect of the original DA has not changed and so has already technically been assessed as part of DA 05/1266. No conditions have been included which relate to the pump out of the grease

arrestor as part of the consent of that DA. If deemed appropriate a condition could be applied to this DA to address this matter and is included below for consideration."

While the grease arrestor is unchanged it is still considered reasonable under this DA to further consider the issue and include an additional condition within the draft schedule of conditions **Appendix B** to further address the matter.

d) Traffic/Parking

Objection was raised to the proposed development on the grounds that it would create adverse traffic impacts upon the local road network.

Comment

The applicant has submitted a traffic and parking report that indicates that the additional commercial floor space will marginally increase traffic movements within King Street, Parry Street, Steel Street and Ravenshaw Street by up to some 100 to 150 vehicles per hour two-way during the peak Saturday period. The report has also analysed the impacts on the local road network. The traffic and parking report was considered by the Roads and Traffic Authority RTA (in accordance with SEPP (Infrastructure) 2007) and a Council traffic engineer. The RTA requested additional traffic modelling which the applicant subsequently submitted. Both the RTA and Council's traffic engineer have raised no concern in relation to the performance of the local road network and support the proposed development subject to conditions essentially the same as those applying to the existing approved development DA05/1266.

The proposed development is considered satisfactory in relation to the vehicular parking requirements under the Newcastle DCP 2005. It would therefore be unlikely to generate any adverse on-street parking demand. Council's traffic engineer did raise concern in relation to the proposals lack of provision for motorcycle and bicycle parking however these matters are addressed as conditions of consent in the Draft Schedule of conditions **Attachment B**.

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

a) Social Impacts

The SEE states:

"The proposed amendments will enforce the following key social benefits of the approved development:

- Access to retail facilities in convenient locations, reducing car dependency;*
- Employment generation;*
- Expansion of retail and entertainment facilities;*
- A gym to promote the health of local residents;*
- Contribution to the revitalisation of the Newcastle City Centre."*

It is considered that the social impacts will be essentially unchanged from the existing approved development on the site. It is noted that the existing approval on the site requires a Security Management Plan (SMP) for the proposed retail shopping mall, cinema complex, associated undercover carpark and the pedestrian pathway through the site (extending from Ravenshaw Street to Steel Street) being prepared by a suitably qualified security consultant and implemented prior to the commercial component of the proposed development being occupied. The required SMP is to assess the need for CCTV, and outline strategies for fostering safer communities and training of security staff and is to be reviewed by the Centre Management on an annual basis. The approval also includes the requirement for a Youth Protocol being developed as part of the Centre Management Strategy for the proposed

retail/cinema centre, in order to facilitate and foster access to the centre by youth in a manner that minimises the potential for conflicts between differing user groups.

These requirements have been replicated within the draft schedule of conditions **Attachment B**.

In relation to Section 94A contributions the applicant has requested that the contribution be based upon the difference in construction cost between the existing approved development and the proposed development. Council's Section 94 officer supports this approach to the Section 94A levy. An appropriate condition has been included with the draft schedule of conditions **Attachment B** to this effect.

b) Economic Impacts

The applicant has submitted an economic impact assessment which identifies that the increased retail floorspace within the development will have minimal impact upon other retail centres within Newcastle.

"The highest incremental level of impact assessed on an individual centre or precinct is -6.6% or -\$2.6 million for non-food at Waratah. Other impacts of less than 3% for non-food will be experienced by discount department store based centres at Kotara, Charlestown and Jesmond. However, in all cases, these impacts are considered relatively minor."

The report adds:

"A number of benefits would accrue to the local community due to the development of the Steel Street centre including:

- *Significant new ongoing employment resulting in a net increase of 215 full time jobs(direct and indirect) as a result of the change in floorspace over and above the approved DA, and*
- *Other benefits such as:*
 - *Strengthening of the Steel Street centre precinct as a recognised retail destination for residents, visitors and workers in and around the Newcastle City Centre;*
 - *Addition of a discount department store which would increase the choice and convenience for residents, and*
 - *Provision of an additional supermarket which would encourage price competitiveness.*

Overall, it is assessed that the development of the Steel Street centre and the altered plans would deliver a significant net community benefit."

The proposed development is generally consistent with Chapter 6 – Economic Development of the *Newcastle City Centre Vision 2006*, being the strategic document that formed the background for the NCCLEP 2008. The document does however outline an issue in terms of retail competitiveness;

"A further task lies in retaining and enhancing the current retail opportunities of the centre. Competition with regional shopping centres, such as Garden City (Westfield) and Charlestown Square may be difficult. Furthermore, developments on the city fringe – including the expansion of grocery retail at Market Town – could draw everyday shopping away from the Hunter Street Mall."

While the City Centre Vision recognised this potential issue of competition with the revitalisation of the mall area the subsequent LEP did not place any zoning restrictions on the subject site and in fact provides for an FSR incentive to provide commercial/retail

development on the site. Accordingly the proposed development could not reasonably be considered an inappropriate land use from an economic perspective.

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

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

The site is affected by flooding. The proposed development does not alter the floor levels or access arrangements to the development. Nevertheless appropriate conditions of consent have been recommended within the Draft Schedule of conditions **Appendix B** to appropriately manage flood risk, including minimum floor levels.

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

The subject site is generally considered to be well located for the proposed development serving the surrounding commercial and residential populations and is well serviced by public transport.

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

This report has addressed the various concerns raised in the submission/s received in response to the Public Notification and referral procedures under the Act and Regulation.

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

- **Sustainability**

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

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

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

- **General**

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

ATTACHMENTS

- Attachment A:** Plans and elevations and 3D images of proposed development as amended – 23 Steel Street, Newcastle West.
- Attachment B:** Draft Schedule of Conditions - 23 Steel Street, Newcastle West.
- Attachment C:** Processing chronology – 23 Steel Street, Newcastle West.
- Attachment D:** Plans and elevations and 3D images of the existing approved development (as modified) DA05/1266 – 23 Steel Street, Newcastle West.
- Attachment E:** Advice from Council's Urban Design Consultative Group – 23 Steel Street, Newcastle West.

Attachment F: Applicants written request seeking exemption to the height development standard – 23 Steel Street, Newcastle West.

ATTACHMENT B - DRAFT SCHEDULE OF CONDITIONS
DA 09/1039 – 23 STEEL STREET, NEWCASTLE WEST

1 Conditions Restricting the Terms of Consent

- 1.1 The proposed development being carried out strictly in accordance with the details set out on the:
- Submitted amended architectural plans by Krikis Tayler Architects, Job No. 04D, Drawing Nos. DA00 – DA15, received 7 December 2009 as further amended by supplementary drawings dated 22 December 2009 in respect of additional commercial suites on Ravenshaw Street;
 - the Statement of Environmental Effects prepared by Urbis dated August 2009;
 - the applicant's written submissions dated 4 November 2009, 7 December 2009, 23 December 2009; and
 - on the Application form,

except as otherwise provided by the conditions of this consent.

Any inconsistency that may arise between the existing approved development DA05/1266 and this approval DA09/1039, this approval shall take precedence to the extent of the inconsistency.

(Note: Any proposal to modify the terms or conditions of this consent whilst still maintaining substantially the same development to that approved, will require the submission of a formal application for Council's consideration in accordance with the provisions of Section 96 of the Environmental Planning and Assessment Act, 1979.)

Reason: To confirm and clarify the terms of Council's approval.

- 1.2 Any operational aspects of the proposed development are to comply with the Statement of Environmental Effects prepared by Urbis, dated July 2005 (as approved under DA05/1266) except as otherwise provided by the conditions of this consent.

Reason: To confirm and clarify the terms of Council's approval.

- 1.3 Deliveries and waste collection being carried out only within the designated loading dock area.

Reason: To confirm the terms of the consent and to ensure that noise generating activity is confined to an enclosed area.

