

JRPP No.	2009HCC006
DA No.	DA09/1039
Proposed Development	23 Steel Street, Newcastle West - Alterations and Additions to approved mixed use development
Applicant:	Gennie Holdings
Report By:	Drew Bulmer/Steven Masia (Newcastle City Council)

Supplementary Assessment Report and Recommendation

Background

The subject development application was considered by the Joint Regional Planning Panel (JRPP) on 28 January 2010. The Panel resolved that the determination of the application be deferred and Council staff be requested to provide a further report and additional information to a subsequent meeting of the Panel addressing and/or detailing:-

- 1) Flooding, Climate Change and Mitigation measures.
- 2) Details of RL's of building heights around the site.
- 3) Details of the calculations of Section 94A levy and for legal opinion to be sought on the appropriate means of calculating and applying the levy for the current Development Application.
- 4) BASIX compliance.
- 5) SEPP 65 compliance.
- 6) The awning heights to Ravenshaw Street.
- 7) Theoretical FSR calculations including, circulation space of additional parking, if Applicable.
- 8) Details of measures to ensure success of northern "green wall".
- 9) Relationships with previous DA consents and integrated approvals.
- 10) Acoustic impacts of proposed plant on residential properties on Ravenshaw Street.

These matters are discussed in detail within this report.

Nature of Proposed Development

Prior to addressing the additional information requirements it is considered appropriate to first clarify the nature of the proposed development that the applicant is seeking consent for. The submitted development application form describes the proposed development as *"Alterations and additions to approved mixed use development – refer to DA05/1266"*. The applicant is not seeking consent for an entirely new development nor are they seeking consent for the remainder of the development not yet constructed.

The applicant felt it appropriate to clarify this matter following the JRPP's consideration of the matter on 28 January 2010.

“Prior to addressing the specific issues, a crucial threshold issue arises that has not been specifically addressed in the motion from the JRPP but nevertheless was referred to several times by members of the panel in their deliberation. We refer to the nature of the development application that has been lodged and whether it is indeed an application for alterations and additions to the approved building (that is currently under construction) or indeed a new development application for the building in its entirety (as altered in the drawings).

It is clear that certain aspect specific requests included in the JRPP decision have been made due to the assumption that this is indeed a development application for the entire development. We strongly disagree with such a conclusion. At all times, including material incorporated into the application and subsequent discussions with Council, we have maintained that this is a development application for alterations and additions..... Both our statement of environmental effects and the plans submitted clearly identify that this is an application for alterations and additions and the plans clearly mark the alterations that have been included.

During the panel discussion, members expressed a concern that they were not aware or could not identify the specific alterations that were being sought. It may be that this explains their attitude towards the development application. To avoid any doubt, we have enclosed with this correspondence a fresh set of plans that identify the alterations as before (perhaps in a stronger colour). In these plans we have also corrected certain minor clarifications, included the commercial areas that have previously been incorporated purely by sketch, and also have identified a portion of back of house mezzanine area that was inadvertently omitted previously.”

A copy of the amended plans is at **Attachment A**. Please note that should the Panel see fit to approve the development that draft condition 1.1 would need to be amended to reference these new plans.

Councils’ legal advice considered the concept of an amending development application.

“The concept of an ‘amending development application’ is available as a consequence of section 80A(1)(b) of the EP & A Act which is in the following terms:

A condition of consent may be imposed if:

.....

(b) it requires the modification or surrender of a consent granted under this Act or a right conferred by Division 10 in relation to the land to which the development relates....

Although an amending DA is in essence a DA which does not propose new development, the Court has taken the view that such DA’s can rely on the development which is already authorised.

The Court’s first use of the ‘amending DA’ concept occurred in Waverly Council v C M Hairis Architects (2002) NSWLEC 180 (Hairis).

In Hairis, the DA described the proposed development as an “amending development application to DA approval 133/98 changing club space & pool on ground and first floor into 4 apartments & change to car park”. It was agreed by the parties in that case that the changes proposed in the new DA did not satisfy the threshold test required by section 96 of the EP & A Act, namely that the development as modified would be substantially the same development as that originally approved.

