
NEWCASTLE CITY COUNCIL

JRPP No.	2010HCC035
DA No.	DA 10/1278
PROPOSAL	REDEVELOPMENT OF THE NEWCASTLE ART GALLERY (NAG)
PROPERTY	No.1 LAMAN STREET, COOKS HILL Lots 10, 11, 12, 13, 14 & 15, DP 1122031; Lot 1, DP 63100; Lot 1, DP 516670, and Pt Lot 18, Sec G, DP 978941
APPLICANT	NEWCASTLE CITY COUNCIL
REPORT BY	ON BEHALF OF DEVELOPMENT AND BUILDING SERVICES

Assessment Report and Recommendation

Executive Summary

Proposed Development

The development application proposes alterations and additions to the existing Newcastle Art Gallery (NAG). The proposed redevelopment consists of the following elements:

- Demolition of an existing structure on Darby Street, the cooling tower and some internal partitions;
- Refurbishment of the existing gallery and associated facilities to link with the new gallery and exhibition space, new office reception, office and various storage areas;
- Construction of a new back of house consisting of a loading dock, plant room and lift hoist at ground floor level, exhibition store, plant room and lift store at first floor level;
- Construction of a new eastern wing consisting of a café, amenities, gallery reception, education area gallery, courtyard and theatre at ground floor level and boardroom, gallery spaces and amenities at first floor level; and
- Two retail spaces along Darby and Queen Streets.

Referral to Joint Regional Planning Panel

The proposal is referred to the Joint Regional Planning Panel for determination pursuant to Clause 21 of State Environmental Planning Policy (State and Regional Development) 2011, given the Council is the applicant and the proposal has a capital investment value of more than \$5,000,000. The application submitted to Council nominates the value of the project as \$14,300,000.

Permissibility

The site is zoned B4 Mixed Use zone pursuant to the Newcastle City Centre Local Environmental Plan 2008. The proposal is categorised as a 'Community Facility' and 'Retail Premises', both of which are permissible within the B4 Mixed Use zone subject to development consent. Landowner's consent has been provided. The proposal is Integrated Development as the site is located within a Mine Subsidence District.

Consultation

The application was publicly exhibited in accordance with Newcastle Development Control Plan 2005 from 6 - 20 October 2010. In response to the public exhibition, one submission was received. It is noted that this notification period was in 2010, however the delay in finalising the assessment of this application was due to the need for the applicant to resolve contamination issues.

The Mine Subsidence Board has provided a letter dated 26 August 2010 granting its approval of the application.

Key Issues

- Whether the design of the proposed development is suitable for a major art gallery in a prominent location in the City of Newcastle.
- Whether the loss of car parking spaces on the site is acceptable.
- Whether there is contamination of the site from previous use and whether the site is/can be made appropriate for the proposed use.
- Whether the proposed development would have an unacceptable impact on the adjoining Cooks Hill Heritage Conservation Area.

Recommendation

Grant approval to DA 10/1278 for the redevelopment of the Newcastle Regional Art Gallery at 1 Laman Street Cooks Hill, subject to conditions contained in **APPENDIX A**.

1. Background

The applicant's Statement of Environmental Effects provides the following information in relation to the background of the site:

'In 1929 Council dedicated the area known as 'Civic Park' as public green space. Prior to this the area was traversed by railway lines used for local coal mines and timberyards which had burnt down. In the 1960s Captain Cook Fountain was built, completing the formal link between the City Hall and the War Memorial Cultural Centre.

In 1945 Dr Roland Pope, an ophthalmic surgeon from Sydney, made the promise of the bequest of his art collection of some 137 Australian paintings to Newcastle, conditional upon the construction of a gallery to house them. In 1957 Newcastle City Art Gallery, as it was then known, opened on the second floor of the War Memorial Cultural Centre adjacent to the gallery's current home.

After the current site was identified in 1971 construction began in 1974 and Queen Elizabeth II opened the Gallery in March of 1977.'

2. Site and Locality Description

The site is owned by Newcastle City Council. It comprises a number of lots and includes Lots 10, 11, 12, 13, 14 & 15, DP 1122031; Lot 1, DP 63100; Lot 1, DP 516670; and Pt Lot 18, Sec G, DP 978941.



The site is irregular in shape and has a northern frontage to Laman Street of 78.85 metres, an eastern frontage to Darby Street of 73.1 metres and a southern frontage to

Queen Street of 53.4 metres.

The total area of the allotments which make up the site is approximately 4,172m².

The existing NAG comprises an L-shaped building which has a primary frontage to Laman Street. The NAG has a gross floor area of approximately 2,026m² and extends over two levels. It includes a main gallery, offices and amenities. Part of the War Memorial Cultural Centre (approximately 75m²) is located on the site.

Pedestrian access to the NAG is provided primarily from Laman Street. The entry leads to the main gallery. A lift services the upper levels of the building.

The site is accessible via two separate driveway crossings which service a car park which is currently used informally by the Roads and Traffic Authority on the eastern side of the site with parking spaces to the south of the existing gallery. These driveways are situated on Queen Street and Laman Street. A third 6 metre wide driveway is situated on the Queen Street frontage and services the public car park located directly to the west of the site.

On-street parking in the vicinity is generally restricted to 2 hours.

3. Project Description

The development application proposes alterations and additions to the existing NAG. The applicant describes the proposed redevelopment as:

- **'Demolition** - Demolition of an existing structure on Darby Street, the cooling tower and some internal partitions.
- **Refurbishment** - Refurbishment of the existing gallery and associated facilities to link with the new gallery and exhibition space, new office reception, office and various storage areas.
- **New Back of House** - Construction of a new back of house consisting of a loading dock, plant room and lift hoist at ground floor level and a back of house area, exhibition store, plant room and lift store at first floor level.
- **New Eastern Wing** - Construction of a new eastern wing consisting of a café, amenities, gallery reception, education area gallery, courtyard and theatre at ground floor level and boardroom, gallery spaces and amenities at first floor level. Additionally, there are two retail spaces proposed along Darby and Queen Streets.'

The proposed development would be two storeys in height, and the applicant proposes the following materials and finishes:

- 'Cement Composite Panels to the external first floor walls;
- Glazed windows and balustrades;
- Timber clad mullions, louvres and sliding screens to the terrace;
- Terrazzo pavers to terraces;
- Metal roof sheeting;

- Zinc cladding to the parapet and the ground floor of the Queen Street extension;
- Off-form concrete to the street walling; and
- Plasterboard and timber walls, and terrazzo floorings to the interior.'

Vehicular access to the rear of the site would be retained. Pedestrian access to the site would be available via Laman Street. The buildings would be fully accessible to all staff and visitors.

The proposed development involves the removal of a total of 45 car parking spaces that are currently located within the proposed building envelope. Fifteen spaces are 2 hour public parking spaces, and 2 are utilised informally by the Samaritans Child Care Centre. Twenty seven of the spaces are not public carparking spaces, utilised by the Roads and Traffic Authority for staff parking. These spaces are not formalised, and existed only due to there being an area of unformed future road reserve.

The original documentation forwarded with the application indicated that the development, although not staged development within the meaning of the Environmental Planning and Assessment Act 1979, was to be constructed in two stages. The applicant subsequently advised that the proposal is no longer proposed to be staged.

In addition, following concerns raised in relation to some aspects of the original design, the applicant has made modifications to the proposal. These modifications include:

- Additional 'softening' of the corner element of the building on the corner of Laman Street and Darby Street.
- Refining of the loading dock design.

The amended plans of the proposed development are provided at **APPENDIX B**.

4. Consultation

The application was publicly exhibited in accordance with Newcastle Development Control Plan 2005 from 6 - 20 October 2010. In response to the public exhibition one submission was received.

The submission raised the following issues:

- (a) The proposed development is of inadequate design quality for a major art gallery in such a prominent location, particularly when compared to the design which won a previous design competition.

Comment: The original design submitted with the development application was assessed as lacking in detail, and in some areas, was considered to be inappropriate from a design perspective.

The design of the proposed development has been amended during the assessment process and has been reviewed by the Council Urban Design Consultative Group

(UDCG). The amended design generally addresses the design issues raised such that the UDCG is satisfied with the amended development proposal. Detailed discussion of the design of the proposed development is provided in Section 6 of this report.

- (b) Whether adequate car parking has been provided on the site for the proposed development.

Comment: The proposed development would result in 45 car parking spaces being removed as they would fall within the proposed building envelope. The issue of impact on car parking is discussed in detail in Section 6 of this report.

- (c) More information is required to demonstrate how large vehicles will enter and leave the proposed loading dock.

Comment: Initial concerns with regard to the means by which trucks would enter and leave the site have been addressed by the applicant to the satisfaction of the Council Traffic Engineer. This issue is discussed in more detail in Section 6 of this report.

5. Referrals

Statutory Referrals

The site is located in a Mine Subsidence District and is therefore 'Integrated Development'. The application has been reviewed by the Mine Subsidence Board which approved the application on 25 August 2010.