- 1.4 The use of the loading dock area being restricted to between 7am and 9pm, Monday to Saturday, and between 9am and 8pm, Sundays and Public Holidays.

Reason: To confirm the terms of the consent and to ensure that noise generating activity is confined to reasonable hours.

- 1.5 The collection of shopping trolleys within the property and surrounding streets being restricted to between 7am and 10pm, Monday to Saturday, and between 8am and 10pm, Sundays and Public Holidays.

Reason: To confirm the terms of the consent and to ensure that noise generating activity is confined to reasonable hours.

- 1.6 Cleaning activities within the car parks being restricted to between 7am and 10pm, Monday to Saturday, and between 8am and 10pm, Sundays and Public Holidays.

Reason: To confirm the terms of the consent and to ensure that noise generating activity is confined to reasonable hours.

- 1.7 The grease trap being maintained in good working order and regularly pumped out and serviced by licensed waste contractors as required between the hours of 7am and 6pm Monday to Saturday and 8am to 6pm Sundays and public holidays.

Reason: To prevent odours and environmental and health impacts.

2 Conditions Requiring Payment of a Monetary Contribution Dedication of Land / Carrying Out of Off Site Works

- 2.1 The Developer designing and constructing the following works within the road reserves of Steel and Ravenshaw Streets generally as detailed in the submitted plans, at no cost to Council and to Council's requirements and design specifications:

- a) Road pavement
- b) Road shoulder pavement
- c) Kerb and gutter
- d) Footway formation
- e) Footpaving
- f) Landscaping
- g) Associated drainage works
- h) Provision for on road cyclists in Steel Street

(Note: Full construction details regarding the required works in the said road reserves are to be submitted to Council for approval.)

Reason: To ensure that the road network is upgraded to an appropriate standard having regard to the additional traffic movement and pedestrian activity likely to be generated by the proposed development.

- 2.2 The developer undertaking the following works within the King Street road reservation and in Steel Street in accordance with the Roads and Traffic Authority's (RTA) Road Design Guide and to the satisfaction of both the RTA and Council with the required works being carried out at no cost to Council or the Roads and Traffic Authority of NSW:

- i) the westbound left turn lane in King Street, at the signalised Steel Street / King Street intersection, being extended to a length of 40m, excluding tapers;
- ii) the provision of 'No Stopping', 'Taxi Zone' & 'Bus Zone' signage restrictions in Steel Street, from King Street to Parry Street. The applicant should consult with Taxi companies and the Newcastle City Traffic Committee to determine the appropriate location for the Taxi zone.

Reason: To allow for increased traffic storage capacity within King and Steel Streets and restrict exit movements from the development as required by the Roads and Traffic Authority of NSW.

- 2.3 The developer designing and constructing, at no cost to Council and to Council requirements, a roundabout at the intersection of Steel and Parry Street. Appropriate concrete splitter islands for all legs, line marking and signage is to be provided in association with the required roundabout and all works are to be approved by the

Newcastle City Traffic Committee prior to issue of a Construction Certificate in respect of the proposed development.

Reason: To provide for appropriate distribution of vehicles leaving the development from the Steel Street exit driveway, having regard to the likely high demand toward King Street. The location of the roundabout is to influence traffic distribution in order to reduce pressure on the King Street / Steel Street intersection.

- 2.4 There being no right turn out of the proposed development at the Steel Street Exit driveway. In this regard, the developer is to design and construct, to Council's requirements and at no cost to Council, raised concrete median islands in Steel Street, between Parry Street and the pedestrian crossing. Appropriate line marking and signage, including "All Traffic Left" signs, are to be provided and all works are to be approved by the Newcastle City Traffic Committee prior to issue of a Construction Certificate in respect of the proposed development.

Reason: To minimise the potential for conflict between the proposed development and the existing traffic environment.

- 2.5 Right turn entry into the development from Steel Street at the proposed vehicle entrance driveway being facilitated by a dedicated right turn storage bay within Steel Street with capacity for a minimum of two cars. Appropriate line marking and signage is to be provided at no cost to Council and all works are to be approved by the Newcastle City Traffic Committee prior to issue of any Construction Certificate in respect of the proposed development. Should the operation of this access result in an adverse impact on road safety or traffic efficiency, Council / RTA reserves the right to prohibit right turn movements from Steel Street into the development in the future.

Reason: To provide for safe vehicular entry to the proposed development having regard for the likely traffic volume on Steel Street.

- 2.6 Additional edge line marking being provided in Parry Street, between Cottage Creek and Ravenshaw Street, such that the holding line for Ravenshaw Street is moved further south. The required works are to be undertaken at the developer's expense and are to be approved by the Newcastle City Traffic Committee prior to the issue of a Construction Certificate in respect of the proposed development.

Reason: To improve safe intersection sight distance having regard to the likely increase in demand on the Parry Street / Ravenshaw Street intersection as a result of the proposed development.

- 2.7 A raised threshold pedestrian crossing being provided across Steel Street at the proposed pedestrian entry to the development at no cost to Council. Such crossing is to be subject to the further approval of the Newcastle City Traffic Committee.

(Note: Should the Newcastle City Traffic Committee refuse approval, this condition shall be of no effect.)

Reason: To provide for appropriate pedestrian access to the development, particularly in respect of the likely high pedestrian demand between the existing Market Town Shopping Centre and the proposed development.

- 2.8 Pedestrian refuges being designed and constructed in Ravenshaw Street at both the King Street and Parry Street intersections at no cost to Council. The required refuges are to be approved by the Newcastle City Traffic Committee prior to construction.

(Note: Should the Newcastle City Traffic Committee refuse approval of either or both of the required refuges, this condition shall have no effect in respect of the refuge/s in question.)

Reason: To ensure that appropriate pedestrian refuge facilities are provided within public roads that are likely to have increased pedestrian activity as a result of the proposed development.

- 2.7 A commercial type vehicular crossings being constructed across the public footway at the proposed driveway entrance/exits at no cost to Council and in accordance with Council's A017 Series (Concrete Vehicular Crossings) design specifications and such crossing being properly maintained. Single entry and exit lanes are to be provided at each access point as appropriate.

Reason: To ensure the provision of adequate clearly defined and properly constructed means of all-weather vehicular access to the site in order to encourage the use of on-site parking facilities and in the interest of maximising vehicular and pedestrian safety and convenience.

- 2.9 Any redundant existing vehicular crossings being removed at no cost to Council and the public footway and kerb being restored to match the existing infrastructure.

Reason: To clarify site access arrangements in the interest of traffic and pedestrian safety, as well as road efficiency, to maximise kerbside parking opportunity and to ensure that reinstatement work is undertaken to an appropriate standard.

- 2.10 Any necessary alterations to public utility installations being at the Developer/Demolisher's expense and to the requirements of both Council and the appropriate authorities.

Reason: To ensure that any required alterations to public utility infrastructure are undertaken to acceptable standards and without demands on public sector resources.

- 2.11 A temporary protective crossing being provided over the footway for vehicular traffic before building operations are commenced. This approval does not permit access to the property over any adjacent private or public land.

Reason: To ensure public safety and protection of public assets.

- 2.13 Application being made to and approved by Council for the erection of a hoarding or part closure of the footway prior to construction being commenced. Such overhead structure or protective fence shall comply with the Construction Safety Act 1912 and Regulation 1950. Notice of intention of commencement must be given to WorkCover New South Wales.

Reason: To maintain pedestrian passage and public safety.

- 2.14 A total monetary contribution of \$74,823.00 being paid to Council, pursuant to Section 94A of the *Environmental Planning and Assessment Act 1979*, such contribution to be payable prior to the issue of a Construction Certificate in respect of the proposed development.

