

JRPP No.	2012HCC009
DA No.	DA 2012/0141
Proposal	Erection of Seven-Storey Court House Building and Associated Works
Property	Lots 41, 42, 44 and part Lot 46 in DP1169149 (formerly Part Lot 4 DP 1010675), 282 King Street, Newcastle
Applicant	NSW Department of Attorney General and Justice
Report By	TCG Planning
Checked by	Future City Group

Assessment Report and Recommendation

Executive Summary

Proposed Development

The proposed development is for the construction of a new seven storey Regional Courthouse facility and associated works.

Referral to Joint Regional Planning Panel

The proposal is referred to the Joint Regional Planning Panel for determination pursuant to Part 4 'Regional Development' of *State Environmental Planning Policy (State and Regional Development) 2011* as the proposal is listed within Schedule 4A of the Environmental Planning and Assessment Act 1979 as the proposal is a Crown development (and Council-related) having a Capital Investment Value of \$74.8.

Permissibility

The site is zoned B4 Mixed Use pursuant to Newcastle City Centre Local Environmental Plan 2008. The proposal is categorised as a "public administration building" and is permissible within the zone subject to development consent. All required owner(s) consent has been provided. The proposal is local development.

Consultation

In accordance with Council's Development Control Plan 2005 – Element 3.1 'Public Participation' the application was notified/exhibited from 17 February to 2 March 2012 and received six submissions.

Key Issues

The main issues identified in the assessment and/or raised in the submissions were as follows:

- car parking: non-compliance with parking standards;
- building height: exceeding development standard;
- appropriateness of building design.

Recommendation

That the Joint Regional Planning Panel refer development application DA 2012/0141 to the Minister for Planning to refuse the application for the following reasons:

- does not provide adequate parking relative to the likely demand of the development;
- will result in an unsatisfactory impact in terms of available access to a high proportion of users of the Courthouse facility; and
- as a result, has the potential to have unsatisfactory traffic impacts in the vicinity of the proposed development.

1. Background

- 5 July 2011: Council's Director-Liveable City approved a Plan of Subdivision of the subject land (Lot 4 DP 1010675) being an "activity" pursuant to Part 5 of the *Environmental Planning and Assessment Act 1979* as the proposed subdivision was permissible without development consent under Clause 50(c) of the *Newcastle City Centre LEP 2008*. The File Note authorising this approval provided the following background information under the heading "Background-Sale of the Burwood Wedge Site":
 - *"In 2010, Council-owned land on the Corner of Hunter Street and Burwood Streets, Newcastle was identified as the preferred site for the Newcastle State Law Courts complex;*
 - *Negotiations were completed in early 2011 and Council resolved to sell the land to the State Property Authority (SPA) for the Newcastle State Law Courts development on 24 March 2011 subject to a number of contract conditions precedent;*
 - *One of the precedent conditions is registration within six months of the subdivision plan which will create five individual lots from existing Lot 4 DP1010675. SPA, acting as acquisition agent for the Department of Justice and Attorney General will acquire two of the newly created lots for the Courthouse development."*
- This Plan of subdivision was registered (DP1169149) on 16 July 2012 (Refer **Appendix A**). A Review of Environmental Factors (prepared by SG Consulting dated 9 February 2012) for an earlier draft subdivision was reviewed in the preparation of this report and it is unclear whether this was revised with respect to the final registered plan of subdivision.
- 5 July 2011: Council's Director-Liveable City approved the demolition of the Frederick Ash warehouse building and associated works (including relocation of a stormwater pipe and disconnection of site services) being an "activity" pursuant to Part 5 of the *Environmental Planning and Assessment Act 1979*. The building has now been demolished and other works still require completion (including recommended relocation of brick drains).
- 27 February 2012: Development Consent 2011/1531 for 'Mines grouting works, temporary fencing and graded car park removal' was issued by Council. It is understood that these works have commenced.
- Three "pre-DA lodgement" meetings were held:
 - i. 19 October and 18 November 2011: with Council's Urban Design Consultative Group. Refer to Section 4 of this report.
 - ii. 13 January 2012: A pre-Development Application meeting with Council Officer and applicant. Preliminary information was provided in writing the same day to the applicant's planning consultant. This correspondence identified that departures relating to building height and car parking would need to be addressed in the application, in addition to other considerations for the development application.
- 14 February 2012: Application lodged with Newcastle City Council.
- 1 March 2012: Briefing provided to Joint Regional Planning Panel by Council Officer.
- 27 March 2012: Correspondence forwarded to applicant from Council requesting additional information.
- 3 April 2012: TCG Planning appointed as independent planning consultants for the assessment of the development application.
- 30 April 2012: TCG Planning forwarded written correspondence to Council requesting information and clarification from Council following preliminary assessment of the application.
- 9 May 2012: Response from Council to TCG Planning received and Additional Information received from applicant addressing matters requested in Council's letter dated 27 March 2012.
- 21 May 2012: TCG Planning forwarded written correspondence to Council advising of status of assessment and requesting information regarding the application and further clarification from Council. Key items included provision of information previously requested and not provided (ie in TCG letter dated 30 April) and matters concerning the built form (confirmation of building height; minor plan amendments for external finishes; unsatisfactory pedestrian amenity and request for an awning along the Burwood Street frontage to address this).
- 23 May 2012: TCG Planning advised Council that the parking deficiency was unacceptable following consideration of the comments received from Council's Traffic Engineer (on 21 May)