In rejecting the Council’s contention in Hairis that it was not open for the applicant to modify the existing consent other than by a section 96 application, Justice Talbot held as follows:

There is no statutory or other legal constraint upon the number of development applications that a person can make in respect of the same land. A shopping centre complex is a demonstrative example of the way in which there can be a mosaic of development consents extending around different parts or sections of a single site. Section 80A(1)(b) of the EP & A Act provides a facility for the consent authority to insist on the surrender of an existing development consent. It follows that the Act contemplates there can be more than one valid and operating consent in existence at the one time. The legislature has left the option or election whether to require surrender of an existing consent to the consent authority.....”

On this matter the legal advice concluded in respect of the subject development application:

“While it was open to the applicant to lodge a section 96 application, we think it is equally open for it to lodge a fresh DA for the proposed development.”

It is evident from the legal advice that it is open to the applicant to propose ‘alterations and additions’ to the approved development without having to lodge a new development application for the entire development.

The question of how the amending development application should be assessed was also considered in the legal advice.

“In Gordon & Valich Pty Ltd v City of Sydney Council (2007) NSWLEC 780 (Valich), the applicant contended that the relevant development assessment enquiry was limited to only the alterations and additions from the development the subject of the previous consent....The applicant argued that the matters in section 79C could only be considered in relation to the reduction in height from six to five storeys and that the resultant five storey development as a whole could not be considered through the lens of section 79C.

In rejecting the applicant’s argument, Preston CJ held as follows:

...The Council’s contentions look at the development that would result from carrying out the particular works, erecting the building and using the land in the ways that have been proposed by the development application. They evaluate that development against the relevant controls in the applicable local environmental plan and applicable development control plan, and more generally against planning criteria. It cannot be said that those matters are irrelevant in the sense that a

consent authority, assessing the development application which proposes those works, buildings and uses, would be bound to ignore the matters.

.....it would be artificial in the extreme to look only at that part of the building that previously breached the height limit and to compare it to the new part of the building which breaches the height limit divorced from the broader contextual enquiry and the rest of the building.

In respect of the subject development application the legal advice concluded:

Having regard to the findings of Preston CJ in Valich, we think that 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.”

While the logic applied from Valich suggests that a consent authority needs to consider the entire resultant development as a whole this does not mean that the subject application is for an entirely new development. It is simply a process matter to ensure all relevant matters are considered.

The mixed use development approved under DA05/1266 is not only approved but already well under construction. As outlined in Council's legal advice it is reasonable to place weight on this.

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

This certainly poses a different situation to an uncommenced approval that may never come to fruition, in which case the consent authority may give limited weight to the approved development.

1) Flooding, Climate Change and Mitigation measures

A Council Senior Development Engineer has reviewed the proposed development and the JRPP's request to consider flooding impacts, including effects of climate change, and advised as follows.

“Background

This site has a recent history of development assessment including DA's 05/1266 and 09/0205 which are currently being built and this more recent DA 09/1039 for alterations and additions to the approved development.

Council and their flood management consultants have been working on a flood model for the Cottage Creek catchment which includes this site for several years. The flood study was finalised in 2009. From this study the current estimate of the 1 in 100 year Average Recurrence Interval (ARI) flood level along the Steel Street frontage ranges from 2.35 to 2.45 m AHD. The flood study also includes an estimate of the largest possible flood, the Probable Maximum Flood (PMF), at 4.5m AHD. There have been no significant

changes to the local flood level estimates since the DA 05/1266 approval was issued.

In the June 2007 flood event the flood levels in this area exceeded 3.0m AHD partly due to the blockage, by a large shipping container, of the downstream culvert under the main rail line.

The ground floor level for the development has been approved at 3.5m AHD which satisfies the minimum flood freeboard requirement of 500mm above the local 1 in 100 year ARI flood level.