- (Note: i) This condition is imposed in accordance with the provisions of the *Newcastle City Council S94A Development Contributions Plan 2006* operational from 15 January 2007. A copy of the plan may be inspected at Council's Customer Enquiry Centre, ground floor of the City Administration Centre, 282 King Street Newcastle 8.30 am to 5.00 pm, excluding public holidays.
- ii) The amount of contribution payable under this condition has been calculated on the basis of the current rate as at the date of consent and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of Statistics (ABS). The CPI index rate is expected to rise at regular intervals and therefore the actual contribution payable is indexed and recalculated at the CPI rate applicable on the day of payment.

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

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

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

Reason: To assist Council in the provision of public facilities within the local government area in response to the additional demand likely to result from the proposed development.

- 2.15 The existing trees within the public footway along the Ravenshaw Street and Steel Street frontages of the site being removed and the stumps ground out by the developer at no cost to Council and under Council's supervision. To be completed prior to issue of an occupation certificate.

(Note: The developer is required to give at least five working days notice to Council's Urban Tree Coordinator before undertaking the works.)

Reason: To ensure the proposed development does not further destabilise existing street trees which have been identified as being in poor condition and to ensure the tree removals are undertaken in a safe manner without public risk and without demand on public sector resources.

- 2.16 The existing Hills Weeping Fig tree within the public footway of Ravenshaw Street, at the north-east corner of the site and fronting the adjacent McDonalds food outlet, (identified as tree No.5 in the Arborist report by Urban Tree Management Pty Ltd, dated 23 June 2005 – Reference 7273) being protected by the developer during the site construction works. In this regard a 1.8m high freestanding chain link fence is to be erected and maintained around the base of the tree in question, extending into the roadway, as well as a distance of 10m to the south and 5m to the north of the tree's trunk.

(Note: The developer is required to give at least five working days notice to Council's Urban Tree Coordinator before the tree protective measures are undertaken to facilitate any necessary pruning of the tree and to oversee the erection of the required tree protection barrier.)

Reason: To minimise the possibility of injury to an existing healthy street tree and to ensure that the tree protection measures are properly implemented prior to the commencement of any works.

2.17 Ravenshaw Street, along the frontage of the site, being provided with street tree planting and associated tree guards, as well as full width paving to Council requirements. Full details to be included in a Landscape Management Plan which is to be submitted to Council with the Construction Certificate application for works in the public road.

- i) The paving of the public footway in Ravenshaw Street is to comprise asphalt with brick banding at maximum 10m intervals, using Bowral 'London Chestnut' paving bricks.
- ii) Tree guards are to comply with Council's Treeguard and Planting detail A350.)

To be completed prior to issue of an occupation certificate.

Reason: To provide for an appropriate standard of pedestrian amenity and enhance the overall environmental quality of the adjacent public road.

2.18 Steel Street (along the frontage of the site as well as the Market Town Shopping Centre carpark frontage) being provided with street tree planting, associated tree guards and full width paving to Council requirements. Full details to be included in a Landscape Management Plan which is to be submitted to Council with the Construction Certificate application for works in the public road.

- i) The paving of the public footway in Steel Street is to comprise asphalt with brick banding at maximum 10m intervals, using Bowral 'London Chestnut' paving bricks.
- ii) Tree guards are to comply with Council's Treeguard and Planting detail A350.
- iii) The existing sandstone kerb in Steel Street is to be replaced with concrete kerb & gutter. The sandstone blocks are to be returned to Council's Works Depot at Turton Road, Waratah for recycling.)

To be completed prior to issue of an occupation certificate.

Reason: To provide for an appropriate standard of pedestrian amenity and enhance the overall environmental quality of the public road.

2.19 Tree plantings within Ravenshaw and Steel Streets fronting the site being species *Acmena smithii* (Lilly Pilly), with the selected trees being advanced specimens in a minimum 150 litre pot size. The required plantings are to be undertaken in consultation with Council's Landscape Architect, with the trees certified by the supplier to comply with the current NATSPEC guideline with respect to root development, height, trunk diameter, branch structure and balance (refer to *Specifying Trees*, Construction Information Systems Australia PL, Clark, R 2003). All associated costs are to be borne by the developer. To be completed prior to issue of an occupation certificate.

Reason: To provide appropriate street tree planting along the frontages of the site to enhance the landscape quality of the development and the streetscape in the public interest.

- 2.20 The planting blisters proposed within the carriageway of Ravenshaw Street being linearly connected by tree pits to maximise soil volume (structural soil) and allow for drainage, soil moisture and root control barriers. The design and construction of the planting blisters and tree pits are to be undertaken at no cost to Council and under Council's direction. To be completed prior to issue of an occupation certificate.

Reason: To ensure future optimal health and structure of street trees and to facilitate tree growth, while minimising potential infrastructure problems from the primary woody roots of the trees.

- 2.21 Street lighting being upgraded at no cost to Council (other than annual maintenance) in accordance with AS 1158.1.1 – Road Lighting on Steel and Ravenshaw Streets in association with the proposed development. The lighting upgrade works being completed prior to the occupation of the premises.

(Note: The developer is to liaise with Energy Australia in relation to the design and construction of the street lighting.)

Reason: To ensure that adequate and appropriate lighting facilities are provided in association with the proposed development.

- 2.22 Comprehensive engineering design plans and specifications for the works being undertaken in the road reserves being submitted to Council for approval with the required Construction Certificate application, such to be accompanied by the following documentation and additional details:

i) Water Management Plan

Details showing the control methods proposed to ensure compliance with this consent, with water quality management details included indicating management practices to be utilised in both the construction and the post construction phases of the proposed development.

ii) Land Management Plan

The required Plan is to nominate existing and proposed surface levels and provide full details of proposed erosion and sediment control measures to be implemented prior to, during and after construction. The Plan is to be prepared in accordance with the Department of Housing's Guidelines – *Managing Urban Stormwater: Soils and Construction*.

iii) Detail of Earthworks

Plans are to indicate the full extent of any earthworks proposed (cut and fill). All topsoil and unsuitable material is to be nominated to be removed prior to placement of fill.

Maximum nominated thickness of fill layer	- 150 mm in road reserve areas
	- 300 mm in other areas

- Minimum nominated compaction of fill
 - 98% standard in road reserve areas
 - 95% standard in others areas

iv) Road Design Plans

Plans, longitudinal sections and cross sections are to comply with the following requirements –

- a) Design speed to be 50 kph.
- b) Standard design vehicle to be a semi-trailer (19.0m) and coach (14.5m).
- c) Plans to be accompanied by a pavement design report prepared and endorsed by a practising geotechnical engineer.
- d) The minimum acceptable subgrade CBR to be 5%.
- e) Roads to be designed generally with a maximum grade of 12%.
- f) Proposed road intersection to have at least 10m vertical curves.
- g) Provision of adequate kerbside parking for service vehicles and taxis.
- h) Kerb and gutter shapes to be constructed in accordance with Council's *Standard Drawing No. NCC A17*, as amended on 23 January 1995.
- i) Drainage inlet structures to be constructed in accordance with Council's *Standard Drawing Nos. A199*, dated March 1995 and *A313*, as amended 6 September 1994.
- j) Footways to be generally high level and at 2% grade toward the kerb.
- k) Kerb ramps to be constructed in accordance with Council's *Draft Standard Drawing No. A90*, dated November 1998.
- l) Engineering plans to specify that the road is to be Benkleman Beam tested prior to prime sealing, with a maximum permissible deflection of 0.8mm.
- m) Plans to specify that the road is to be primer sealed prior to asphaltting.
- n) The wearing surface of the road to comprise a 50mm minimum compacted thickness layer of asphaltic concrete (AC 14).
- o) A separate linemarking and signposting plan (approved by the Newcastle City Traffic Committee) to be included in the design plans.

v) Stormwater Drainage Plan

The stormwater drainage design is to incorporate a 1:10 year recurrence interval piped stormwater drainage system, with overland flow up to a 1:100 year recurrence interval event contained within road reserves and/or drainage reserves, and is to comply with the following requirements:

- a) Sub-soil drainage to be located under kerb and gutter and extend at least 500mm below bottom of pavement.
- b) Pits to be located upstream of kerb ramps and kerb returns.
- c) All stormwater pipes in the public road to be rubber ring jointed reinforced concrete.
- d) The proposed development not to increase upstream or downstream flooding for floods over a range of storms from 1:1 to 1:100 year events.

vi) Utilities Layout Plan

The required Utilities Layout Plan is to indicate the location of existing mains, associated installations and service conduits, together with any proposed utility alterations and installations, in particular street lighting. Any required electricity substations, pumping stations or similar installations are to be located in public reserves and/or private land and are not to be located within road reserves.

vii) Set-out Layout Plan

The required Set-out Layout Plan is to indicate survey co-ordinates for set out points for kerbs, medians and lane lines.