and following assessment of the additional parking and traffic information submitted by the applicant.

- Late May – early July 2012: Various correspondence between Senior Council staff and the applicant regarding key outstanding issues (provided in email correspondence from Council to the applicant dated 22 and 24 May and 7 June 2012;
- 9 July 2012: Additional information received from applicant which responded to the requested additional information sought by Council on 22 and 24 May and 7 June 2012, namely justification to non-provision of developer contributions; additional parking surveys (of the Newcastle CBD, existing Newcastle and Wollongong Courthouses) and justification of car parking shortage and other matters relating to traffic and car parking; clarification of site and built form information; acceptance of provision of an awning (subject to imposition of a condition in the absence of provision of amended plans); provision of information on proposed sand filter for stormwater; and request that landscaping details be addressed subject to further discussions.
- 13 July 2012: Council forwarded an additional submission received in relation to the application.
- 17 July 2012: Amended Plans (**Appendix E** of Additional Information received 9 July 2012) and requested sketches of awning received by TCG Planning.

2. Site and Locality Description

The *subject property* when submitted was formally described as Part Lot 4 DP 1010675, which has now been subdivided. The former Lot 4 in its entirety is very irregular in shape and has frontage to Hunter and King Streets, and includes Burwood Street (not a dedicated road), the access lane between the ATO and Telstra Buildings, Council Administration Building.

The land comprising the *subject site* is to be located on Lots 41, 42, 44 and part Lot 46 of the recently registered six lot subdivision of the abovementioned former Lot 4, now known as Deposited Plan 1169149. Lot 41 (1985m²), Lot 42 (754.8m²), and 44 (236.2m²) and Part Lot 46 (2024m² forming Burwood Street) form the subject site. The combined site area of the subject site upon which the building and site access is to be constructed (Lots 41 and 42) is 2739.8m². The remainder of the subject site will comprise public domain works (landscaping, paving, public furniture, redesign of on-street car parking etc). All of the subject land and surrounding properties are affected by numerous easements, restrictions and rights of carriageway. Refer to **Appendix A** for Deposited Plan (page 1 only).

The subject site is also irregular in shape, maintaining the “wedge shape” of the intersection of Hunter and Burwood Street frontages. The subject site is vacant, formerly occupied by the New Fred Ash Building (now demolished) and an at grade car park for Council staff and patrons and staff of the Clarendon Hotel. On-site works (mine subsidence/grouting works) are currently being carried out on the site in accordance with Development Consent 2011/1531. The site is generally level and is serviced by water and sewerage via various mains at adjoining streets. As indicated in the Statement of Environmental Effects (SEE) accompanying the DA (p15) there are a number of services and infrastructure located on the subject land that have been considered in the design. No removal, relocation or augmentation of existing services/infrastructure is proposed, with the exception of the relocation of a stormwater drain under the southern portion of the site, which is to be undertaken as a separate project by Council.