Internal Referrals

Internal referral was made with the following:

- Environmental Services (Compliance Services Unit) with reference to State Environmental Planning Policy 55 - Remediation of Land.
- Senior Development Officer (Traffic) concerning removal of car parking spaces and the design of the proposed loading dock.
- Senior Development Officer (Flooding) concerning flooding and stormwater management.
- Heritage Officer concerning the design of the garbage collection area and loading dock and their impact on the heritage significance of the area.
- Landscape Architectural Services Team with regard to the proposed landscaping of the site.

- Urban Design Consultative Group.

Details of the referrals are discussed in this assessment.

6. Section 79C Considerations

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 79C(1) of the Environmental Planning & Assessment Act, 1979, as detailed hereunder.

(a)(i) the provisions of any environmental planning instrument

Newcastle City Centre Local Environmental Plan 2008 (LEP 2008)

The site is within the B4 Mixed Use zone under the provisions of LEP 2008.

Below is an extract of the LEP 2008 zoning map as it relates to the site.



The proposed development is a 'Community Facility' and 'Retail Premises' which are defined as follows:

'community facility' means a building or place owned or controlled by a public authority and used for the physical, social, cultural or intellectual development or welfare of the community.

'retail premises' means a building or place used for the purpose of selling items by retail, or for hiring or displaying items for the purpose of selling them by retail or hiring them out, whether the items are goods or materials (or whether also sold by wholesale).'

'Community facilities' and 'retail premises' are permitted in the B4 Mixed Use zone with consent.

The objectives of the B4 Mixed Use zone are:

- *'To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To support the higher order Commercial Core zone, while providing for the daily needs of the Mixed Use zone.*
- *To encourage a diverse and compatible range of activities including:*
 - *commercial and retail development, and*
 - *cultural and entertainment facilities, and*
 - *tourism, leisure and recreation facilities, and*
 - *social, education and health services, and*
 - *higher density residential development.*
- *To allow development along the coastline to take advantage of and retain view corridors whilst avoiding a continuous built edge along the waterfront.*
- *To create opportunities to improve the public domain and pedestrian links within the Mixed Use zone.*
- *To protect and enhance the unique qualities and character of special areas within the Newcastle city centre.'*

The proposed development would provide further cultural, entertainment and retail facilities for the benefit of the community. The expansion of the existing NAG in the city centre, would allow the facility to continue maximising public transport patronage, encourage walking and cycling to the site, and reinforce the civic precinct. In this regard, the proposed development is consistent with the objectives of the zone.

Height of Buildings and Floor Space Ratio

Clauses 21 and 23 of LEP 2008 deal with Height of Buildings and Floor Space Ratio respectively. Following is a compliance table dealing with those development standards.

Development Standard	Requirement	Proposal	Compliance
Clause 21 - Height of Buildings	Maximum height - 14m	Variable. Max. 14m	Yes
Clause 23 - FSR	Maximum FSR - 2:1	1.3:1	Yes

The proposal satisfactorily addresses these clauses of LEP 2008.

Car Parking

Clause 26 of LEP 2008 deals with car parking.

The proposal would result in a net loss of 45 car parking spaces. The applicant has submitted a traffic impact assessment. The applicant has provided the following comments in relation to parking:

'With specific regard to parking it should be noted that Element 4.1 of Newcastle DCP 2005 includes objectives that seek to encourage measures to reduce motor vehicle dependency and increase walking, cycling and the use of public transport and reduce traffic in the City Centre.

Parking rates included in Table 1A of the DCP are intended as a guide. Whilst parking is to be provided generally in accordance with the rates shown in the table, parking for major traffic generating developments in the city centre is to be assessed on merit with reference to measures such as likely peak usage times, the extent to which the development will attract additional patronage and the likely use of public transport. Further there are no specific rates for art galleries. Consequently demand has been assessed based on surveys and characteristics of the development as outlined in the traffic report.

The development results in the removal of 45 existing car parking spaces. No spaces are provided as part of the redevelopment. Surveys have shown that, with the exception of school holiday periods, there is spare capacity on street within 200 metres of the site to accommodate the typical future parking demands associated with the development at all times....The traffic report recommends that the Art Gallery should investigate means to encourage greater use of alternative (non car) travel modes for staff and visitors...This should be underpinned by the preparation of a Transport Access Guide which would alleviate parking demands during school holiday programs.'

Council's Senior Development Officer (Traffic) has undertaken an assessment of the impacts of the proposed development in relation to car parking, and provided the following comments:

'The 15 x 2 hour public parking spaces and 2 "designated spaces" for the Samaritans Child Care Centre displaced by this development would be expected to compete for existing on-street parking. Recent site observations confirm the extent of on-street kerbside parking in this area is continuing to expand and demand for this parking is likely to grow. This would suggest that people entering the Newcastle CBD are largely accepting of the parking situation and are therefore prepared to park on-street beyond the 400m radius at the expense of convenience.

In response to the demands for parking Council has recently expanded the resident kerbside parking scheme by the creation of a new Parking Precinct This provides Council with the opportunity to issue resident parking permits within this precinct and thereby maintain a balance between the demand for parking and the retention of residential amenity.

It is considered the responsibility of the Roads and Traffic Authority to

provide alternate parking for the remaining 27 all-day staff parking spaces displaced by this development.

While the loss of any parking in the Newcastle CBD is a concern and should generally be kept to a minimum with development, it is considered that this proposal can be supported and the resulting impacts of this parking loss managed, through the expansion of appropriate parking schemes i.e. resident kerbside parking / time restricted parking / metered parking.

Recommendation:

The application is supported on traffic grounds and the resulting loss in parking be managed through the expansion of appropriate parking schemes.

It is noted that the Senior Development Officer (Traffic) has raised concerns in relation to the carparking. In this regard, any potential impacts need to be considered against the likely cultural and social benefits of the proposal. The expansion of the existing facility is constrained by its setting, with respect to carparking provision. However it is considered that it is appropriate to continue to reinforce the existing cultural precinct, rather than to discourage this development solely by reason of carparking.

The location of this significant regional facility within the civic precinct brings the benefits of accessibility to public transport options, as well as the increased likelihood that patrons to the gallery would be in the city centre for more than one purpose. It is reasonably likely that a high percentage of patrons would also be working in the city centre or visiting the adjoining restaurant strip. The vibrancy of the civic precinct will be enhanced by the development, and accordingly, the public interest benefits are considered to outweigh any resulting on parking impacts.

Ecologically Sustainable Development

Clause 33 of LEP 2008 deals with Ecologically Sustainable Development, and requires consideration of:

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

The plans submitted with the development application were referred to the Urban Design Consultative Group (UDCG) on a number of occasions. With specific regard to resource, energy and water efficiency, the UDCG, upon review of the most recent plans stated:

'The Group was advised that considerable work in design development had been undertaken to create air locks and other design devices to ensure conditioned air did not "leak" to the open, and to separate highly controlled environments from areas requiring less demanding environmental conditions. The Group strongly supported these initiatives, and urged ongoing detailed consideration of these energy related matters as the design is developed. Particular attention was encouraged in respect to providing systems that are not dependent upon operational staff having to adjust HVAC systems to reflect changing use of areas (eg when stacking glazed doors to the café are opened).'

'The issue of waste and other storage for the boutiques on the corner of Queen Street and Darby Street. It is proposed that these retail outlets will have access to an area within the Gallery's waste & recycling area near the loading dock. Discussions indicated that further consideration needs to be given to the operational aspects of permitting waste and recycling storage for these tenancies.'

The embodied energy of the existing building is noted, and therefore it is considered that the enlargement of the premises to meet growing needs, is consistent with this clause. It is further considered that the location of the facility in the city centre with all the associated public transport options, is consistent with the objectives of reducing car dependence.

Accordingly, the proposed development is consistent with the requirements of clause 33 of LEP 2008.

Design Excellence

Clause 36 of LEP 2008 deals with Design Excellence. This clause applies to this development, as it is considered that the additions and external alterations to the existing building are significant. Accordingly, development consent must not be granted unless, in the opinion of the consent authority, the proposed development exhibits design excellence.

The proposed development provides the Council with the opportunity to provide for a major urban design addition to the Newcastle CBD. In this regard, the Architectural Design Statement submitted with the application states, among other things, that the proposed development aims to:

- *'establish Newcastle Art Gallery as a model of best-practice in the collection, curation and exhibition of the visual arts, housed in an iconic landmark building for Newcastle.*
- *confirm the Gallery's role as an important contributor to cultural tourism in Newcastle, acting as a magnet for visitation to the new Civic and*

Cultural Precinct, and enlivening the Precinct's Darby Street frontage and the eastern end of Civic Park.'

The Architectural Design Statement states that the specific design objectives include to:

- *'Provide a building of high architectural quality appropriate to its significant setting.*
- *Respond to the site's urban context, and heritage significance.'*

The UDCG, when assessing the most recent plans of the proposed development stated:

'Context

The proposed building is a major addition to the existing Newcastle Region Art Gallery, which makes use of the available land to the east of the existing building and addresses both Darby and Laman Streets. The Gallery is located in the major civic precinct of the city, and addresses the south-eastern corner of Civic Park.