Reason: To ensure that Council is provided with adequate details to enable all design aspects of works required within the public road reserves to be properly assessed prior to the issue of a Construction Certificate.

2.23 No works being commenced within the public road reserves until Council's separate written approval has been obtained.

(Note: i) A separate application under Section 138 of the Roads Act is required for all proposed works to be undertaken in the public road reserves.
 ii) Engineering design plans and specifications for the works being undertaken in the public road reserve are required to be submitted to Council for approval with the application.
 iii) An additional fee will be required by Council for the assessment of engineering plans submitted for the public road works. In this regard, the developer is advised to confer with Council's Development & Building Services Section in order to confirm this fee.)

Reason: To confirm and clarify the terms of approval and ensure that any work within the public road reserve is carried out in accordance with Council requirements and under Council supervision.

2.24 Prior to commencement of any works the developer submitting to the Newcastle City Council Traffic Section for approval a Construction Traffic Management Plan for the proposed management of construction traffic and associated controls within the public road. The required plan is to detail traffic control measures to be utilised during each construction phase ensuring the provision for safe, continuous movement of traffic and pedestrians within the adjacent public roads. The plan is to be prepared in accordance with Australian Standard 1742.3 – 2002.

Reason: To ensure that vehicular and pedestrian traffic movement is properly controlled and managed during the construction phase of the proposed development in the interest of traffic safety.

3 Conditions Requiring Inclusion of Details in Documentation for a Construction Certificate Application / Matters to be Resolved Prior to Occupation of the Premises

3.1 On-site parking accommodation being provided for a minimum of 742 cars as well as 35 bicycle spaces (security level 3) and 15 motor cycle spaces. Such facilities being set out generally in accordance with the minimum parking layout standards indicated in Australian Standard AS 2890.1-2004 "Parking facilities – off street car parking and Element 4.1 of Council's Newcastle DCP 2005. Full details are to be included in documentation for a Construction Certificate application. Bicycle and motor bike parking should be spread throughout the parking areas and not just provided at the one location.

Reason: To ensure the provision of adequate on-site parking facilities commensurate with the demand likely to be generated by the proposed development.

3.2 The developer conferring with Newcastle Buses and Council to determine appropriate bus stop(s) for the development. Such bus stop(s) are to be provided with an all-

weather shelter facility that has been designed in consultation Council and at the developer's cost. The required shelters are to be erected prior to the issue of an Occupation Certificate in respect of any part of the commercial component of the proposed development.

Reason: To provide for improved public transport access to the development having regard to be likely increased demand.

- 3.3 The retail entry to the Level 1 customer carpark from Ravenshaw Street being closed nightly at 9pm. Full details as to how traffic will be restricted from entering the Level 1 customer carparking area and traffic redirection to the Steel Street entrance are to be included in the documentation submitted with the Construction Certificate application.

Reason: To reduce the volume of traffic entering the premises from Ravenshaw Street late at night in order to protect the existing amenity of the neighbourhood.

- 3.4 The development proposal, as detailed on the submitted plans, being modified in the following respects:

- a) Minimum clear sight lines for vehicles to pedestrians being provided within the site at the driveway entry/exit ramps to the carparks in accordance with AS 2890.2 – Parking Facilities.
- b) Minimum 6.0m level landing being provided within the site at the property boundary at the vehicular entry/exit ramps to the carparks.

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

Reason: To clarify the terms of approval and ensure that proposed vehicular ramps are designed and built with adequate regard for public safety.

- 3.5 Opposing traffic flows on car park ramps being separated by the provision of an appropriate kerb and/or safety barrier, with the exception of the ramp servicing the staff parking area (basement level). Full details are to be included in documentation for a Construction Certificate application.

Reason: To minimise vehicular conflict and accident potential within the car park and thereby facilitate operational efficiency.

- 3.6 Clear openings between car park columns for single parking spaces being a minimum of 2.7 m and for double parking spaces of 5.0 m. Full details are to be included in documentation for a Construction Certificate application.

Reason: To ensure that all parking spaces are conveniently accessible and to thereby encourage use of on-site parking facilities and minimise overflow parking in adjacent streets.

- 3.7 The minimum height between the car park floor surface and the lowest overhead obstruction being 2.3 m.

Reason: To ensure safe and convenient use of the car park by the public, including persons driving vans and recreational vehicles and to thereby encourage its use and to minimise overflow parking in adjacent streets.

- 3.8 All proposed driveways, parking bays and vehicular turning areas being 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.

Reason: To facilitate the use of vehicular access and parking facilities and to minimise any associated noise and dust nuisance.

- 3.9 Appropriate lighting being provided to the carpark and connecting pathways in accordance with AS 1158 Lighting and AS 4282: 1997 Control of the Obtrusive Effects of Outdoor Lighting, such being installed prior to occupation of the premise.

Reason: To ensure that adequate and appropriate lighting facilities are provided for the proposed development.

- 3.10 The proposed residential flat building being modified to provide for a minimum 400mm high solid turn-up above the deck level of all balcony balustrades or, alternatively, to provide for the bottom 400mm of all balcony balustrades to be in translucent glazing. The required modification to be included in amended plans submitted with the Construction Certificate application.

Reason: To ensure that proposed balconies are provided with appropriate visual screening and privacy.

- 3.11 Appropriate screening devices being provided along the south-western edge of the balconies of the residential apartments located within the lower four floor levels at the south-eastern corner of the residential flat building fronting Ravenshaw Street, and all habitable room windows along the south-western side of such apartments having translucent glazing. Details to be submitted with the application for a Construction Certificate.

Reason: To ensure that the development respects the privacy amenity between future residents of the dwelling units within the 2-storey attached dwellings and the 9-level residential flat building.

- 3.12 The colour scheme of the development to be generally in accordance with the 3D images submitted to Council 15 December 2009. Full details to be included in documentation for a construction certificate application.

Reason: To ensure the aesthetics of the development are satisfactory in relation to the character of the area.

- 3.13 The proposed building being provided with adequate means of access for persons with disabilities in order to comply with the Building Code of Australia AND THE Disability Discrimination Act 1992.

In this regard, the applicant is to submit a design detail which has been certified by a qualified Access Advisor* with the application for a Construction Certificate.

(Note: 1) Compliance with the Building Code of Australia only can still leave a building professional or building owner in contravention of the Disability Discrimination Act 1992.

2) * A qualified Access Advisor is a current member of

- 3) A qualified Access Advisor should carry current and relevant public liability and public indemnity insurances for the practice of their trade.)

Reason: To ensure compliance with the provision of the Environmental Planning and Assessment Act, 1979 and the Building Code of Australia and the Disability Discrimination Act 1992 in relation to the provision of equity in access for disabled persons.