The subject land is located within an established commercial and Civic Precinct and adjoins:

- To the north: the four lane plus kerbside parking Hunter Street (including a bus stop immediately in front of the site), with commercial buildings on the opposite (northern) side of Hunter Street occupied by the Department of Fair Trading and other uses.
- To the east: Burwood Street (a no-through road) and on-street public car parking area, and Australian Tax Office and Telstra Buildings with ground floor retail uses.
- To the south: the access driveway to the basement car park of the nine storey cylindrical Council Administration Building.

- To the west: the Wheeler Plaza and attached group of buildings fronting Hunter Street comprising the Clarendon Hotel (the eastern wall and courtyard adjoins the subject site), Morpeth House, and Old Fred Ash Building (listed on the State Heritage Register). Further to the west adjoining Wheeler Plaza is the Civic Theatre and the Town Hall.

The site is well serviced by public transport, with a bus stop directly in front of the site on Hunter Street, which this is proposed to be relocated 50m to the east in front of the closed Burwood Street to make way for a drop off zone. There are numerous bus stops in close proximity to the site on Hunter Street and King Street. The Civic Railway Station is located approximately 130m to the north-west. There are several commercial car parking stations within walking distance of the subject site.

The site is within the Newcastle Mine Subsidence District (mine stabilisation works are currently being undertaken on the site to address this), is flood prone and has a high water table (approximately 2m below ground level). The land is located within a Heritage Conservation Area and there are a number of listed or draft listed State and locally significant heritage items within the locality.



Figure 1: Location of subject site showing approximate lot boundary and surrounding buildings

Source: http://www.newcastle.nsw.gov.au/about_newcastle/maps/newcastle_map

3. Project Description

The Statement of Environmental Effects accompanying the development application describes the proposed development as a “complex....to provide court, registry and support facilities for NSW State court sittings including Local, District and Supreme Courts. The complex also needs to accommodate space for tribunal hearings and mediations to take place, as well as office and preparation areas for a number of legal and court support agencies.” The proposed complex will replace the existing “disjointed” court complex located in east Newcastle which “no longer meets contemporary functional needs, particularly with regard to security and maintenance” (p18).

The SEE summarises the development as follows:

- *“Piling and associated earthworks and remediation;*
- *Construction and use of a new seven storey courthouse building with a maximum 8400m² gross floor area (GFA) comprising:*
 - *Entry lobby and public gathering spaces;*
 - *12 courtrooms serving the Supreme, District, Local and other Tribunal services;*
 - *Judges Chambers, Jury Assembly Area, registry and Sheriff Offices, interview rooms and other administrative spaces for the judiciary, legal professionals, police and support staff;*
 - *Registry, sheriff and holding cells for people in custody;*
- *25 basement car parking spaces for serving judges and magistrates and Departmental vehicles (including two special use spaces);*
- *42 bicycle spaces, of which 14 will be located within the basement car park and 28 will be provided at grade.*
- *Seven on-street motorbike parking spaces;*
- *Pedestrian and cycle access and circulation arrangements;*
- *Landscaping and public domain works along the Hunter Street and Burwood Street frontages; and*
- *Services and utilities provision required to service the Courthouse Building.”*

The following table contains other key development information (adapted from Table 1 of the SEE, p21 and JBA Planning Correspondence dated 9 July 2012).

Table 1: Key Characteristics of the Proposed Development	
Component	Proposal
Capital Investment Value	\$74,888,157
Height RL Metres Storeys	38.00 35.5m (from lowest footpath of RL 2.50) Seven (7)
Site Area <i>site area means the area of any land on which development is or is to be carried out. The land may include the whole or part of one lot, or more than one lot if they are contiguous to each other.</i> ➤ Land on which building is sited (Lots 41 and 42): ➤ Lots 41, 42 and 44 (northern end of Burwood Street landscaping) Burwood Street upgrading works not included in site area (ie. works within Lot 46)	➤ 2,739.8m ² ➤ 2976m ²
Gross Floor Area¹	8,400m ²
Floor Space Ratio (max 3:1 permitted)	2.8:1
Street Frontage Heights (12-22m required) North (Hunter Street) East (Burwood Street)	From adjacent footpath levels 14.1m (from RL2.4) 13.5 (from RL3.1)