As part of the submission to DA 09/0205, approved by Council on 30 July 2009, the applicants engineers Taylor Thomson Whitting prepared an updated submission, dated 4 June 2009, which outlined the measures proposed to minimise the risk to flooding of the basement carpark. These measures included ensuring the two Steel Street driveway entry threshold levels are set at a minimum of 2.42m AHD and the installation of flood gates at the driveway thresholds for protection against storms larger than the 1 in 100 year ARI flood event. The flood gates would be set to keep floodwaters out of the basement up to 3.3m AHD. They also proposed to install an alarm sensor for basement carpark evacuation for flood levels reaching a level of 2.3m AHD.

Impact of Sea Level Rise

The NSW Government has adopted a Sea Level Rise Policy Statement, dated October 2009, which states that “the best national and international projections of sea level rise along the NSW coast are for a rise relative to 1990 mean sea levels of 40 cm by 2050 and 90cm by 2100”. Council are currently assessing the flood impacts of higher harbour water levels as part of Stage 2 of the Newcastle City Wide Flood Management Study which will result in a City Wide Flood Management Plan being completed by the end of 2010. As an interim position Council are using a harbour water level of 2.0m AHD which includes 90cm of future sea level rise. Whether this higher harbour level will significantly increase the 1 in 100 year ARI flood levels in the Steel Street area is unknown at this point in time.

Proposed New Development (DA 09/1039)

For this latest development proposal the ground floor level is being kept at 3.5m AHD and the basement carpark will be protected from flood inundation up to a local flood level of 3.3m AHD using a combination of flood alarm, minimum driveway threshold levels matching existing local 1 in 100 year ARI flood level estimates and flood gates. The flood protection measures proposed and the basement evacuation arrangements for extreme flood events is documented in the letter report prepared by Taylor Thomson Whitting Pty. Ltd., Consulting Engineers, dated 4 June 2009.

Proposed Consent Condition

Should consent be issued for the proposed modification it is recommended that the consent condition used on the latest approval DA 09/0205 be reiterated.

- *The basement carpark being designed to manage the local flood risk as outlined in the latest letter report from Taylor Thomson Whitting dated 4 June 2009. Full details being provided with the Construction Certificate application.*

Note: *Appropriate maintenance requirements for the proposed flood gate need 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."*

This condition shall replace previous proposed draft condition 3.21, which inadvertently referenced an older report lodged under DA05/1266.

2) Details of RL's of building heights around the site

The applicant has submitted a Site Context Plan (sheet DA22 of plans) with surrounding building RL's indicated. A further photomontage has been included with the plans to demonstrate the Ravenshaw Street context (**Attachment A**).

3) Details of the calculations of Section 94A levy and for legal opinion to be sought on the appropriate means of calculating and applying the levy for the current Development Application

Council's Section 94 Officer has provided the following explanation of the proposed Section 94A levy of \$74,823 as contained in proposed draft condition 2.14.

"DA 05/1266 was approved on the 4 August 2006. Condition 2.13 required the payment of a development contribution of \$334,576. The contribution was paid on the 14 April 2008 and due to indexation totalled \$341,936.

DA 09/1039 (alterations and additions) has an estimated development value of \$10,096,500. The s94A contribution payable on a development of that value is \$302,895 (3% of development cost). As the alterations and additions application is substantially the same (from a community infrastructure demand perspective) as the original development it was thought to be unreasonable to levy the entire development again as some components of the development would be levied twice. In this instance Council provided a credit for the existing floor area approved under DA 05/1266 and proposes to only levy the additional floor area being created by the alterations and additions.

*In this regard the applicant provided Council with a detailed cost report prepared by a registered quantity surveyor (**Attachment D**) which outlined the net cost of the additional floor area for commercial, retail and car parking uses, less the value of the residential floor area that is being deleted. Accordingly this results in a value below the development value (outlined above). The additional floor area has a net development cost of \$2,494,087 which equates to a development contribution of \$74,823 (3% of net development cost).*

The purpose of Part B of the section 94A Plan is to provide funding towards the public domain projects and special city centre projects listed within Appendix B of the plan. The reduced contribution applied for DA 09/1039 is thought to be reasonable when assessing the demand the development will

create on community infrastructure within the city centre area. It is unlikely that the additional floor area created by the alterations would substantially increase the demand for community infrastructure created by DA 05/1266 and therefore levying the entire development again would be unreasonable.