- 3.14 The width of the pedestrian pathway between the proposed building and the adjacent concrete lined Cottage Creek stormwater channel being widened to a minimum of 3m in total, in accordance with the details shown on the submitted sketch plans under DA05/1266 numbered SK-M1 A and SK-M2A, dated 26 June 2006. The required amendment to be incorporated into revised plans submitted with the application for a Construction Certificate.

Reason: To ensure the provision of an adequate pathway width to facilitate mid-block pedestrian connectivity between Steel Street and Ravenshaw Street in the public interest.

- 3.15 The developers installing a Public Art item or items within the public domain area adjacent to the site to the value of not less than \$50,000 in accordance with the Applicant's undertaking, such Public Art item to be designed and located in consultation with Council's Public Art Advisory Committee and to the Committee's satisfaction. Full details in this regard are to be submitted to Council and approved prior to the issue of an Occupation Certificate in respect of any part of the proposed development.

Reason: To confirm the terms of consent and to ensure the provision of adequate public benefit in association with the proposed development to justify bonus floorspace awarded.

- 3.16 Any public art proposed for the Steel Street bridge or within the floodway being designed to be flood compatible, with no significant adverse flood impact on the development or neighbouring properties. Full details to be provided with the Construction Certificate application.

Reason: To ensure that the proposed development does not present any inappropriate obstruction to the overland flow of floodwaters during an extreme flood event.

- 3.17 Any alteration to natural surface levels on the site being undertaken in such a manner as to ensure that no surface water is drained onto or impounded on adjoining properties. Full details are to be included in documentation for a Construction Certificate application.

Reason: To ensure that any such proposed works do not disrupt existing natural stormwater flows in the vicinity.

- 3.18 The developer instituting appropriate erosion protection and soil stabilisation measures in association with the proposed site works. Such measures to be designed in accordance with the provisions of *Managing Urban Stormwater: Soils and Construction 4th Edition - Vol. 1* (the 'Blue Book'), published by Landcom, 2004. Full details to be included in the documentation submitted with the Construction Certificate application.

Reason: To control soil erosion and prevent sedimentation of surrounding lands both private and public.

- 3.19 Proposed cover to the Cottage Creek open drain upstream of the existing Steel Street culvert being designed to minimise the local flood impact for the 1 in 100 year Average Recurrence Interval event and in compliance with the requirements of the Hunter Water Corporation. Full details, including a letter of approval from the Hunter Water Corporation to be submitted with the Construction Certificate application.

Reason: To minimise the impact on local flooding and ensure compliance with the requirements of the trunk stormwater management authority.

- 3.20 The building being structurally designed to withstand the hydraulic loading due to flooding at the Probable Maximum Flood (PMF) event. Structural certification in this regard to be provided with the Construction Certificate application.

(Note: The current estimate of the PMF level on the site is 4.4m AHD.)

Reason: To ensure the structural stability of the building during extreme flood events so as to maintain safe refuge for building occupants.

- 3.21 The basement carpark being designed to manage the local flood risk as outlined in the report from Taylor Thomson Whitting, dated 4 July 2008 (as submitted under DA05/1266 and approved 18 December 2009). Full details being provided with the Construction Certificate application.

(Note: Appropriate maintenance requirements for the proposed flood gate are to be established in consultation with the manufacturer.)

Reason: To minimise the extent of property damage and the risk of injury in the extent of future flooding on the site.

- 3.22 A flood emergency response plan being prepared and put in place by the applicant prior to occupation of the site for the intended use. The plan is to be updated and maintained as required by the occupiers to include an education and awareness component for the workforce and detailed evacuation procedures to interface with emergency services, where appropriate, and to include provisions for any third parties likely to be involved. The flood emergency response plan is to address the following matters:

- a) Likely flood behaviour.
- b) Flood warning systems.
- c) Education awareness program.
- d) Evacuation and evasion procedures.
- e) Evacuation routes and flood refuges.
- f) Flood preparedness and awareness procedures for residents and visitors.

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

(Note: Considerations should include the full range of flood risks, the proposed use of the site, site access constraints and local area evacuation routes to high ground. As much as possible, the plan should be aimed at self-directed evacuation or evasion to minimise the draw on limited State Emergency Services resources.)

Reason: To adequately manage the risk of life, property and all potential adverse flood impacts within the flood environment.

- 3.23 Flood warning signage being erected in the basement carpark on the Steel Street stairwells and lifts directing the public to use the stairwells exiting onto Ravenshaw Street during an extreme flood event.

Reason: To minimise the risk of injury in the event of future flooding of the site.

- 3.24 All stormwater runoff from the proposed development being collected into a stormwater management system designed in accordance with the provisions of Element 4.5 of the Newcastle Development Control Plan 2005, generally as shown on the Drainage Plans submitted under DA05/1266 prepared by Donnelley Simpson Cleary (Drg. Nos. H2 and H3, Revision 1, dated 26/04/05). Full details to be provided with the Construction Certificate application.

(Note: Separate written approval will be required from the Hunter Water Corporation to upgrade the connection to the Corporation's stormwater channel.)

Reason: To ensure that on-site stormwater run-off is properly collected and conveyed to an appropriate drainage facility.

- 3.25 The water management measures as indicated on the submitted plans and Statement of Environmental Effects and/or modified under the terms of this consent being implemented and the nominated fixtures and appliances being installed and operational prior to issue of an Occupation Certificate, full details to be provided with the Construction Certificate application.

Reason: To ensure Councils requirements for water management are complied with in the interest of water conservation and principles of sustainability.

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

Reason: To help ensure minimal water consumption in the interest of water conservation and principles of sustainability.

- 3.27 All proposed new shower heads and basin taps being AAA rated in accordance with AS 6400 or the Australian Water Services Association National Water Conservation rating scheme, full details to be included in the specification submitted with the Construction Certificate application.

Reason: To help ensure minimal water consumption in the interest of water conservation and principles of sustainability.

- 3.28 Adequate ventilation being provided to the proposed residential apartments in accordance with the provisions of the Building Code of Australia, whilst maintaining the required level of acoustic attenuation, as detailed in the Acoustic Report prepared by Acoustic Logic Consultancy Pty Ltd, dated 20 December 2005. Full details to be included in the documentation for a Construction Certificate application.

Reason: To ensure the provision of adequate ventilation in the interest of public health and safety and to permit the closure of doors and windows to achieve acoustic design goals.

- 3.29 Appropriate acoustic treatment being implemented in accordance with the recommendations set out in the report prepared by Acoustic Logic Consultancy Pty Ltd, dated 20 December 2005. Written certification from the said consultant confirming that the recommended acoustic treatment has been implemented in accordance with the requirements is to be submitted to the Principal Certifying Authority prior to issue of the Occupation Certificate for the premises.

Reason: To ensure that appropriate noise control measures are implemented.

- 3.30 The following acoustic controls being implemented in the construction, operation and management of the loading dock area:

- i) Weather resistant acoustic insulation is to be installed (either 50mm thick Tontine Acoustisorb 2, Bradford Ultraphon, spray on Enviro spray, or equivalent) to the loading dock perimeter walls for the entirety of the southern wall above 3 metres, as well as the soffit to the neck of the loading dock entry. Full details to be included in the documentation for a Construction Certificate application.

(Note: Insulation may be required to be protected using perforated sheet metal with a minimum 30% open area.)

- ii) Bail and/or garbage compactors are to be used only within the loading dock area.
- iii) Neoprene rubber impact absorbing buffers are to be installed on the vertical face of the loading dock where vehicles park to absorb impacts. Full details to be included in the documentation for a Construction Certificate application.
- iv) A layer of Pirelli type rubber matting (or similar) is to be provided to the floor of the active areas of the loading dock. Full details to be included in the documentation for a Construction Certificate application.
- v) A security communication system is to be installed and used to ensure trucks and other delivery vehicles are able to enter the loading dock on arrival without them having to park in surrounding streets.
- vi) Truck engines are to be switched off during loading and unloading.