South (Council Administration Building Boundary) West (Clarendon Hotel Courtyard Boundary)	13.02 (from RL3.49) 12.8m (from RL3.7)
Minimum Ground Level Setbacks (min. 0m required) North (Hunter Street) East (Burwood Street) South (Council Administration Building boundary) West (Clarendon Hotel Courtyard boundary)	0m 0m 11m 0m
Minimum Upper Level Setbacks above required SFH (min. 6m required) North (Hunter Street) East (Burwood Street) South (Council Administration Building boundary) West (Clarendon Hotel Courtyard boundary)	6.95m 0m 4.4m 4.68m
Total Proposed Car Parking Spaces	25 basement car parking spaces for serving judges and magistrates and Department vehicles (including 2 special use spaces); 7 motorbike spaces (on-street – not shown on plans); 48 bicycle spaces (14 in basement and 28 at grade northern end of Burwood Street).
Landscaped Area	714m ²
Other Design Features (p21-22 SEE)	Responds to heritage parapets of the adjacent Clarendon Hotel and Old Fred Ash Building. Strong pedestrian design at entry and lower levels, main entry and lobby on Hunter Street frontage Facilitates Burwood Street as a pedestrian friendly laneway East-west podium-like element which wraps around Hunter and Burwood St intersection (reaching a height of RL16.5, or approx 14.1m above the Hunter St level and between 13.2-13.8m along Burwood St) Podium recessed at entry foyer providing strong sense of arrival Upper levels set back.
Public Domain and Landscaping	Awnings to majority of Hunter and Burwood Street frontages, street trees and paving, landscape works at recessed entrance to building and planting, seating and bike racks at the intersection of Burwood Street and Hunter Streets.
External Materials and Finishes (p23 SEE)	<ul style="list-style-type: none"> ▪ Podium: local split sandstone and concealed grouting; recycled face brick from the New Fred Ash building demolition laid with lime mortar; long life mineral silicate paint on concrete; clear glazing to entry lobby. ▪ Facades: polished dark grey precast concrete; composite panel with natural zinc (external skin); composite timber veneer cladding on steel frame; insulated glass unit; metallic silver and dark grey metallic powder coated framing and louvres ▪ Roof: colourbond metal roof sheeting; fractured concrete pavers.
Vehicular Access	Burwood Street will be terminated at Hunter Street and will be landscaped facilitating pedestrian access to the Hunter Street building entry. Vehicular access will be via Burwood Street to the basement, van dock and loading areas (no public access). A 30m long short term drop off and pick up area in front of the Hunter Street entrance is proposed (will replace existing parking zone and bus stop, to be relocated to east).
Function and Hours of Operation	8.30am to 5pm on weekdays. Peak times in morning. Up to 80 permanent staff. Typical daily court users: vary between 150 and 350 (with up to 500 in the building at a time (p36 SEE)

3a. Submitted Plans and Documents

Plans for the development have been prepared by Cox Richardson and are provided at **Appendix B**. The floor plans provided indicate areas of the building that are sensitive to public viewing from a security viewpoint as a blank “back of house” and do not provide detail of this intended layout and design of these areas. Copies of internal layouts for Council’s assessment purposes were requested by Council to be held confidentially in Council’s files, but these were not provided. These should be required prior to any approval of the application. Sketch plans of the proposed awning to Burwood Street prepared by Cox Richardson (a late amendment to the plans) are provided at **Appendix C**. The Landscape Plans prepared by Turf Landscape Architects indicate the proposed public domain works and are provided at **Appendix D**.

The **Appendix E** list is the full range of current plans and specialist reports assessed for the development application:

4. Consultation

Newcastle Development Control Plan 2005 - Element 3.1 'Public Participation'

On 17 February 2012 a written notice of the development application (indicated as Integrated Development, requiring an approval under Section 15 of the *Mine Subsidence Compensation Act 1961*) was issued to property owners and occupiers of surrounding property as per the annotated map on the file. The application is not 'Integrated Development' (pursuant to *Mine Subsidence Compensation Act 1961*) having regard to Section 90(2) of the Act.

TCG Planning sought confirmation that the public participation considerations of Element 3.1 Public Participation were satisfied. Council responded in its letter dated 9 May 2012 that *"the application was notified correctly and in accordance with Council's Notification Policy. The notification process is consistent with the Development Control Plan 2005 Element 3.1 Public Participation."*

Submissions Received

The notification period was 17 February to 2 March 2012 and an extension of two weeks was granted by Council staff at the request of one of the objectors. A total of six submissions were received that objected to the proposal on the grounds summarised below. The number of those submissions that raised each matter is provided in brackets. Response to each matter is also provided in Section 7 of this report.