The establishment of new residential development generally creates the greatest pressure on Council to provide and upgrade community infrastructure. The alterations and additions proposal reduces the residential component of the development by 39 units and although additional commercial floor area is being created, the overall demand created by the development for community infrastructure is likely to be significantly reduced.

The Department of Planning's Development Contributions Practice Notes provides guidance on issuing credits for existing development. The practice notes state that it is generally accepted practice that a credit equal to the existing development on site is taken into consideration. The practice notes offer the following examples:

- Where an existing detached dwelling is located on a site, the credit would be for a single dwelling*
- Where a residential allotment is vacant, the credit would be for a standard residential allotment*
- Where a residential flat building is located on a site, the credit would be for the floor space or unit mix (ie 1, 2 and 3 bedroom units) on the site*
- Where the contribution has been paid on a site and the development application has been superseded by another application/contribution.*

The Minister for Planning in 2006 issued a direction under Section 94E of the Environmental Planning and Assessment Act that prohibits Councils from applying a section 94A condition to development that has been the subject of a condition under section 94 under a previous development consent relating to the subdivision of land on which the development is to be carried out. The Ministerial direction was imposed to prevent Councils from charging both a section 94 and section 94A contribution on the same development and essentially 'double dipping'. Although the s94 contribution paid for DA 05/1266 was not for subdivision Council needs to ensure no double dipping is occurring when applying a section 94A levy to the proposed alterations and additions development applications.

In summary it is considered that the proposed section 94A levy of \$74,823 based upon the net cost difference of the proposed alterations and additions is fair and reasonable in the circumstances."

Based upon this clarification it is not considered necessary to seek further legal advice at this stage.

4) BASIX compliance

The JRPP queried whether the proposed development would be BASIX affected. Upon further consideration of Council's legal advice, that indicates the assessment

scope should apply to the whole of the development, it is considered that the proposal is a BASIX affected development.

The applicant contends this position:

“This development application does not propose any residential development and we are not seeking any consent for residential development. Consequently, a BASIX certificate analysis of the residential units is not required.”

Nevertheless to expedite the assessment process the applicant agreed to submit BASIX certificates for the three residential buildings above podium level (**Attachment E**). The submitted BASIX certificates achieve targets for Water, Thermal Comfort and Energy. It is recommended that proposed condition 1.1 be amended to include reference to the BASIX certificates (**Attachment B**).

5) SEPP 65 compliance

The JRPP requested that the applicant submit a Design Verification Report in accordance with SEPP 65, and the applicant has subsequently submitted such report. For completeness of assessment and to fulfil any statutory requirements the latest amended design and Design Verification Report were referred to Council's Design Review Panel (Urban Design Consultative Group). At the time of writing this report the final minutes had not been received. Accordingly a separate report on this matter will be distributed to the JRPP prior to the scheduled meeting.

6) The awning heights to Ravenshaw Street

The JRPP sought clarification on the awning height within Ravenshaw Street. The applicant provided the following response:

“The awning is applied over a footpath which falls from a northern extreme high point of RL6.1 down to its southern low point of approximately RL4.3. The awning height above the footpath varies as a result and is a minimum height of 2.4m at its extreme northern end and approximately 4.2m at its extreme southern end. The awning application to the façade is further influenced by opening locations and structural support opportunities. The height has been designed to achieve the best possible outcome for the majority of the awning length. The footpath to awning heights at the extremes are localised and considered appropriate. The residential entry in the mid zone of the façade is given prominence by virtue of a raised portion of awning, which relative to the footpath level at that point achieves a height of 3.1m.”

The Newcastle Development Control Plan 2005 requires a minimum clearance from the footpath to underside of awning of 2.7m. Accordingly a 2.4m height is not considered sufficient and the awning would need to be 'stepped' to achieve a minimum of 2.7m clearance. This requirement has been discussed with the applicant who has agreed that a condition could be imposed. An additional condition has been included within the amended draft schedule of conditions **Attachment B** (condition 3.45).