The revised proposal retains the new entrance to the Gallery in Laman Street to the east of the existing entry point. However the level of the ground floor and entry of the building has been substantially lowered, which addresses a concern raised previously by the Group in respect to the Gallery appearing somewhat removed from and elevated above street level. The previously proposed secondary entry to the Gallery from Darby Street has also been removed from the design, with all visitors now entering via the Reception area adjacent to the Laman Street Entry. The Group supported these changes which rendered the design more visually and physically accessible, making it possible to better integrate the Gallery with the activity of the street.

Built Form

... The Group was of the view that the refinement process had generally yielded positive results in the building's planning, however further design development would benefit the building's street presentation. The Group was keen to see further representations of the building in the form of montages, materials sample boards etc which 'flesh out' the building's external appearance . Some discussion ensued in respect to a street awning for the building, which the Group had previously advocated as being desirable in both Laman and Darby Streets. The meeting was advised that a subsequent Section 96 application would be lodged for the incorporation of street awnings in the design.

The materials palette for the building had been simplified and the proposed pre-cast concrete panels deleted, which was generally considered to be appropriate. A question arose in relation to the proposed use of fairly extensive areas of black metal panelling on the façade and

the soffit of the awning. It was suggested by the architects that the colour was better described as a dark metallic finish, which would lighten slightly as it gains a patina. The Group was of the view that a tone lighter than stark black was definitely preferable, and encouraged the application of a moderately lighter toned metallic finish. Consideration of issues such as "oil can" deflections in the flat surfaces of metal sheet were also identified as important to a quality outcome. Some discussion also centred around the use of timber in limited areas of the facade. While supporting the introduction of a material to contrast with the neutral character of the proposed fibre cement sheeting, the Group encouraged careful consideration of durability and ongoing maintenance issues in relation to timber and composite timber products.

Detailing in respect to both the metallic panels, fibre cement panels and (if included) timber throughout the documentation process was considered to be crucial to a good outcome.

... the issue of street trees and their accommodation in relation to the street awning was touched upon. The Group strongly supported additional street tree planting on Darby Street, which would be fairly stark when the trees on the subject site are removed to make way for the building. The Group further observed that a compromise would need to be struck between providing street trees, and allowing good visual access to changing displays in the Darby Street façade of the building, and locating the street awning at a height so as to be reasonably useful in providing functional shelter for pedestrians. Further design development in relation to the facade and its finishes, street tree location, sight lines to the display areas, and the integration of a useful street awning was encouraged.

[the applicant] outlined the changes to the interior planning of the proposal, which now allowed Gallery patrons to view the exhibitions in a series of circuits, thereby avoiding 'dead ends' which mean patrons have to retrace their steps.

The Group supported the changes to the interior planning of the Gallery, which offer generous spaces which may be readily changed to suit the demands of different exhibitions. A number of gallery spaces offered 'black-out' capability for exhibitions, while at other times allowing glimpses from the gallery spaces to the street. The courtyard is potentially a very attractive space, but it is important to assess the extent of solar access, both in relation to amenity for users, and the negative impact of sunlight penetration into gallery spaces.

Several questions arose in respect to the revised planning. The proposal was noted to locate the Board Room on the upper floor, at the eastern corner of the building - which will enjoy an attractive view to the Park - and which might therefore be more equitably used by all visitors. It was explained that the John Olsen ceiling mural will be located in the Board Room, and that when it was appropriate to the exhibition on display in the gallery adjacent, the sliding wall to the room would be left open to allow

visitors to see the work. However the fully glazed northern wall of the building was not suitable as a gallery wall because of the extent of opening and the amount of light streaming in, and thus the more flexible function of the Board Room was located here. Other questions queried whether the entry was wide enough to accommodate larger crowds, and whether the proposed loading dock could be adequately accessed from Queen Street by larger trucks.

Considerable attention had been given in the revised planning process to allowing the possibility of visually 'opening up' displays to the street, as well as allowing extensive flexibility for exposure of works and promotional material to views from Darby Street.

The layout provides the opportunity for Gallery staff to adjust the extent and nature of exposure to the street, in accordance with the demands and opportunities offered by different exhibitions.

The Group supported the planning changes which provided good opportunities for exposing both exhibition promotional material and even glimpses of an exhibition itself to the street, and suggested that this expression be further explored in terms of its possible positive impact on the Darby Street facade.,

As noted by the UDCG, the proposal is appropriately designed for a development of this nature. The proposal would not have any detrimental impacts on view corridors from the public domain. Considerations of this clause, including heritage and access, are made in other sections of this assessment report.

The proposal is not a development that requires an architectural design competition, as identified by this clause.

Accordingly, it is considered that the proposal is satisfactory, having regard to this clause.

Flood Prone Land

Clause 43 of LEP 2008 relates to development on flood prone land.

Council's Senior Flooding Engineer has provided the following assessment of the proposal:

'This site has been identified as a flood prone site and a flood information certificate was issued on 8 June 2010 (refer to Appendix 10 Flood Report). The peak 1 in 100 year Average Recurrence Interval (ARI) flood level on the corner of Darby and Queens Street is 8.4 m AHD and the corresponding estimated Probable Maximum Flood level is 8.55 m AHD.

The ground floor level of the building extension has been set at 10.1 m AHD to match the existing building floor level. This level is well above the flood level.

The plant room, main switch board room and communications area located in the access bay area off Queens Road are all located at a lower level. Part of the proposed theatrette on the Darby Street frontage is also located at a low level. The floor level for these parts of the building should be no lower than 300mm above the 1 in 100 year ARI flood level.'

The proposal is acceptable in relation to flooding, subject to the Engineer's recommended conditions of consent.

Preservation of Trees

Clause 45 of LEP 2008 seeks to preserve the amenity of the area through the preservation of trees and other vegetation.

The proposal involves the removal of several trees located on the site to allow the proposed development to take place. Development consent is sought for the removal of these trees. The Council's Landscape Architectural Services Team states:

'A number of mature and semi mature trees will be removed as a result of this development, including a row of plane trees along the Darby Street frontage which currently provides shade to the footpath. It does not appear that the building design has given any consideration to the potential for retaining these existing trees. Instead by developing to the limits of the block the proposed building will leave the street devoid of canopy cover until new street trees can establish.'

An amended landscape plan has been provided by the applicant which indicates that street trees would be planted to replace those which would be lost as a result of the proposed development. The applicant has advised:

'The Newcastle Regional Art Gallery is in agreement that the proposed street trees along Darby Street be planted as soon as practicable. It is anticipated that the proposed street trees will be planted at site establishment stage provided the contractor can ensure their protection throughout the construction of the project.'

The Darby Street frontage has been amended to soften the interface between the building and the pedestrians. A 500mm high planter has been introduced along the streetscape and when viewed with the planter at the terrace level, a considerable landscaping opportunity is presented.'

Conditions of consent in relation to street trees have been recommended by Council's Landscape Architectural Services Team.

Heritage Conservation

Clause 46 of LEP 2008 deals with Heritage Conservation, and is applicable noting that the subject site is located within a Heritage Conservation Area, and is adjacent to items of heritage significance.

Council's Heritage Officer reviewed the plans of the original proposal submitted with the development application and raised concerns with the treatment of the facade of the then proposed development as it addresses Queens Street. In this regard, the Heritage Officer stated:

'Before this proposal is assessed any further it is recommended that the designers provide an alternative solution to the loading dock/ bin store to ensure the unsympathetic treatment of this zone is resolved. The impact of the service areas on the streetscape and character of the precinct is to be minimised as far as is possible. When such an amendment is received the Heritage Officer shall assess it to ensure that the amendment achieves a satisfactory outcome for the heritage conservation area.'

In response to the concerns raised by the Heritage Officer, the applicant has amended the proposed treatment to the Queen Street facade. In this regard, the Heritage Officer stated:

The rear back of house garbage store and loading dock were previously of considerable concern. The amended scheme has substantially improved the visual impact of these service and loading dock areas on the heritage character of Queen Street and Darby Street. I am now satisfied that this issue has been resolved.

The amended design has ameliorated the impact posed by the operational requirements and truck sizes. The void has been resolved. The zinc panelling will help to soften the perceived bulk of the loading area by offering a textured treatment to the streetscape.

Materials and finishes generally are acceptable and in sync with the existing gallery.'

In relation to any potential archaeological matters, a condition of consent has been recommended by Council's Heritage Officer.

From the above comments of the Heritage Officer, it is concluded that the proposal is satisfactory in relation to heritage considerations.

Council development

Clause 50 of the LEP 2008 removes the need for the Council to obtain development consent for certain development. However, as the development has a capital value of more than \$1,000,000, development consent is required.

Acid Sulfate Soils

Clause 51 of LEP 2008 deals with Acid Sulfate Soils. The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

The site is identified as Class 4 on the LEP 2008 Acid Sulfate Soils Map. Works specified as requiring development consent are as follows:

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

The proposed development would not involve works more than 2 metres below the natural ground surface. No further consideration is required.

State Environmental Planning Policy No.55 - Remediation of Land

State Environmental Planning Policy No.55 - Remediation of Land (SEPP 55) applies to the site.