- Gross deficiency in car parking spaces provided and is unjustified (4);
- Lack of parking for disabled persons (1);
- Excessive height and contravention of height development standard (3);
- Inappropriate building design (3);
- Negative impact from relocating from East Newcastle not identified (2);
- Project benefits are unjustified: employment will just replace existing Court house jobs (2); and revitalisation of Civic Precinct is not likely given short hours of operation of Courts during business hours on Monday to Friday only (1);
- Poor choice of site: in shape (1 submission) and location (2);
- Conflict of interest as Council is selling the land (1);
- Lack of information provided and public briefing (1);
- Proposal fails Environmentally Sustainable Design principles (1);
- Heritage Impact Statement flawed, and proposal will have a negative impact on existing buildings (including heritage buildings) in Civic Precinct (1).

5 Referrals

The key issues raised/relevant to the proposal raised by external agencies and Council staff are provided below.

External Referrals

There are no statutory referrals required for the development application. Whilst not required by legislation the application was referred by Council to the Rail Corporation NSW and the Mine Subsidence Board (MSB). These authorities provided recommended conditions and these were forwarded to the applicant for consideration. Notwithstanding the lack of statutory applicability of these referrals, the applicant has indicated in writing that it accepts imposition of conditions as follows:

- the project generally satisfies the requirements of the (then) Department of Planning's "Development Near Railway Corridors and Bus Roads – Interim Guidelines" (as confirmed by the applicant's acoustic consultant);
- it accepts a condition be imposed requiring the submission of an updated acoustic report prior to commencement of construction demonstrating how the proposal will comply with the above Guidelines;
- it accepts a condition requiring the preparation of an electrolysis risk assessment to inform the preparation of construction drawings and the incorporation of any appropriate risk minimisation measures into the design (if required).

In respect of the Mine Subsidence Board's (MSB) General Terms of Approval (GTA), the applicant noted its commitment to satisfying the conditions as part of the approved grouting works under Development Consent DA 2011/1531. This Development Consent DA 2011/1531 (for the grouting works) was not Integrated Development, and hence no conditions were imposed by the MSB. The GTA's provided by the MSB are considered relevant to the proposed development and are not onerous. Hence, to ensure the matter of mine subsidence is adequately addressed, these are recommended to be included within the conditions for development consent, should the proposed development be approved.

The application was also referred to the NSW Police Force (Crime Prevention Officer, Waratah LAC); Hunter Water Corporation (to advise Council whether or not existing water, sewerage and stormwater facilities will be adequate for the proposal), however no response was received from these authorities. Referrals to these authorities were not statutory referrals.

Internal Referrals, Newcastle City Council Officers

The initial application documents were referred to the Officers listed below upon receipt of the application (February 2012). The additional information received by the applicant on 9 May 2012 was re-referred to the relevant officers. The additional information submitted on 9 July 2012 was re-referred to Senior Development Officer (Engineering-Traffic/Parking and Flooding/Stormwater). The comments below are therefore relevant to the latest comments received:

- Heritage Officer/Strategist – satisfactory, subject to imposition of a condition requiring provision of heritage interpretation details.
- Environmental Health Services Officer - no objection to the proposed development subject to: (1) further consideration of the depths of the proposed works below natural ground to ensure compliance with the requirement of Clause 51(3) of the City Centre LEP 2008, regarding acid sulfate soils; and (2) various conditions being applied to any consent granted.
- Landscape and Public Domain Officers (Senior Strategist – Public Domain; Liveable City Officer; and Coordinator Landscape Architectural Services) – satisfactory subject to amendments to plans regarding materials and specifications (paving materials, bicycle racks, revision of tree spacing, and removal of gravel pavement).
- Senior Development Officer (Engineering-Flooding and Stormwater) – satisfactory subject to conditions.
- Senior Development Officer (Engineering-Traffic) – The proposed development is not supported from a parking and associated traffic perspective because of the significant shortfall in parking provided with a limited justification and the potential traffic impacts that the shortage will have on the surrounding on street parking and public parking network. Refer to detailed response at Section 7 of this report.