7) Theoretical FSR calculations including, circulation space of additional parking, if applicable

The JRPP requested that FSR calculations be carried out to include any circulation space associated with excess parking.

Clause 26 of the Newcastle City Centre Local Environmental Plan (NCCLEP) 2008 is as follows:

“26 Car parking

- (1) If development involves the erection of a new building, or an alteration to an existing building that increases the gross floor area of the building:
 - (a) car parking must be provided in accordance with Newcastle Development Control Plan 2005, and*
 - (b) at least one car parking space must be provided for every 60 square metres of gross floor area that is used for office premises.**
- (2) Car parking required to be provided by this clause is to be provided on site unless the consent authority is satisfied that car parking will be adequately provided for elsewhere.*
- (3) For the purposes of this clause, any area of the building that is used for car parking is to be included as part of a building's gross floor area, except where the car parking is provided as required by this clause.*
- (4) Council-owned public car parking is not to be included as part of a building's gross floor area.”*

The proposed development results in additional gross floor area (GFA) and accordingly in accordance with Clause 26(1)(a) additional carparking is to be provided in accordance with the Newcastle Development Control Plan (DCP) 2005. Section 4.1.2(a) - Parking Rates, of the DCP states:

“The rates listed in tables are intended as a guide and may need to be adjusted to reflect local circumstances, public transport accessibility, employee densities and/or reduced car mode share targets....Where special circumstances exist, Council may require standards greater than those specified in tables.”

As discussed in the previous report to the JRPP the DCP guidelines specify a ‘blanket’ carparking rate for non-residential development within the city centre of 1 space per 60m² of GFA. However the question arises as to whether this is an appropriate rate for a shopping centre. The parking within the proposed development is based upon the applicant’s traffic and parking report by consultants Colston Budd Hunt & Kafes. For the retail ‘shopping centre’ component, the report has applied a parking rate of 4.1 spaces per 100m² GLA, which is the nominated rate for shopping centres under the RTA’s “Guide to Traffic Generating Developments”. The report has been reviewed by a Council traffic engineer and the parking is considered appropriate for a development of this nature. The lower ‘blanket’ parking rate under the DCP of 1 space per 60m² of GFA would be unlikely to provide sufficient on-site carparking thereby generating adverse on-street parking demand within the area which is not considered acceptable. It is considered that the proposed development provides an appropriate level of on-site parking for the commercial/retail component of the mixed use development. As outlined in the previous report there is an excess of 10 residential parking spaces.

The definition of GFA under the Newcastle City Centre Local Environmental Plan 2008 specifically excludes:

“(g) car parking to meet any requirements of the consent authority (including access to that parking.”

Therefore it is considered that no parking should be included in the GFA for the development, other than the 10 additional residential spaces. It is considered unreasonable to require the applicant to meet the car parking requirements of Council but then penalise them by including those spaces as part of GFA calculations. It should also be noted that the existing development DA05/1266 was approved by Council with carparking in excess of the 1 space per 60m² GFA, once again based upon the findings of a Traffic and Parking Report. To require a lesser parking rate under the subject DA would be inconsistent with the existing approvals on site.

Clause 26)1)3) of the NCCLEP is not clear as to whether circulation space of excess parking is to be included as GFA or not. However for the purpose of the exercise circulation space has been included to each additional parking space based upon half isle width per space. A total of 10 excess residential and 245 excess commercial carparking spaces and the associated circulation space equates to a GFA of 5,741m². The total GFA is 38,646m² and site area is 10,350m², resulting in an FSR of 3.73:1. This is 0.04:1 over the maximum FSR of 3.69:1.

The submitted development application form indicates that the proposed development applies to Lot 1 DP1060087 – 23 Steel Street, which has a site area of 10,350m². In reality the development site actually includes another triangular portion of land at the south-west corner adjacent to Steel Street (which is actually shown on the submitted plans but was effectively dealt with under a separate development application DA09/0205). This section comprises Lot 100 DP1135694 and part of Cottage Creek. This represents another 615m² bringing the total site area to 10,965m². Taking this site area the FSR reduces to 3.52:1 which complies with the maximum FSR of 3.69:1.