The applicant has provided an assessment of the site with regard to contamination. Council's Senior Environmental Protection Officer (Compliance Service's Unit - CSU) has reviewed the documents forwarded with the application relating to site contamination and states:

'Discussion

As outlined in previous memos from the CSU, detailed contamination investigations of the proposed site have indicated that areas of soil and groundwater are contaminated to a level which exceeds the appropriate landuse criteria and remediation is required. The primary contaminants of concern identified are asbestos fragments, heavy metals and B(a)P. The source of the contamination is filling and past landuses of the site. Some low chained volatile hydrocarbons were identified in one sample however further detailed sampling and a soil vapour intrusion investigation concluded that volatiles in groundwater did not pose an unacceptable vapour inhalation risk to the future occupants of the site. Soil concentrations of volatiles were considered to be too low to constitute an explosive risk to buildings. These risk levels were based on the assumption that there was to be no basements or groundwater extraction included as part of the proposed development. Should this change, further assessment is recommended.

Whilst the site is considered to be contaminated to levels which exceed the commercial/industrial landuse criteria, contamination levels are not extremely high and can be effectively remediated to make the site suitable for the proposed development. The proposed remediation strategy consists of limiting access to soil via hardstand areas and building footprints. Areas with accessible soil will be excavated and have at least 500mm of clean material placed over marker mesh. An ongoing management plan will be applied to the site following remediation and

validation which will help ensure that contamination is appropriately managed into the future.

The CSU is satisfied that the site has been adequately investigated in accordance with appropriate legislative requirements/guidelines and that the proposed remediation strategy is justified.

The Compliance Services Unit (CSU) has reviewed the response by the applicant to the issues raised in the previous memo dated 9 September 2011 and has no objections to the proposal provided the following conditions are applied to the consent.

There are no basements or groundwater extraction proposed by the development, accordingly, it is considered that the proposal is satisfactory having regard to this policy.

Conditions recommended by the CSU have been included in the recommended conditions of consent.

State Environmental Planning Policy (Urban Renewal) 2010

The site is identified by this SEPP as being within the 'Newcastle Potential Precinct Map'. Clause 10 - 'Development in potential precincts' applies to this development, as the proposal has a capital investment value of more than \$5 million. The consent authority must not grant development consent unless it is satisfied that the proposed development is consistent with the objective of developing the potential precinct for the purposes of urban renewal.

The consent authority is to take into account whether or not the proposed development is likely to restrict or prevent the following:

- a. 'development of the potential precinct for higher density housing or commercial or mixed development,*
- b. the future amalgamation of sites for the purpose of any such development within the potential precinct,*
- c. access to, or development of, infrastructure, other facilities and public domain areas associated with existing and future public transport in the potential precinct.'*

Having regard to these matters, the proposal is appropriate and is consistent with urban renewal principles.

State Environmental Planning Policy (State and Regional Development) 2011

The proposal is referred to the Joint Regional Planning Panel for determination pursuant to Clause 21 of State Environmental Planning Policy (State and Regional Development) 2011, given the Council is the applicant and the proposal has a capital investment value of more than \$5,000,000. The application submitted to Council nominates the value of the project as \$14,300,000.

State Environmental Planning Policy 71 - Coastal Protection

The site is identified within the coastal zone, and therefore has been considered in accordance with Clause 8 - Matters for consideration. The relevant matters are discussed in the table below.

Matter for consideration	Assessment comment
(a) the aims of this Policy set out in clause 2,	The is acceptable, in relation to the aims of this policy.
(d) the suitability of development given its type, location and design and its relationship with the surrounding area,	As detailed in the consideration of Clause 36 of LEP 2008 (Design Excellence), the proposal is of acceptable design.
(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,	The proposal has been assessed by Council's Heritage Officer, and was considered to be acceptable. A condition of consent regarding archaeological considerations has been recommended.
(n) the conservation and preservation of items of heritage, archaeological or historic significance,	The proposal has been assessed by Council's Heritage Officer, and was considered to be acceptable.
(p) only in cases in which a development application in relation to proposed development is determined: (i) the cumulative impacts of the proposed development on the environment, and (ii) measures to ensure that water and energy usage by the proposed development is efficient.	The proposal is acceptable having regard to these matters.

The proposal is acceptable in relation to SEPP 71 matters.

State Environmental Planning Policy (Infrastructure) 2007

The proposal is not identified as 'traffic generating development' in accordance with this policy, however, general comments were sought from Roads and Maritime Services. The comments raised were considered in the assessment made by Council's Senior Development Officer (Traffic).

(a)(ii) the provisions of any proposed instrument

Draft Newcastle Local Environmental Plan 2011

Council resolved on 21 June 2011 to adopt the draft Newcastle Local Environmental Plan 2011 (DLEP 2011) and to refer this plan to the Minister for Planning and Infrastructure for gazettal upon completion of the legal drafting.

In terms of the status of this draft instrument, DLEP 2011 should be given reasonable weight, particularly noting that the revised zonings are re-inforcing that which is already in place.

The site is within the B4 Mixed Use zone of DLEP 2011. In this zone, 'Community Facilities' and 'Retail Premises' are uses which would be permissible with consent.

DLEP 2011 is based on the Standard Instrument which contains certain development standards relating to floor space ratio, building height and the like. There are no provisions within that draft instrument which would affect the proposed development over and above those which currently apply under LEP 2008.

(a)(iii) the provisions of any development control plan

Newcastle Development Control Plan 2005 (DCP 2005)

There are a number of development controls relating to the proposed development contained in DCP 2005. Following is a discussion of the relevant sections of DCP 2005.

Element 3.1 - Public Participation

The proposal has been notified to the public in accordance with Section 3.1 of DCP 2005. One submission was received.

Element 4.1 - Parking and Access

As detailed previously in the assessment, Council's Senior Development Officer (Traffic) has reviewed the amended proposal and has raised no objection to the proposed development subject to conditions.

Element 4.2 - Contaminated Land Management

Refer to above discussion of SEPP 55.

Element 4.3 - Flood Management

Refer to the above discussion of Clause 43 of LEP 2008.

Element 4.4 - Landscaping

The DCP identifies this proposal as a 'Category 3 development', and accordingly the landscaping plan is required to be prepared by a Landscape Architect or similar qualified professional. The submitted plan complies with this requirement. The plan includes replacement street trees in Darby Street, and is satisfactory.

Element 4.5 - Water Management

Council's Engineer has made the following comments in relation to the proposal:

'The proposed stormwater drainage system includes the collection of roofwater runoff in 2 separate detention tanks, 15,000 and 25,000 litre capacity, with reuse proposed for toilet flushing and irrigation use. Excess stormwater will be discharged to the surrounding streets, Darby, Laman and Queen, as shown on Figure 3 'Proposed Site Stormwater Drainage System'.'

Accordingly, the proposal is satisfactory in relation to stormwater management.

Element 4.6 - Waste Management

The applicant has advised that general waste would be separated from that which can be recycled. Waste would be stored in the dedicated waste storage area which has frontage to Queen Street. Collection would occur using the Council pickup service.

Element 4.10 - Tree Management

A number of street trees in Darby Street and Queen Street would be lost as part of the proposed development, however, suitable replacement trees have been provided for in the landscape plan. Conditions of consent in relation to street trees have been recommended by Council's Landscape Architectural Services Team.

Element 6.2 - City East

The objectives of this element are to:

- *'Strengthen the dynamic cultural environment of City East characterised by its heritage buildings; human scaled streetscapes; topography and setting; prominence of landscape features; and proximity of the City Centre to beaches and harbour.*
- *Provide opportunities for mixed uses and activities.*
- *Protect and maintain established and important views through building design.*
- *Retain and enhance existing heritage and contributory buildings and ensure they retain their visual prominence.*
- *Encourage an attractive, functional and integrated open space network.*
- *Encourage public transport use and a pedestrian friendly environment'.*

As discussed in other sections of this report, the proposed development is consistent with the relevant objectives of this DCP Element. Following is a discussion of the relevant sections of this DCP Element.