Urban Design Consultative Group

The Group was originally established as the Urban Design Advisory Panel in the mid-1980s under the Chair of Professor Barry Maitland. It was an initiative of the then Director of Environment and Planning to provide independent urban design and architectural advice on major development proposals within the CBD.

The Panel was reconstituted in 1998 as the Urban Design Consultative Group under Chair Professor Peter Webber, with five members, each of whom is independent of Council and has

expertise in one or more of the disciplines nominated in SEPP 65 – Design Quality of Residential Flat Development.

The Group continues to operate as an independent advisory Group to Council and is also recognised by the Minister for Planning as a SEPP 65 Design Review Panel.

Given the significance of the project and the expertise of the group, the proposal was referred by Council on three occasions to the UDCG for design advice and comment (two of these were prior to the lodgement of the application) and on this basis, provision of this information is considered highly relevant for inclusion within this assessment report. The most recent advice (provided on the day the DA was lodged) was forwarded to the applicant, who responded to all of the issues raised, resulting in some design alterations. These design alterations, (together with some design amendments provided in the revised plans provided on 9 May 2012) have not been re-referred to the UDCG and this is not considered necessary as the application has incorporated many of the recommendations of the UDCG.

19 October 2011: This meeting provided views of the UDCG in the context of the ten design principles outlined in SEPP 65. No plans were provided as the applicant was seeking guidance on the built form (envelope and height controls) noting that the preliminary studies identified that it would be difficult to fit required accommodation within the prescribed envelope. Key outcomes of the meeting are summarised below. It is noted that the submitted design incorporated most of the suggested design elements.

- *Context:* excellent location and will complement civic centre; well serviced by public transport; opportunity to enhance area;
- *Scale/Built Form/Aesthetics:* maximum building heights give reasonable guidance to acceptable development but could be latitude in their interpretation; importance of building needs to be reflected in architectural expression; Hunter Street to be built to street frontage, setback at western end to height of adjoining parapets, continuous street awning desirable; a setback to Burwood Street may not be necessary but will need to have pedestrian scale and provide an awning or colonnade to provide shelter from elements; corner junction to be reinforced; interface with Council Administration Centre need careful attention – southern end should be lower than this building by at least one floor level but northern end could step up to same height.
- *Landscape:* opportunity for substantial major tree planting in both streets in accordance with Council's Strategy and new paving and street furniture; explore possibility of Burwood Street to be a paved 'shareway' for pedestrians and vehicles.
- *Amenity:* agreed reduced car parking could be provided but noted lack of on-site parking will put pressure on off-site parking locations; design should allow for convenient drop off and pick-up points, eg port-cochere or similar.

16 November 2011: The architects presented three design options for the site, with physical massing models of each. Each option was assessed and Option 1 was preferred which placed the tallest element of the structure toward the north-eastern corner and a lower level adjacent to the Newcastle City Council Administration building. This option provided an overall height of approximately 34m (higher than the other two alternatives) but was considered the most appropriate in the context of the site. Suggestions were offered by the Group in respect to the architectural design development of the building, and particularly with its relationship at ground level with the public spaces surrounding the site.

15 February 2012: The UDCG reviewed the submitted plans again in the context of the ten design principles outline in SEPP 65. Overall, the Group *"was of the view that the design of the Court had progressed significantly, and that the overall massing and form of the building had achieved an appropriate and attractive outcome. However, it is important to give further consideration to reducing the complexity of the detailed form, finishes and detailing of the building. In particular, the Hunter Street and Burwood Street facades and the external materials and colour of the building were critical. Further imaginative design initiatives addressing landscape generally and pedestrian entry to Wheeler Place are strongly encouraged."* The advice was forwarded to the applicant who

responded to each of the comments, resulting in some design edits to address some of the issues raised. Areas that the applicant did not propose any revisions to the scheme as recommended included improvements to the public domain of Burwood Street; feature blade elements of the Hunter Street façade, and introduction of a water feature to Hunter Street forecourt.

Following a request by Council's Independent Consultant, the applicant later amended the design to include an awning along the entire Burwood Street frontage, to satisfy the consistent comments by the UDCG and to satisfactorily address the LEP and DCP requirements. The plan edits were therefore considered to satisfactorily address the UDCG's comments and concerns.