- vii) The loading dock roller shutter door is to remain closed at all times, apart from when vehicles are entering/leaving the premises.

Written certification from the Acoustic Consultant, confirming that the recommended acoustic treatments have been satisfactorily implemented, is to be submitted to the Principal Certifying Authority prior to issue of an Occupation Certificate in respect of the premises.

Reason: To confirm the terms of the consent and to ensure that appropriate noise control measures are implemented.

- 3.31 A report from an appropriately qualified Acoustic Consultant is to be submitted to the Principal Certifying Authority prior to the issue of the required Construction Certificate, recommending any acoustical treatment necessary in respect of plant and equipment to be installed on the site, including air conditioning units. Written certification from the said Consultant confirming that the recommended acoustic treatment has been satisfactorily implemented is to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate in respect of the premises.

Reason: To ensure that appropriate noise control measures are implemented in order to protect the existing amenity of the neighbourhood and the future amenity of the proposed building's occupants.

- 3.32 Appropriate acoustic treatment being implemented in accordance with the recommendations set out in the report prepared by Acoustic Logic Consultancy Pty Ltd, dated 12 August 2009. Written certification from the said consultant confirming that the recommended acoustic treatment has been implemented in accordance with the requirements is to be submitted to the Principal Certifying Authority prior to issue of the Occupation Certificate for the premises.

Reason: To ensure that appropriate noise control measures are implemented.

- 3.33 A temporary protective crossing being provided over the footway for vehicular traffic before building operations are commenced. This approval does not permit access to the property over any adjacent private or public land.

Reason: To ensure public safety and protection of public assets.

- 3.34 Prior to the commencement of construction work the proponent is to submit to the Principal Certifying Authority an Environmental Management Plan (EMP), such to be designed and implemented to manage all environmental aspects associated with the construction works, and to be kept on site and made available to authorised Council officers upon request.

The EMP should include but not be limited to:

- a) A site management strategy, identifying and addressing issues such as environmental health and safety, site security, and traffic management.
- b) A water management strategy, detailing erosion and sediment control, management of soil stockpiles, control and management of surface water, groundwater and process water.
- c) A dust management strategy, detailing procedures to minimise dust generation, with particular reference to control techniques and operational limits under

adverse meteorological conditions. This strategy should be cross referenced with the water management strategy.

- d) A road management strategy, detailing procedures to ensure that all roads adjacent to and within the proposed application area are kept free and clear from dust, mud and sediment.
- e) A noise and vibration management strategy, detailing measures to minimise the impact of the development on commercial and residential amenity. Noise and vibration monitoring during the demolition and construction phase should be incorporated into the program.
- f) A waste minimisation strategy that aims to avoid production of waste and maximise reuse, recycling or reprocessing of potential waste material.
- g) A community relations plan, which aims to inform local residents and other local stakeholders of the proposed nature and timeframes for demolition and construction activities together with contact details for site management.

Reason: To prevent environmental pollution and to ensure compliance with relevant provisions of the Protection of the Environment Operations Act 1997.

3.35 All proposed planting and landscape elements indicated on the landscape concept plan, as approved under DA05/1266, or otherwise required under the conditions of this consent being implemented and a comprehensive landscape design plan and specification in respect thereof being prepared by a qualified landscape designer and being submitted with a Construction Certificate application.

(Note 1: The required comprehensive landscape design plan and specifications is to be in accordance with the provisions of Council's adopted Development Control Plan (Element 4.7) and is to include cross sections through the site where appropriate, proposed contours or spot levels, botanical names, quantities and container size of all proposed trees, shrubs, ground cover and proposed 'green wall landscaping', details of proposed soil preparation, mulching and staking as well as treatment of external surfaces and retaining walls where proposed, drainage, location of taps and the nominated maintenance periods.)

(Note 2: A Landscape Practical Completion Report is required to be submitted to the Principal Certifying Authority by the consultant responsible for the landscape design plan prior to occupation of the premises or any portion of the premises that is the subject of this consent. The report is to verify that all landscape works have been carried out in accordance with the approved landscape design plan to a high professional standard and that an effective maintenance program has been commenced.)

Reason: To ensure that adequate and appropriate provision is made for landscaping of the site in association with the proposed development, to enhance the external appearance of the premises and to contribute to the overall landscape quality of the locality.

3.36 The applicant complying with all requirements of the Hunter Water Corporation Ltd 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 certificate of compliance is to be included in documentation for a Construction Certificate application.

Reason: To ensure that water supply and sewerage services are properly connected to the proposed development in the public interest.

- 3.37 Adequate facilities being provided in a screened location within the premises for the storage of garbage, discarded or returnable packaging or other forms of trade wastes and arrangements being made for regular removal and disposal of same. Full details are to be included in documentation for a Construction Certificate application.

(Note: The required garbage facility is to be suitable for the accommodation of Council approved wheel type bins or bulk waste containers.)

Reason: To ensure adequate garbage storage and removal arrangements in the interest of public health, safety and sanitation and to ensure that the required on-site garbage storage facilities do not unreasonably detract from the overall appearance of the proposed development.

- 3.38 All areas not provided with natural ventilation in accordance with the provisions of the Building Code of Australia being provided with an adequate mechanical ventilation system complying with Australian Standard 1668, Parts 1 and 2 "The use of mechanical ventilation and air conditioning in buildings". Full details are to be included in the documentation for a Construction Certificate application.

Reason: To ensure the provision of adequate ventilation in the interest of public health and safety.

- 3.39 The premises being provided with adequate toilet facilities and wash hand basins for each sex in accordance with the provisions of the Building Code of Australia. Full details are to be included in the documentation for a Construction Certificate application.

Reason: To ensure compliance with appropriate public health and hygiene standards.

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

Reason: To ensure compliance with appropriate safety standards.

- 3.41 The design and construction of any food related uses being in accordance with the relevant requirements of the Australian Standard *AS 4674-2004 Design, construction and fit-out of food premises* dated 11 February 2004. Full details are to be submitted with the required construction certificate application for the proposed fit-out.

Reason: To ensure safe and suitable food for human consumption under the provisions of the Food Act 2003 and Food Regulations 2004.

- 3.42 Appropriate lighting being provided for the car park and pedestrian pathways in accordance with AS 1158 - Lighting and AS 4282 - Control of the Obtrusive

Effects of Outdoor Lighting, such being installed prior to the occupation of the portion of the premise the subject of this application.

Reason: To ensure that adequate and appropriate lighting facilities are provided for the proposed development.

- 3.43 The developer being responsible for the provision of additional regulatory signage and all adjustments to and/or relocation of existing regulatory signage as part of this development at no cost to Council and in accordance with Council requirements, such works to be implemented prior to the occupation of the premises.

(Note: Alterations to regulatory signage will need to be referred to the Newcastle City Traffic Committee for approval.)

Reason: To ensure that public road facilities are upgraded to an appropriate standard having regard to the additional traffic movement and pedestrian activity likely to be generated by the proposed development.

- 3.44 All external ramps and pathways within the site required to be accessible for persons with disabilities being designed and constructed in accordance with AS.1428 – Design for Access and Mobility. Kerb ramps are to be provided adjacent to disabled parking bays. Full details are to be included in documentation for a Construction Certificate application.

Reason: To ensure appropriate disabled persons access is provided for this development in accordance with the appropriate standards.

4 Conditions Requiring the Submission of Future Applications to Council or The Approval of Other Authorities

- 4.1 Any proposed business identification sign or advertising sign, being designed in accordance with the provisions of Council's adopted Outdoor Advertising Sign Code and being the subject of a separate Development Application approved prior to erection or placement in position.

Reason: To advise of the necessity to submit further applications to Council in respect of proposed signage in order that any such proposals may be properly assessed in accordance with relevant heads of consideration under the Environmental Planning and Assessment Act, 1979.