Heritage Areas	The Council's Heritage Officer raised no objection to the proposed development.
Traffic & Transport	The Council's Senior Development Officer (Traffic) raised no objection to the proposed development.
Pedestrian Access	The amended proposal has accounted for access for pedestrians and those with a disability. A condition of consent has been recommended to ensure that all access points for those with a disability meet the relevant Australian Standards.
Gateways	The site is identified as a Gateway to the City East precinct. The proposed development would have a strong presence thus reinforcing the gateway nature of the site.
Density	The proposed development would have a floor space ratio of 1.3:1. This floor space ratio is significantly less than the 2:1 maximum of both LEP 2008 and draft LEP 2011.
Building Height	The maximum building height is 14 metres as contained in LEP 2008 and draft LEP 2011. The proposed development, with a maximum height of 14 metres meets this control element.
Car Parking	The proposed development would result in the loss of 45 car parking spaces. Vehicular access to the site would be from a new dedicated access from Queen Street. As indicated above, the Council Senior Development Officer (Traffic) raised no objection to the proposed development.
Building Facade & Articulation	The UDCG has reviewed the amended development and has generally supported the design of the amended development.
Street Frontage	<p>The objectives of this element are to:</p> <ul style="list-style-type: none"> • Preserve the surviving heritage character of whole shop frontages and elements. • Ensure that shops are accessible for everyone. <p>The proposed development would not adversely impact on any heritage items or heritage conservation areas and the two proposed retail premises would provide accessibility to everyone. Separate development applications would be required for the future use of the two retail premises.</p>
Roof Form & Silhouette	<p>The objective of the control element is to:</p> <ul style="list-style-type: none"> • Encourage roof form and material finishes which reinforce and enhance the prevailing

	<p>roofscape characteristics of the local context.</p> <p>The existing roof form of the NAG is generally flat. The proposed development would continue the existing roof form of the NAG such that no adverse impact would result to the adjoining development.</p>
Corners	<p>The objective of the control element is to:</p> <ul style="list-style-type: none"> • Ensure new corner developments respond to the visually interesting corner buildings characterising City East. <p>The design of the proposed development has been developed to ensure that the final built form would blend with that of the existing NAG building. The existing corner elements of the NAG would be significant altered and improved such that a more appropriate response to the setting of the NAG is achieved.</p>
Materials, Finishes and Colours	<p>An appropriate pallet of colours and finishes has been provided to ensure that the alterations and additions blend with the architectural design and style of the existing NAG building.</p>
Signage	<p>The objectives of the control element are to:</p> <ul style="list-style-type: none"> • Ensure signage is sympathetic to and complements the building form and detailing. • Ensure signage does not dominate or detract from the architectural features of the building. • Ensure signage retains the visual prominence and integrity of roof and silhouette. <p>The only signage proposed is that which would be attached to the theatre. A separate development application would be required for that signage.</p>

(a)(iii) the provisions of any planning agreement or draft planning agreement.

There are no planning agreements which apply to this development.

Further, it is noted that as this is an application by Newcastle City Council for the provision of public facilities, the proposal is exempted from Section 94A contributions, in accordance with the adopted plan.

(a)(iv) the provisions of the Regulations.

As the site is within the Coastal Zone, and proposes demolition works, Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires consideration of the provisions of the Government Coastal Policy and Australian Standard AS 2601—1991: The Demolition of Structures. In this regard, the proposal is acceptable, subject to conditions of consent in relation to demolition.

(a)(v) the provisions of any coastal management plan.

Not applicable.

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

Impact on the Natural Environment

The proposed development would necessitate the removal of a number of trees, most of which are street trees. The landscape plan submitted with the application depicts suitable replacement street trees.

There is potential for impact to the environment during the construction stage of the proposed development, however, suitable conditions have been recommended to ensure that appropriate sediment and erosion control measures are implemented such that sediment laden waters do not enter the Council stormwater system.

Impact on the Built Environment

As stated by the applicant:

'The proposed works will have a positive impact on the built environment in that it will upgrade an important community building in an easily accessible location. It will define and contribute positively to the streetscape with a contemporary yet sympathetic design and reinforce the role of the Civic and Cultural Precinct.'

With regard to vehicular access to the site, in relation to the original proposal, the Council's Consultant Traffic Engineer assessed the proposed development as submitted with the development application and made the following comments:

'The proposal will require provision of a new access off Queen Street to the loading bay and will result in two existing accesses in Queen Street and Laman Street becoming redundant. The redundant accesses will need to be removed and the footpath areas restored. The footpaths around the site should be reconstructed to Council's requirements as advised by its Landscape Architect (likely to be concrete and brick banding).'

It is noted that the proposal shows a loading dock off Queen Street. The plans show it being serviced by a vehicle (size not nominated) which in exiting the site reverses onto Queen Street. It is a Council and RTA requirement which has been consistently applied that all new loading dock areas within developments are to be designed to ensure forward entry and exit from the site. Therefore the proposed loading arrangements off Queen Street are not supported and amendments should be made to the plans such that forward entry and exit from the loading dock area is achievable for the nominated largest service vehicle to enter the site. The traffic report did not nominate the largest size vehicle likely to enter the loading dock area and this information needs to be provided also.'

Amended plans have been submitted by the applicant to address the concerns raised. In this regard, the Council Senior Development Officer (Traffic) states:

'Gallery Loading Zone

A degree of confusion exists in relation to the origin/destination of vehicles utilising the Queen Street loading dock. Queen Street is not a through street and therefore all service vehicles will be required to enter and exit the site via the Darby / Queen Street signal controlled intersection.

The applicant and traffic consultant have confirmed that deliveries to the gallery will be irregular and infrequent. While vehicle access to and from a loading dock should be in a forward direction the implementing of a 'traffic management plan' to control service vehicle and pedestrians movements during loading/servicing operations is considered acceptable.'

In light of the above comments, the previous concerns with regard to the use of the loading dock and garbage bay have been resolved.

Social Impacts

The proposed development would have a positive social impact in that the existing NAG would be expanded to cater for the increased cultural role it plays and the additions to the NAG would provide for an expansion of cultural activities.

With regard to access to the proposed development for people with a disability, the UDCG commented on the original design as follows:

'No indication is given in the documentation in regard to disabled access to the Theatre space, but it is assumed that this has been taken into consideration. It is assumed that disabled access from the street to the Theatre is obtained via the Main Entry off Laman Street. Consideration needs to be given to whether there is any possibility that this could be perceived to be discriminatory if Theatre patrons will otherwise use the Darby Street foyer stairs.'

The applicant has provided the following response:

'Two points of Universal Access are provided on the Laman Street frontage, one being located on the North West corner between the Gallery and the Library and the other directly at the main entry adjacent to the lift.

It is proposed that primary access to the theatrette, to be constructed as part of the second stage, will be gained from the Main Entry. As equal entry is provided at both points, it is not intended that this would be discriminatory.'

A condition of consent has been recommended to ensure that suitable access to the proposed development is provided for those with a disability.

In relation to 'Crime Prevention Through Environmental Design' principles, the proposal has been designed so as to reduce potential for anti-social behaviour and crime. The access control and surveillance facilitated through the design would appropriately manage risks.

Economic Impact

The economic impact would be positive in that employment opportunities would be available to the local community during the construction stage of the proposed development and also in the operation of the expanded facility.

(c) the suitability of the site for the development.

The site currently accommodates the NAG. The proposed development would enhance the existing facilities offered by the NAG. The proposed use is permissible, with consent of the Council, in the B4 Mixed Use zone and the site is considered to be suitable for the expanded NAG facility.

(d) any submissions made.

This report has addressed the various concerns raised in the submissions received in response to the Public Notification under the Act and Regulation.

(e) the public interest.

The public interest is served by the development of land within its environmental capacity. The site is currently occupied by the NAG, however, parts of the site are underutilised or used for car parking not associated with the NAG. The proposed alterations and additions would enhance the status of the gallery while at the same time allowing for the most productive use of the site. It is in the public interest that the site be utilised as proposed.

It is considered that the proposal is satisfactory having regard to climate change.

8. Concluding Comments

The original proposal lodged had a number of issues, such as public domain interface design matters, heritage and contamination issues, which have been resolved through the assessment process.

It is noted that there are some concerns in relation to the carparking. In this regard, any potential impacts need to be considered against the likely cultural and social benefits of the proposal. The expansion of the existing facility is constrained by its setting, with respect to carparking provision. However it is considered that it is appropriate to continue to reinforce the existing cultural precinct, rather than to discourage this development solely by reason of carparking.

The location of this significant regional facility within the civic precinct brings the benefits of accessibility to public transport options, as well as the increased likelihood that patrons to the gallery would be in the city centre for more than one purpose. It is reasonably likely that a high percentage of patrons would also be working in the city centre or also visiting the adjoining restaurant strip. The vibrancy of the civic precinct will be enhanced by the development, and accordingly, the public interest benefits are considered to outweigh any resulting on-street parking impacts.

9. Recommendation

That the Joint Regional Planning Panel grant consent to DA10/1278 subject to the conditions contained in **Appendix A**.

APPENDIX A - Conditions of Consent

REASONS FOR CONDITIONS

- 1 The conditions of this consent have been imposed in accordance with Section 80A of the *Environmental Planning and Assessment Act 1979* (NSW). The conditions relate to any matter referred to in Section 79C(1) of relevance to the development the subject of the consent and are imposed to ensure that the development is undertaken in an orderly manner, with acceptable impacts on the natural and built environment.