8) Details of measures to ensure success of northern "green wall"

The applicant has engaged Site Image Landscape Architects to review the proposed green wall. The report states:

“It is the opinion of Site Image that the proposals will achieve a suitable ‘green wall’ outcome to the nominated locations indicated on the drawings. There is considered to be a suitable sunny aspect that will provide adequate sun, along with suitable soil volume, irrigation, and suitable access for maintenance. We qualify this opinion with only a suggestion that the climber species nominated by the Landscape Architect (Scott Murray and Associates) be changed from Pandorea jasminoides (Bower of Beauty) to a more vigorous and hardy species. Our suggestions, discussed in the body of this report, include Bougainvillea (Bougainvillea spp), Parthenocissus tricuspidata (Boston Ivy), and Hedera helix (Persian Ivy), all of which have highly vigorous growth habit, suitable climbing and trailing form (as appropriate to application), and suckers that will self-adhere to the walls.”

A full copy of the report is at **Attachment C**.

It is recommended that condition 3.35 contained in the draft schedule of conditions be amended to include reference to the report (**Attachment B**).

9) Relationships with previous DA consents and integrated approvals

The site currently has two DA consents relating to the subject proposal. These include the main DA05/1266 as previously discussed in the report to the JRPP. The second approval is DA09/0205 comprising 'timber deck and seating area, pedestrian pathway and driveways' and was approved by Council on 30 July 2009. These are external works associated with the development adjacent to Steel Street and extend over the creek. The proposed development under the subject DA09/1039 is considered to be compatible with both these consents.

In relation to integrated development it is considered that the only applicable approval required is under the Mine Subsidence Compensation Act 1961. This Act requires approval to alter or erect improvements within a mine subsidence district. The applicant has separately obtained the required approval from the Mine Subsidence Board.

The Panel questioned whether the subject development may require an Activity Approval under the Water Management Act 2000.

Section 91(2) of the Water Management Act 2000, states *"A controlled activity approval confers a right on its holder to carry out a specified controlled activity at a specified location in, on or under waterfront land."*

The subject site is within 40m of 'Cottage Creek' and accordingly is defined as 'waterfront land'.

A controlled activity means:

- "(a) the erection of a building or the carrying out of a work (within the meaning of the Environmental Planning and Assessment Act 1979), or*
- (b) the removal of material (whether or not extractive material) or vegetation from land, whether by way of excavation or otherwise, or*
- (c) the deposition of material (whether or not extractive material) on land, whether by way of landfill operations or otherwise, or*
- (d) the carrying out of any other activity that affects the quantity or flow of water in a water source."*

A Part 3A permit was issued under the Rivers and Foreshores Improvements Act 1948 for works adjacent to the creek in relation to the existing approved development DA05/1266.

A separate application DA09/0205 comprising 'timber deck and seating area, pedestrian pathway and driveways' was approved by Council on 30 July 2009. These are external works associated with the development and actually extend over the creek. The Department of Environment and Climate Change advised the works were too minor to require a Control Activity Approval under the Water Management Act 2000.

The actual earthworks, basement and ground floor for the subject development are now already constructed and the proposed development does not propose any further earthworks or building adjacent to the creek. It is therefore considered that the proposed development would not require a further controlled activity approval.

Irrespective of the opinion on this matter the applicant has not applied to Council for an integrated development approval and accordingly there is no onus on the Council or the JRPP to require such approval prior to determination of the DA.

This type of matter was considered in *Maule v Liporoni & Anor (2002) NSWLEC 25*. The court considered the validity of the development consent on a number of grounds, including whether the failure of the Council to require the applicant to obtain a Part 3A permit under the Rivers and Foreshores Improvements Act 1948 prior to determination of a DA was a breach of process. In this regard the court found:

“In making the development application Mr Liporoni did not tick the box in the application form to indicate that consent was being sought for an integrated development approval. In so doing he elected to have his development application processed as if it were not an application for integrated development. That was his choice. There was and is no compulsion on an applicant to make an application for an integrated development approval, if he or she chooses not to do so.”