- 4.2 Compliance with the requirements of the Hunter Water Corporation Ltd in respect of any building or structure proposed to be erected over any services or stormwater drain under the Corporation's control.

Reason: To protect the Corporation's infrastructure from site development works.

- 4.3 A separate Development Application being submitted for Council's consideration in respect of any specific proposed use of the premises or portion of the premises for commercial purposes (including café) prior to fitout.

Reason: To allow the assessment of any potential impacts as a result of the use of this area and to confirm the necessity for submission of a separate Development Application for occupation of premises proposed on a

speculative basis in order to ensure compliance with the relevant planning instrument.

5 General Conditions

- 5.1 Any groundwater extracted during site works under no circumstances being discharged to the stormwater drainage system.

Reason: To prevent environmental pollution and to ensure compliance with relevant provisions of the Protection of the Environment Operations Act 1997.

- 5.2 Groundwater under no circumstances being extracted from the site for re-use.

Reason: To confirm the terms of the consent and to prevent risk to human health and the environment.

- 5.3 The developer, upon identifying any potential contamination issues, instituting appropriate management procedures in accordance with all relevant NSW Department of Environment and Conservation, Newcastle City Council and WorkCover requirements.

Reason: To prevent risk to human health and the environment

- 5.4 No impact/hammer piling being carried out on site.

(Note: Advice is to be sought from an appropriately qualified consultant regarding alternative methods of pile placement suitable for the site and such information is to be included in documentation submitted with the Construction Certificate application.)

Reason: To confirm the terms of consent and minimise noise and vibration impacts on neighbouring properties.

- 5.5 Continuous monitoring of noise and/or peak vibration levels being carried out at neighbouring properties considered to be potentially significantly impacted by noise and/or vibration due to site works, as determined by a suitably qualified consultant or if directed by an authorised Council officer following complaints from neighbouring property owners.

Reason: To confirm the terms of consent, allow assessment of noise and vibration impacts on neighbouring properties and ensure compliance with the relevant assessment criteria.

- 5.6 Any excavated material to be removed from the site being assessed, classified, transported and disposed of in accordance with the *NSW EPA Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes*.

Reason: To prevent environmental pollution and to ensure observance of appropriate health standards.

- 5.7 All imported fill on to the site being validated to ensure that it is suitable for the proposed land use, such fill to be documented to certify that the material is not contaminated based upon laboratory analysis or the known past history of the site from which the material was obtained.

Reason: To safeguard human health and the environment of the locality.

- 5.8 Appropriate control measures being implemented during construction to minimise the generation and off-site transportation of dust, including the use of water sprays and suspension of operations during periods of high winds.

Reason: To minimise air pollution impacts.

- 5.9 The developer notifying neighbouring residents and businesses of the construction works program by way of neighbourhood letterbox drop at least seven days prior to the commencement of site works. Information to be included with the works program is to include telephone contact details for the developer and/or project manager for the purpose of receiving any complaints from members of the public in relation to activities conducted on site or by vehicle or mobile plant associated with site works. A log of complaints received and action taken in response must be kept on site and made available to authorised Council officers upon request.

Reason: To ensure that environmental impacts or incidents arising from site operations are addressed promptly.

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

Reason: To confirm a condition of consent prescribed by the Environmental Planning & Assessment Regulation 2000.

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

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the work site is prohibited.

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

Reason: To confirm a condition of consent prescribed by the Environmental Planning and Assessment Regulation 2000.

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

- (a) protect and support the adjoining premises from possible damage from the excavation, and
- (b) where necessary, underpin the adjoining premises to prevent any such damage.

This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

Reason: To confirm a condition of consent prescribed by the Environmental Planning and Assessment Regulation 2000.

- 5.13 Fulfilment of the commitments listed in each relevant BASIX certificate for the development is a prescribed condition of this development consent.

Reason: To confirm a condition of consent prescribed by the Environmental Planning and Assessment Regulation 2000.

- 5.14 For the purposes of section 80A (11) of the Act, the requirements of Schedule 3A of the Environmental Planning and Assessment Regulation 2000 are prescribed as conditions of development consent to be complied with.

1 Nitrate film

An entertainment venue must not screen a nitrate film.

2 Stage management

During a stage performance, there must be at least one suitably trained person in attendance in the stage area at all times for the purpose of operating, whenever necessary, any proscenium safety curtain, drencher system and smoke exhaust system.

3 Proscenium safety curtains

If a proscenium safety curtain is installed at an entertainment venue:

- (a) there must be no obstruction to the opening or closing of the safety curtain, and
- (b) the safety curtain must be operable at all times.

4 Projection suites

- (1) (Repealed)
- (2) When a film is being screened at an entertainment venue, at least one person trained in the operation of the projectors being used and in the use of the fire fighting equipment provided in the room where the projectors are installed (the **projection room**) must be in attendance at the entertainment venue.
- (3) If the projection room is not fitted with automatic fire suppression equipment and a smoke detection system, in accordance with the *Building Code of Australia*, the person required by subclause (2) to be in attendance must be in the projection suite in which the projection room is located during the screening of a film.
- (4) No member of the public is to be present in the projection suite during the screening of a film.

11 Emergency evacuation plans

- (1) An emergency evacuation plan must be prepared, maintained and implemented for any building (other than a temporary structure) used as an entertainment venue.
- (2) An **emergency evacuation plan** is a plan that specifies the following:
 - (a) the location of all exits, and fire protection and safety equipment, for any part of the building used as an entertainment venue,
 - (b) the number of any fire safety officers that are to be present during performances,
 - (c) how the audience are to be evacuated from the building in the event of a fire or other emergency.

- (3) Any fire safety officers appointed to be present during performances must have appropriate training in evacuating persons from the building in the event of a fire or other emergency.

Reason: To confirm a condition of consent prescribed by the Environmental Planning and Assessment Regulation 2000.

- 5.15 All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

Reason: To confirm a condition of consent prescribed by the Environmental Planning & Assessment Regulation 2000.

- 5.16 A Registered Surveyor's Certificate showing the boundaries of the site and the proposed building plotted thereon being submitted to the Principal Certifying Authority before construction is commenced.

Reason: To ensure that the building will be located as approved.

- 5.17 The proposed parking bays being clearly indicated by means of signs and/or pavement markings.

Reason: To encourage the use of the proposed on-site car parking facilities and thereby minimise kerbside parking in the adjacent public road as a result of the proposed development.

- 5.18 The vehicular entrance and exit driveways and the direction of traffic movement within the site being clearly indicated by means of reflectorised signs and pavement markings.

Reason: To ensure that clear direction is provided to the drivers of vehicles entering and leaving the premises in order to facilitate the orderly and efficient use of on-site parking spaces / facilities and driveway access and in the interest of traffic safety and convenience.

- 5.19 All vehicular movement to and from the site being in a forward direction.

Reason: To ensure that the proposed development does not give rise to vehicle reversing movements on or off the public road with consequent traffic accident potential and reduction in road efficiency.

- 5.20 Vehicles being loaded or unloaded standing wholly within the premises and within loading bays designated on the submitted plans or as otherwise provided in accordance with the conditions of this consent and under no circumstances are vehicles to be loaded or unloaded at the kerbside, across the public footpath or in a manner which obstructs vehicular access to the site.

Reason: To ensure that the proposed development does not give rise to street loading or unloading operations or obstruction of internal driveways with consequent accident potential and reduction in road and driveway efficiency.

- 5.21 Proposed parking areas, driveways, vehicular ramps and turning areas being maintained clear of obstruction and being used exclusively for purposes of car parking

and vehicle access, respectively. Under no circumstances are such areas to be used for the storage of goods or waste materials.

Reason: To ensure the proposed/required parking, facilities and associated driveways are able to function efficiently for their intended purpose and are not otherwise used in a manner which detracts from the overall appearance of the development.