APPROVED DOCUMENTATION

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

Plan No./Supporting Document	Reference/Version	Prepared by	Dated
Site Plan	DA03A	Government Architect's Office	30.12.11
Elevation Plan	DA04A DA08A DA09A	Government Architect's Office	30.12.11
Ground Floor Plan	DA05A	Government Architect's Office	30.12.11
First Floor and Mezzanine Plan	DA06A	Government Architect's Office	30.12.11
Roof Plan	DA07A	Government Architect's Office	30.12.11
Demolition Plan	DA02	Government Architect's Office	30.12.11
Section Plan	DA10A	Government Architect's Office	30.12.11
Statement of Environmental Effects	09-198	BBC Consulting Planners	November 2011
Landscape Plan	01 rev A	McGregor Coxall	Undated
Perspective Views	DA11A	Government Architect's Office	30.12.11

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

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

- 3 Appropriate street tree planting, associated tree guards and full width 'tool jointed' concrete paving to Council requirements being provided within Darby Street for the full frontage of the development. Detailed landscape plans and specifications are to be prepared by a qualified Landscape Architect, (as required under Newcastle Development Control Plan 2005), and approved by Council's Landscape Architectural Services Team prior to the issue of the Construction Certificate. Street tree planting shall comply with the following:
 - a) Street trees shall be planted at a minimum rate of one tree per 8 metres frontage;
 - b) Street trees are to be provided with a minimum 100 litre pot size, or as otherwise approved by Council's Landscape Architectural Services Team;
 - c) Street trees are to be installed in load bearing soil vaults, refer to Council's draft details A367/1 and A368/1. Vault size is to be a minimum of 4m square.
 - d) All trees are to comply with the NATSPEC criteria, especially with regard to tree balance, root and stem structure. Written evidence of compliance to NATSPEC to be submitted to Council prior to delivery to site. This may be in the form of a report and or checklist and should include photos. Refer to standard NATSPEC Tree Inspection Form.
 - e) Ecoloc or equivalent porous pavers (to the satisfaction of Council's Landscape Architect) are to be installed at the base of each street tree, with a sturdy steel tree guard as per Council's requirements;
 - f) A detailed specification is to be submitted with the required Landscape Design Plan for the preparation of the necessary tree vaults and quality control on the installation of load bearing soil. Full details are to be submitted to Council for approval with the

- required Landscape Design Plan prior to the issue of a Construction Certificate. Details of the tree vaults will require the technical experience and sign off of a qualified Landscape Architect, and
- g) These documents shall include details on planting method, installation of structural soil vaults, and the proposed maintenance/establishment program. The drawings must also include detailed construction drawings for retaining walls with integrated planter boxes, which shall include appropriate drainage and irrigation.
- 4 The building is to be 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: i) 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*.
- ii) * 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
- iii) A qualified Access Advisor should carry current and relevant public liability and public indemnity insurances for the practice of their trade.
- 5 All proposed loading bays and vehicular turning areas are to be constructed with a basecourse of adequate depth to suit design traffic, being sealed with either bitumen seal, asphaltic concrete, concrete or interlocking pavers and being properly maintained. Full details are to be included in documentation for a Construction Certificate application.
- 6 Landscaping and any other obstructions to visibility are to be kept clear of or limited in height to 1.2m in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance in accordance with AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. Full details are to be included in documentation for a Construction Certificate application.
- 7 All stormwater runoff from the proposed development being managed in accordance with the requirements of the *Water Management* Element 4.5 of the Newcastle Development Control Plan 2005 and the associated Technical Manual as indicated on the Stormwater Drainage Concept Plan prepared by the NSW Government Department of Services, Technology and Administration, dated August 06, 2010.
Full details to be included in documentation for a Construction Certificate application.
- 8 All new impervious surfaces, including driveways and paved areas are to be drained to the nominated discharge controls, full details are to be included in documentation for a Construction Certificate application.
- 9 All existing trees on the site outside the envelope of the proposed building are to be preserved where practicable and all such trees being indicated on the required comprehensive landscape design plan and being adequately protected against damage during the building construction period. Full details are to be included in the documentation for a Construction Certificate application.
- 10 The applicant is to comply with all requirements of the Hunter Water Corporation regarding the connection of water supply and sewerage services, including the payment of any required cash contribution towards necessary amplification of service mains in the locality as a result of the increased intensity of land use proposed. A copy of the Corporation's certificate of compliance is to be included in documentation for a Construction Certificate application.

- 11 Adequate facilities are to be provided in a screened location within the premises for the storage of garbage, discarded or returnable packaging or other forms of trade wastes and arrangements being made for regular removal and disposal of same. The required garbage facility is to be suitable for the accommodation of Council approved wheel type bins or bulk waste containers. Full details are to be included in documentation for a Construction Certificate application.
- 12 The premises are to be 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.
- 13 The design and construction of the proposed development is to be in accordance with the relevant requirements of Australian Standard 4674:2004 - Design, Construction and Fit-Out of Food Premises. Full details are to be included in the documentation for the Construction Certificate application.
- 14 The proposed lighting of the premises is to be designed, positioned, and installed, including appropriate shielding and orientation of the lighting fixture, as to not give rise to obtrusive light, interfere with traffic safety or detract from the amenity of surrounding properties in accordance with Australian Standard 4282:1997 - Control of the obtrusive effects of outdoor lighting. Full details are to be included in the documentation for a Construction Certificate application.
- 15 Working drawings and specifications of the proposed building are to be submitted to the NSW Mine Subsidence Board for approval prior to an application for a Construction Certificate and any requirements of the Board are to be included in the documentation for a Construction Certificate application.
- 16 The applicant must take the relevant action to manage potential archaeological relics on the site by obtaining an Exception or Excavation permit from the NSW Heritage Branch Department of Planning prior to the commencement of works and before the Construction Certificate is issued.
- 17 Prior to the work commencing and before the release of the Construction Certificate an archival record of the building, both internally and externally is to be made that is consistent with the NSW Department of Planning Heritage Branch Guidelines for Undertaking Archival recordings.
- 18 The building floor level of the theatrette, plant room, main switch board room and communications area being set a minimum of 300mm above the local 1 in 100 year ARI flood level. Details to be indicated on plans for a Construction Certificate application.

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

- 19 A Registered Surveyor's certificate detailing the setting out of the proposed building on the site, including the relationship of the set out building to property boundaries, is to be submitted to the Principal Certifying Authority before construction is commenced.
- 20 A commercial type vehicular crossing 15.0m wide with appropriate splays being constructed across the public footway at the proposed driveway entrance/exit at no cost to Council and in accordance with Council's Driveway Standard A17/6B (Concrete Vehicular Crossings) design specifications and such crossing being properly maintained.

- 21 Any proposed work within the public road reserve, including driveway works, reinstatement of a kerb or installation of drainage, is to be the subject of the separate approval of Council prior to commencement.

Note: A separate approval from Council must be obtained for all works within the public road reserve pursuant to Section 138 of the *Roads Act 1993* (NSW). For further information contact Council's Works Depot on 4974 6000 to request a Road Opening Approval. A fee will be payable in this regard.

- 22 Prior to commencement of site works the developer submitting to Council for approval a Construction Traffic Management Plan addressing traffic control measures to be utilised in the public road reserve during the construction phase.

Note: The required plan is to ensure the provision for safe, continuous movement of traffic and pedestrians within the road reserve. The plan is to be prepared in accordance with Australian Standard 1742.3 – 2002.

- 23 Prior to the commencement of any works in the public road reserve, the developer providing written notification to the adjoining landowners of the intention to start works, advising details of the scheduling of works and nominating a contact person. A legible prominent sign stating the name of the developer and contractor and a 24 hour contact telephone number is to also be displayed on-site during the construction period.

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

- a) be a standard flushing toilet connected to a public sewer, or
- b) have an on-site effluent disposal system approved under the *Local Government Act 1993* (NSW), or
- c) be a temporary chemical closet approved under the *Local Government Act 1993* (NSW).

- 25 A Hazardous Substances Management Plan is to be prepared by a competent person for the building(s) or parts of the building(s) proposed to be demolished in accordance with Australian Standard 2601:2001 - The Demolition of Structures. A copy of the Hazardous Substances Management Plan is to be provided to Council (marked to Attention: Compliance Services) and the demolisher prior to commencement of work.

- 26 Any demolition works are to be undertaken in accordance with Australian Standard 2601:2001 - The Demolition of Structures and the following requirements:

- a) Demolition works shall be conducted in accordance with the submitted Hazardous Substances Management Plan and a copy of the Hazardous Substances Management Plan shall be kept on-site for the duration of the proposed development;
- b) The removal, handling and disposal of any asbestos material is to be undertaken only by an asbestos removal contractor who holds the appropriate class of Asbestos Licence, issued by the WorkCover Authority of NSW;
- c) A copy of all waste disposal receipts are to be kept on-site for the duration of the proposed development and made available to authorised Council Officers upon request;
- d) Seven working days notice in writing is to be given to Council and the owners/occupiers of neighbouring premises prior to the commencement of any demolition works. Such written notice is to include the date demolition will commence and details of the name, address, contact telephone number(s) and licence details (type of licences held and licence numbers) of any asbestos removal contractor and demolition contractor. Notification to owners/occupiers of neighbouring premises shall

also include Council's contact telephone number (49742000) and the Workcover Authority of NSW telephone number (49212900);

- e) On sites where asbestos materials are to be removed, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent position during asbestos removal works.
- 27 The demolisher is to ensure that all services (ie water, telecommunications, gas, electricity, sewerage etc), are disconnected in accordance with the relevant authority's requirements prior to demolition.
- 28 Any demolition/waste building materials that are not suitable for recycling are to be disposed of at Council's Summerhill Waste Management Facility or other approved site.
- 29 At a minimum, the following waste management measures shall be implemented during the construction phase:
- a) A waste container of at least one cubic metre capacity shall be provided, maintained and regularly serviced from the commencement of operations until the completion of the building for the reception and storage of waste generated by the construction of the building and associated waste.
 - b) The waste container is to be, at minimum, constructed with a 'star' picket (corners) and weed control mat (sides), or equivalent. The matting is to be securely tied to the pickets.
 - c) Appropriate provision is to be made to prevent wind blown rubbish leaving the site.
 - d) Footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

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

- 30 If construction / demolition work is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the need to enclose a public place, a hoarding or fence must be erected between the work site and the public place. If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place. Any such hoarding, fence or awning is to be removed when the work has been completed.