Therefore even if the development did require a controlled activity approval this should not affect the determination of the subject DA.

10) Acoustic impacts of proposed plant on residential properties on Ravenshaw Street

This matter has been considered by Council's Environmental Compliance Unit which has advised as follows:

“Regarding comments made by the Joint Regional Planning Panel (JRPP) on 28 January 2010 “Acoustic impacts of proposed plant on residential properties on Ravenshaw Street” the Compliance Services Unit (CSU) provides the following advice.

The CSU understands that the JRPP has made comments that the details of specific plant to be installed has not been adequately considered as part of the assessment process and that these details should be provided for assessment prior to approval being issued.

The applicant has responded to this stating that this requirement is impractical as not all equipment to be installed has been selected at this stage of the development and that predicted noise from plant was assessed in the acoustic assessment. They also state that that Council has imposed relevant conditions to ensure that any plant to be installed is assessed by an acoustic consultant prior to issue of the Construction Certificate and that any required attenuation is put in place prior to the issue of the Occupation Certificate.

The CSU is satisfied that the potential acoustic impacts from plant have been adequately addressed in a manner that is consistent with other developments of a similar nature. The CSU considers the applicants response to this matter is reasonable; that with a large scale development not all details pertaining to specific plant can reasonably be expected to be provided by the applicant prior to approval.

The applicant has provided information pertaining to maximum noise levels of plant proposed to be installed which was considered by the acoustic

consultant in the previous acoustic assessment reports undertaken for this proposal.

The CSU considers that potential noise impacts from proposed plant will effectively be addressed via the following conditions applied to the consent;

- 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.*

- 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."*

These were included as conditions 3.28 and 3.31 respectively in the draft schedule of conditions within the previous report to the JRPP.

Revised Draft Conditions of Consent

A revised draft schedule of conditions has been provided to reflect any changes as referred to above in this report. It was also considered appropriate to amend a number of conditions relating to works in the public domain to be completed prior to the issue of any occupation certificate. This will ensure that those works are completed prior to occupation of the development and provide clarity for all relevant stakeholders.

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| Attachment A: | Amended plans of proposed development and 3D image – 23 Steel Street, Newcastle West. |
| Attachment B: | Revised draft schedule of conditions - 23 Steel Street, Newcastle West. |
| Attachment C: | Landscaping report on 'green wall' - 23 Steel Street, Newcastle West. |
| Attachment D: | Quantity Surveyor cost estimation report. |
| Attachment E: | BASIX certificates. |

ATTACHMENT B - DRAFT SCHEDULE OF CONDITIONS
DA09/1039 – 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 3 February 2010;
 - BASIX certificates 294671M, 294675M, 294673M;
 - 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.

The works are to be completed prior to the issue of any occupation certificate.

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. The works are to be completed prior to the issue of any occupation certificate.

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. The works are to be completed prior to the issue of any occupation certificate.

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. The works are to be completed prior to the issue of any occupation certificate.

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. The works are to be completed prior to the issue of any occupation certificate.

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. The works are to be completed prior to the issue of any occupation certificate.

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. The works are to be completed prior to the issue of any occupation certificate.

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 any 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 any 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 any 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 *Acmera 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 any 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 any 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, 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

Association of Consultants in Access Aust Inc
326 Autumn Street, HERNE HILL, VIC. 3218.
Ph (03) 5221 2820
www.access.asn.au
 - 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 latest letter report from Taylor Thomson Whitting dated 4 June 2009. Full details being provided with the Construction Certificate application.

Note: Appropriate maintenance requirements for the proposed flood gate need 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 Envirospray, 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, and under the report by Site Image Landscape Architects, titled 'Green Wall' Landscape Design Assessment, dated 9 February 2010, 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.

- 3.45 Street awnings to provide a minimum 2.7m clearance from footpath surface. Full details are to be included in documentation for a Construction Certificate application.

Note: The awning within Ravenshaw Street will likely need to be 'stepped' at the northern end to provide required clearance.

Reason: To ensure adequate clearance to street awnings for public safety.

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.