- 5.22 The developer shall ensure that the RTA Motor Registry access in Steel Street is retained or reconstructed as required.

Reason: To clarify the terms of the approval of the proposal in line with RTA requirements.

- 5.23 Erosion and sediment control measures being implemented prior to the commencement of works and being maintained during the period of construction in accordance with the details set out on an Erosion and Sediment Control Plan that is to be submitted for approval with the Construction Certificate application. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.

Reason: To ensure that appropriate measures are taken to prevent surface erosion and the emission of sediment from the site as a result of the proposed development.

- 5.24 Any liquid wastes from the premises, other than stormwater being discharged to the sewers of the Hunter Water Corporation Ltd in accordance with that authority's requirements.

Reason: To prevent environmental pollution and to ensure observance of appropriate public health standards.

- 5.25 Any proposed floodlighting of the premises being so positioned, directed and shielded as to not interfere with traffic safety or detract from the amenity of the adjacent premises.

Reason: To ensure that the proposal does not interfere with traffic safety and to protect the existing amenity of the neighbourhood.

- 5.26 No goods or advertising signs being displayed or allowed to stand on the public footpath or street.

Reason: To avoid interference with pedestrian traffic flow and to protect the visual amenity of the neighbourhood.

- 5.27 Adequate facilities being provided in an appropriately screened location within the premises for the separate storage of recyclable and non-recyclable material, and arrangements being made for regular removal and disposal of same.

Reason: To prevent environmental pollution and reduce the amount of waste being disposed to landfill.

- 5.28 Construction / demolition work noise that is audible at other premises is to be restricted to the following times:

- Monday to Friday, 7.00 am to 6.00 pm
- Saturday, 8.00 am to 1.00 pm

No construction/demolition work noise is permitted on Sundays or Public Holidays

Reason: To prevent 'offensive noise' from construction/demolition sites in accordance with the Environmental Protection Authority Guidelines.

- 5.29 No construction/demolition work being undertaken on a Public Holiday or on a Saturday or Sunday adjacent to a Public Holiday

Reason: To safeguard the amenity of the neighbourhood.

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

(Note: Council's PREVENT POLLUTION sign can be obtained by presenting your development application receipt at Council's Customer Enquiry Counter at 282 King Street Newcastle or at the Master Builders Association office.)

Reason: To increase industry and community awareness of developer's obligations to prevent pollution and to assist in ensuring compliance with the statutory provisions of the Protection of the Environment Operations Act 1997.

- 5.31 A Landscape Establishment Report is to be submitted to the Principal Certifying Authority following completion of a three (3) month maintenance period, verifying that satisfactory maintenance of the landscape works has been undertaken and any necessary rectification measures have been carried out to a high professional standard.

Reason: To ensure that the landscape works are conserved and properly maintained in accordance with approved plans so as to improve the appearance of the premises and the visual quality of the locality.

- 5.32 All public footways, footpaving, kerbs, gutters and road pavement damaged during the works being immediately repaired following the damage, to a satisfactory state that provides for safe use by pedestrians and vehicles. Full restoration of the damage is to be carried out to Council's satisfaction prior to the issue of any occupation certificate in respect of the development.

Reason: To ensure that safe conditions are maintained on the site during construction and that the required restoration is undertaken to acceptable standards, without demand on public sector resources.

- 5.33 Where the proposed development involves the destruction or disturbance of any existing survey monuments, those monuments affected being relocated at no cost to Council by a surveyor registered under the Surveyor's Act.

Reason: To ensure that existing permanent survey marks which may be affected by the development are appropriately reinstated.

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

The minimum numeral heights shall be -

- a) Exterior of the building and individual suites, flats or units = 75 mm.
- b) Group mailbox
 - house number = 150 mm
 - suite number = 50 mm.

Reason: To ensure that the property can be readily identified by visitors, motorists, emergency services and the community generally.

5.35 If the work involved in the erection / demolition of the building:

- a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
- b) building involves the enclosure of 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.

Reason: To confirm a condition of consent prescribed by the Environmental Planning & Assessment Regulation 2000.

5.36 A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is carried out:

- a) stating that unauthorised entry to the work site is prohibited, and
- b) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.

Any such sign is to be removed when the work has been completed.

Reason: To confirm a condition of consent prescribed by the Environmental Planning & Assessment Regulation 2000.

5.37 The placing of building materials or the carrying out of building operations upon or from Council's footway or roadway is prohibited unless prior consent in writing is obtained from Council.

Reason: To maintain pedestrian passage and public safety.

5.38 A Security Management Plan (SMP) for the proposed retail shopping mall, cinema complex, associated undercover carpark and the pedestrian pathway through the site (extending from Ravenshaw Street to Steel Street) being prepared by a suitably qualified security consultant and implemented prior to the commercial component of the proposed development being occupied. The required SMP is to assess the need for CCTV, and outline strategies for fostering safer communities and training of security staff and is to be reviewed by the Centre Management on an annual basis.

Reason: To ensure that appropriate security measures are implemented for the commercial development in the interest of providing and maintaining a satisfactory level of public security and safety within the site.

- 5.39 A Youth Protocol being developed as part of the Centre Management Strategy for the proposed retail/cinema centre, in order to facilitate and foster access to the centre by youth in a manner that minimises the potential for conflicts between differing user groups. The required Protocol is to be developed and submitted for Council approval prior to the issue of an Occupation Certificate in respect of the commercial /cinema component of the development.

Reason: To ensure that an appropriate centre management strategy is developed and put in place providing for a shopping centre environment that is inclusive of all user groups, including youth, and to assist in minimising the potential for conflict and anti-social behaviour within the centre.

- 5.40 The use and occupation of the premises including all plant and equipment installed thereon, not giving rise to any "offensive noise", as defined under the Protection of the Environment Operations Act, 1997, as amended. Should Council consider that offensive noise has emanated from the premises, the owner/occupier of the premises will be required to submit an acoustic consultant's report recommending appropriate acoustic measures necessary to ensure future compliance with this condition and will be required to implement such measures within a nominated period. Furthermore, written certification from the said consultant confirming that the recommended acoustic measures have been satisfactorily implemented will be required to be submitted to Council before the expiration of the nominated period.

Reason: To ensure that appropriate noise control measures are implemented and subsequently upgraded if required to satisfy reasonable environmental standards.

- 5.41 The replacement street trees and all proposed on-site landscaping being watered and maintained under the supervision of a suitably qualified Landscape Contractor, appointed by the developer, for a period that includes at least two summers after planting.

Reason: To ensure the replacement trees and site landscape works survive and grow with optimal structure so as to minimise future maintenance requirements and continue to provide visual enhancement and landscape quality for both the development and the streetscape.

6 General Terms of Approval to be Obtained from Other Authorities

- 6.1 Working drawings and specifications of the proposed building being submitted to and approved by the NSW Mine Subsidence Board prior to the issue of a Construction Certificate and compliance with any requirements of the Board.

Reason: To ensure that structural stability of the proposed development having regard to underground mine workings.

7 Advisory Matters

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

- a) A Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act.
- b) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act and form 7 of schedule 1 to the Regulations.
- c) Council is to be given at least two days notice of the date intended for commencement of building works, in accordance with Section 81A(2)(c) of the Act and Form 7 of Schedule 1 to the Regulations.

Reason: To advise of matters to be resolved prior to the commencement of work.

- 7.2 Prior to the occupation 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 erection of the building. An application for an Occupation Certificate must be set out in the form of the relevant part of Form 12 of the Environmental Planning and Assessment Regulations and must be accompanied by the relevant information required by Form 12.

Reason: To ensure compliance with Section 109M of the Environmental Planning and Assessment Act 1979, as amended.

- 7.3 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.

Reason: To ensure compliance with Clause 80E of the Environmental Planning and Assessment Regulations.