An application is to be made to and approved by Council for the erection of a hoarding or part closure of the footway prior to construction being commenced. Such overhead structure or protective fence shall comply with the *Occupational Health and Safety Act 2000* (NSW), *Occupational Health and Safety Regulation 2001* (NSW) and any relevant approved industry code of practice. Notice of intention of commencement must be given to WorkCover New South Wales.

- 31 The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- 32 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.

- 33 All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- 34 All excavations and backfilling are to be executed safely in accordance with appropriate professional standards and excavations are to be properly guarded and protected to prevent them from being dangerous to life and property.
- 35 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.

The above requirements 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 the requirements not applying.

- 36 The proposed remediation works being carried out in accordance with the requirements of the submitted Remedial Action Plan (RAP) prepared by Douglas Partners Pty Ltd (February 2012), the requirements and the conditions of this consent.
- 37 A copy of the ongoing environmental management plan is to be kept on the premises at all times and implemented as required in relation to site maintenance and future works involving excavation.
- 38 Remediation works being carried out in accordance with the requirements of Element 4.2 (*Contaminated Land Management*) and associated technical manual.
- 39 Any excavated material to be removed from the site is to be assessed, classified, transported and disposed of in accordance with the Department of Environment and Climate Change's (DECC) '*Waste Classification Guidelines Part 1: Classifying Waste*'.
- 40 Any fill material imported into the site is to be Virgin Excavated Natural Material or material subject to a Resource Recovery Exemption that is permitted to be used as a fill material, in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment (Waste) Regulation 2005*.
- 41 Any fill material subject to a Resource Recovery Exemption received at the site must be accompanied by documentation demonstrating that material's compliance with the conditions of the exemption, and this documentation must be provided to Council officers or the Principal Certifying Authority on request.
- 42 All building materials, plant and equipment is to be placed on the site of the development so as to ensure that pedestrian and vehicular access in public places is not restricted and to prevent damage to the road reserve. The storage of building materials on Council reserves including the road reserve is not permitted.

- 43 Any alteration to natural surface levels on the site is to be undertaken in such a manner as to ensure that there is no increase in surface water runoff to adjoining properties or that runoff is impounded on adjoining properties, as a result of the development.
- 44 All loading bays are to be permanently marked out on the pavement surface, being clearly indicated by signs.
- 45 The vehicular entrance and exit driveways and the direction of traffic movement within the site are to be clearly indicated by means of reflectorised signs and pavement markings.
- 46 Construction/demolition work that generates noise that is audible at residential premises is to be restricted to the following times:
- Monday to Friday, 7:00 am to 6:00 pm;
 - Saturday, 8:00 am to 1:00 pm;

No noise from construction/demolition work is to be generated on Sundays or Public Holidays.

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

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

- 48 Erosion and sediment control measures are to be implemented prior to the commencement of works and be maintained during the period of construction in accordance with the details set out on the Erosion and Sediment Control Plan submitted with the application, and with the below requirements:
- a) Control over discharge of stormwater and containment of run-off and pollutants leaving the site must be undertaken through the installation of erosion control devices such as catch drains, energy dissipaters, level spreaders and sediment control devices such as hay bale barriers, filter fences, filter dams and sediment basins.
 - b) Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover. Erosion and sediment control measures are to be designed in accordance with the requirements of the Managing Urban Stormwater: Soils and Construction 4th Edition – Vol. 1 (the 'Blue Book') published by Landcom, 2004.
- 49 Prior to the commencement of work, a 3m wide all weather vehicle access is to be provided from the kerb and gutter to the building under construction, to reduce the potential for soil erosion. Sand shall not be stockpiled on the all weather vehicle access.
- 50 A temporary protective crossing is to be provided over the footway for vehicular traffic before demolition or building operations are commenced. This approval does not permit access to the property over any adjacent private or public land.
- 51 All necessary measures are to be undertaken to control dust pollution from the site. These measures must include, but not are limited to:
- a) restricting topsoil removal;
 - b) regularly and lightly watering dust prone areas (note: prevent excess watering as it can cause damage and erosion);

- c) alter or cease construction work during periods of high wind;
 - d) erect green or black shade cloth mesh or similar products 1.8m high around the perimeter of the site and around every level of the building under construction.
- 52 Where the proposed development involves the destruction or disturbance of any existing survey monuments, those monuments affected are to be relocated at no cost to Council by a Surveyor registered under the *Surveying and Spatial Information Act 2002* (NSW).
- 53 All external items of air conditioning plant are to be screened or positioned in such a manner as to not detract from the visual presentation of the building.

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

- 54 Street lighting being upgraded at the cost of the developer to Standard P3 in accordance with AS 1158.1.1 – Road Lighting on Darby Street across the frontage of the site. The lighting upgrade works being completed prior to the occupation of the portion of the premise the subject of this application.

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

- 55 Following implementation of the RAP and prior to occupation of the land, a validation report and ongoing environmental management plan is to be prepared by a suitably qualified consultant in accordance with relevant NSW State Government Guidelines and provided to the Principal Certifier and Council.
- 56 Prior to selection and location of mechanical plant, (including air conditioning, refrigeration and ventilation systems), noise emission data for the equipment is to be reviewed by an appropriately qualified acoustic consultant. Written certification by the acoustic consultant regarding the appropriateness of the equipment and installation location is to be provided to the Principal Certifier and Council prior to the issue of any Occupation Certificate for the premises.
- 57 All public footways, footpaving, kerbs, gutters and road pavement damaged during the works are to be immediately repaired following the damage, to a satisfactory state that provides for safe use by pedestrians and vehicles. Full restoration of the damage is to be carried out to Council's satisfaction prior to the completion of demolition work or prior to the issue of any occupation certificate in respect of development involving building work.
- 58 Any redundant existing vehicular crossing is to be removed at no cost to Council and the public footway and kerb being restored to match the existing infrastructure and be completed prior to the issuing of any Occupation Certificate for the proposed development.

Note: A separate approval from Council must be obtained for all works within the public road reserve pursuant to Section 138 of the *Roads Act 1993* (NSW). For further information contact Council's Works Depot on 4974 6000 to request a Road Opening Approval. A fee will be payable in this regard.

- 59 The whole of the land to which the art gallery relates is to be consolidated into a single title and documentary evidence of the lodgement for registration of a survey plan of consolidation with NSW Government Land & Property Information being submitted to Council prior to the issuing of an Occupation Certificate for the proposed development.

- 60 A copy of the stormwater drainage design plans approved with the Construction Certificate with "work as executed" levels indicated, shall be submitted to Newcastle City Council prior to occupation of the building. The plans shall be prepared by a Practising Professional Engineer or Registered Surveyor experienced in the design of stormwater drainage systems.
- 61 A Landscape Practical Completion Report is to be submitted to the Principal Certifying Authority prior to the issue of the Final Occupation Certificate. The report is to verify that all landscape works have been carried out in accordance with the comprehensive landscape design plan and specifications that were required to be included in documentation for a Construction Certificate application and is to verify that an effective maintenance program has been commenced.
- 62 The Landscape Architect is to submit a Certificate of Practical Completion to the Principal Certifying Authority which verifies that the street tree planting works have been undertaken in accordance with the planting detail provided and to a professional standard. Refer to Council's standard Practical Completion Report form. Council's Landscape Project Officer may be contacted on Ph: (02) 4974 2675 to inspect the works at any stage.
- 63 A *Landscape Establishment Report* is to be submitted to Newcastle City Council at 52 weeks after the date of Practical Completion. This report shall state the actual maintenance carried out on site, including maintenance records such as site work report sheets, diary entries or log books which show frequency of watering, weeding, mulching, personnel and any other remediation or rectification works carried out.
- 64 The applicant preparing and implementing a Traffic Management Plan for the operation of the Queen Street loading dock to control vehicle and pedestrian activity during service operations, such being operational prior to the issue of an Occupation Certificate for the premises.
- 65 The developer being responsible for the provision of additional regulatory signage in Darby and Queen Streets adjacent to the site frontage and all adjustments to and/or relocation of existing regulatory signage necessary as part of this development, at no cost to Council and in accordance with Council requirements, such works being implemented prior to the occupation of the portion of the premise the subject of this application.

Note: The provision of additional regulatory signage and alterations to existing regulatory signage will need to be referred to the Newcastle City Traffic Committee for approval prior to installation.
- 66 The building floor level of the theatrette, plant room, main switch board room and communications area being set a minimum of 300mm above the local 1 in 100 year ARI flood level. The finished floor levels are to be certified by a registered Surveyor prior to the placement of the floor material and a copy of the Surveyor's Certificate is to be forwarded to the Principal Certifying Authority.
- 67 Prior to issue of an Occupation Certificate, any food business must notify the relevant enforcement agencies, under the *Food Act 2003* (NSW) and (for licensed food businesses) under the *Food Regulation 2010* (NSW). Notification is to be provided to Council and the NSW Food Authority.

Note: To arrange notification of the food business with Council go to www.newcastle.gov.au and download a copy of the 'Council Food Business Notification Form' or contact Council's Environmental Health Services on (02) 4974 2525. To notify with the NSW Food Authority go to www.foodnotify.nsw.gov.au and follow the instructions.

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

- 68 The theatre is an 'entertainment venue' as defined by the *Environmental Planning and Assessment Regulation 2000* shall have a maximum capacity of 117 people. A sign must be displayed in a prominent position in the theatre stating the maximum number of persons, as specified in the development consent, that are permitted in the theatre.
- 69 The maximum number of patrons permitted within the café and associated terrace area is to be restricted to 88 persons in total. A sign must be displayed in a prominent position in the cafe stating the maximum number of patrons, as specified in the development consent, that are permitted in the café.
- 70 The hours of operation or trading of the premises are to be not more than from:

DAY	START	FINISH	
Monday	8am	10pm	Same day
Tuesday	8am	10pm	Same day
Wednesday	8am	10pm	Same day
Thursday	8am	10pm	Same day
Friday	8am	10pm	Same day
Saturday	8am	10pm	Same day
Sunday	8am	10pm	Same day

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

- 71 With respect to the theatre, which is an 'entertainment venue' as defined by the *Environmental Planning and Assessment Regulation 2000*, the following shall be complied with:

a) Nitrate film

An entertainment venue must not screen a nitrate film.

b) 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.

c) Proscenium safety curtains

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

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

d) Projection suites

(i) 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.

(ii) 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.

(iii) No member of the public is to be present in the projection suite during the screening of a film.

e) Emergency evacuation plans

- (i) An emergency evacuation plan must be prepared, maintained and implemented for any building (other than a temporary structure) used as an entertainment venue.
 - (ii) 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.
 - (iii) 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.
- 72 The use and occupation of the premises, including all plant and equipment installed thereon, is not to give rise to any offensive noise, as defined under the *Protection of the Environment Operations Act 1997* (NSW).
- Should Council consider offensive noise has emanated from the premises, the owner/occupier of the premises will be required to submit an acoustic assessment prepared by a suitably qualified acoustical consultant recommending appropriate acoustic measures necessary to ensure future compliance with this condition and will be required to implement such measures within a nominated period. Furthermore, written certification from the said consultant confirming the recommended acoustic measures have been satisfactorily implemented will be required to be submitted to Council prior to the expiration of the nominated period.
- 73 The use and occupation of the premises is not to give rise to the emission of any 'air impurity' as defined under the *Protection of the Environment Operations Act 1997* (NSW), that interferes unreasonably with the amenity of neighbouring premises and/or other sensitive receivers.
- Should Council consider that unreasonable levels of air impurities have been emitted from the premises, the owner/occupier will be required to engage a suitably qualified consultant to recommend measures to control emissions of air impurities to an acceptable level and such measures being implemented within a nominated time period. Furthermore, written certification from the suitably qualified consultant will be required to be submitted to Council confirming that air impurity emissions from the premises do not interfere unreasonably with the amenity of neighbouring premises and/or other sensitive receptors before the expiration of the nominated period.
- 74 Prior to the operation of the proposed water-cooling air handling system(s) the owner/occupier of the premises is to notify Council of all water-cooling air handling system(s). To arrange notification of the installation of the water-cooling air handling systems please contact Council's Environmental Health Services Unit on (02) 4974 2525.
- 75 All proposed water-cooling air handling systems are to be designed and installed in accordance with the requirements of Australian/New Zealand Standard AS/NZS 3666.1: 2002 Air-handling and water systems of buildings – Microbial Control Part 1: Design, installation and commissioning.
- 76 All overflow or drainage discharge waters from the water-cooling air handling system tray or sump are to be directed to the sewers of the Hunter Water Corporation or collected for disposal by a licensed waste transport contractor in accordance with the Department of Environment and Climate Change (DECC) 'Waste Classification Guidelines Part 1: Classifying Waste'.

- 77 All water-cooling air handling systems and associated water treatment systems are to have monthly maintenance checks performed by a suitably qualified contractor or person with cleaning of the system conducted in accordance with *AS/NZS 3666.2: 2002 Air-handling and water systems of buildings – Microbial Control Part 2: Operation and maintenance*. A copy of all monthly inspection, cleaning and water analysis reports, including an annual certification of the process designed to control microbial growth prepared by a competent person, is to be forwarded to Council's Environmental Health Services Unit on a quarterly basis for assessment.
- 78 An operation and maintenance manual is to be kept on site at all times for the proposed water-cooling air handling systems, water treatment equipment and other associated equipment and systems in accordance with the Australian/New Zealand Standard *AS/NZS 3666.2: 2002 Air-handling and water systems of buildings – Microbial Control Part 2: Operation and maintenance*. The operating and maintenance manual is to include (but not be limited to) the following:
- a) Physical details of the plant, equipment and systems and pre-treatment carried out
 - b) Recommendations on maintenance including water treatment maintenance and management
 - c) Recommended cleaning, disinfection and emergency contamination procedures.
 - d) Start-up, operating and shut-down procedures
 - e) Particulars of the maintenance management program including plan servicing and cleaning schedules
 - f) Up-to-date maintenance reports
- 79 The water treatment chemicals associated with the proposed water-cooling air handling system(s) are to be suitably banded and covered to prevent escape of liquids into the stormwater system.
- 80 No flashing, chasing or scintillating lighting or promotional material of a visually intrusive nature is to be installed or displayed on the exterior of the premises.
- 81 Any flags, bunting or other promotional material of a like nature are to be arranged and properly maintained in a manner which does not detract from the appearance of the premises or the streetscape and which does not represent a hazard to the public.
- 82 The driveway crossing, loading areas and stormwater management system are to be properly maintained for the life of the development.
- 83 Vehicles are to be loaded or unloaded standing wholly within the premises and within loading bays designated on the submitted plans or as otherwise provided in accordance with the conditions of this consent and under no circumstances are vehicles to be loaded or unloaded at the kerbside, across the public footpath or in a manner which obstructs vehicular access to the site.
- 84 Proposed driveways and turning areas are to be maintained clear of obstruction and be used exclusively for purposes of loading and unloading, and vehicle access, respectively. Under no circumstances are such areas to be used for the storage of goods or waste materials.
- 85 The maximum size vehicle that shall access the Queen Street loading dock is to be a heavy rigid vehicle (HRV) or vehicle (MRV) as defined in AS 2890.2. Under no circumstances should an articulated vehicle enter the site.
- 86 Any liquid wastes from the premises, other than stormwater are to be either discharged to the sewers of the Hunter Water Corporation in accordance with an approved Trade Waste Agreement or collected and disposed of by a licensed waste transport contractor in accordance with the Department of Environment and Climate Change 'Waste Classification Guidelines Part 1: Classifying Waste'.

ADVISORY MATTERS

- 87 It is recommended that, prior to commencement of work, the free national community service 'Dial before you Dig' be contacted on 1100 or by fax on 1200 652 077 regarding the location of underground services in order to prevent injury, personal liability and even death. Inquiries should provide the property details and the nearest cross street/road.
- 88 Any necessary alterations to public utility installations are to be at the developer/demolisher's expense and to the requirements of both Council and any other relevant authorities. Council and other service authorities should be contacted for specific requirements prior to the commencement of any works.
- 89 Prior to commencing any construction works, the following provisions of the *Environmental Planning and Assessment Act 1979* (NSW) (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.
 - 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.
- 90 A Construction Certificate application for this project is to include a list of fire safety measures proposed to be installed in the building and/or on the land and include a separate list of any fire safety measures that already exist at the premises. The lists must describe the extent, capability and basis of design of each of the measures.
- 91 Prior to the occupation or use of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the proposed development. An application for an Occupation Certificate must contain the information set out in Clause 149 of the *Environmental Planning and Assessment Regulation 2000* (NSW).
- 92 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.
- 93 An annual Fire Safety Statement in the form described in Clause 175 of the *Environmental Planning and Assessment Regulation 2000* (NSW) is to be submitted to Council and a copy (together with a copy of the current fire safety schedule) is to be given to the Commissioner of New South Wales Fire Brigades. A further copy of the Statement (together with a copy of the current fire safety schedule) is to be prominently displayed in the building.
- 94 It is an offence under the provisions of the *Protection of the Environment Operations Act 1997* (NSW) to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.
- 95 Failure to comply with the conditions of consent constitutes a breach of the *Environmental Planning and Assessment Act 1979* (NSW), which may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.

APPENDIX B – Plans and Elevations