6. Other Relevant Approvals, Legislation, Policies, Plans and Studies

Environmental Planning and Assessment Act 1979 and Regulation 2000

Part 13 of EP&A Regulations 2000: Development by the Crown

The proposed development is "crown development" as the Department of Attorney General and Justice is a "public authority". This application is being referred to the regional panel in accordance Section 89 'Determination of Crown Developments' of the EP & A Act. Under this section,

- "(1) A consent authority (other than the Minister) must not:*
 - (a) refuse its consent to a Crown development application, except with the approval of the Minister, or*
 - (b) impose a condition on its consent to a Crown development application, except with the approval of the applicant or the Minister.*
- (2) If the consent authority fails to determine a Crown development application within the period prescribed by the regulations, the applicant or the consent authority may refer the application:*
 - (a) to the Minister, if the consent authority is not a Council, or*
 - (b) to the applicable regional panel, if the consent authority is a Council.*
- (2A) A Crown development application for which the consent authority is a Council must not be referred to the Minister unless it is first referred to the applicable regional panel."*

This report recommends the development application be refused on the basis of unsatisfactory parking and associated potential traffic impacts and therefore, should the JRPP concur with this recommendation, the application must then be referred to the Minister in accordance with the above provisions. If the JRPP resolves to approve the application subject to conditions, the applicant will need to approve those conditions prior to Council issuing a development consent.

Section 94A of EP&A Act 1979: Fixed Development Consent Levies

This provision enables consent authorities to impose a condition on a development consent that requires the applicant pay a levy of the percentage, authorised by a contributions plan, of the proposed cost of carrying out the development. Part 4.2 Council's *Section 94A Development Contributions Plan 2009* exempts "public transport and infrastructure provided by or on behalf of a public authority." The proposed development falls under this category and is therefore exempt from the payment of Section 94A levies under this Plan. The Department of Planning's Circular D6 (addressed below) also outlines appropriate categories of contributions toward off-site works for Crown Developments, which are limited to drainage works and upgrading of local roads and local traffic management (for the site entrance only). It identifies that no contributions be collected for open space, community facilities, car parking and general or major road upgrades. The applicant indicates in documentation submitted that the proposal will provide material public benefits consistent with strategic planning objectives, including landscaping and public domain works, replacement of a redundant existing Courthouse utilising existing infrastructure and services in a better location and likely higher public transport use. Hence, the applicant argues no development contribution should be imposed. Based on the provisions of the Act, Council's s94A Plan and requirements of Circular D6, the applicant's submission is supported. Council has no grounds to require contributions

Circular D6 'Crown Development Applications and Conditions of Consent' (Department of Planning, 1995)

This circular “suggests procedures for Crown agencies to follow prior to lodging DAs; sets out the procedures for consent authorities to follow when determining Crown DAs under (the then) Section 91 (now Section 89); provides advice on the policy on conditions of consent appropriate for Crown DAs, particularly Section 94 conditions on Crown activities provided with an underlying philosophy of essential community service; notes the availability of the provisions of the (then) Section 91 in relation to Crown DAs; and advises on the policy on appropriate conditions of consent.” Appendix C of the Circular provides a document entitled “Resolution Mechanism for disputed Crown development applications between Crown applicants and Consent Authorities: Compulsory negotiation meetings Under Section 91A of the Environmental Planning and Assessment Act 1979”.

Draft conditions of consent have been prepared for this application, should the JRPP approve the application. These conditions have been prepared in accordance with the Circular D6, however due to time constraints for completion/finalisation of this report these have not yet been provided to the applicant for approval. This would be required prior to issue of a Development Consent.

Should the JRPP resolve to refer the application to the Minister and/or agreement cannot be reached on the draft conditions of development consent the resolution mechanism set out in Appendix C of the Circular will need to be followed.

Section 138 of Roads Act 1993: For the works within the Hunter Street road reserve (including drop off zone, bus stop relocation and on-street parking on Burwood Street). Burwood Street is not a public road. This approval will be required to be obtained from Council/the RMS in consultation with the Traffic Committee prior to works commencing.

Section 139(4) of the Heritage Act 1977: An Exception for the need for an Excavation Permit (Type 1C) will be required to be sought and obtained from the NSW Heritage Office prior to works commencing. Refer to Section 7 of this report.

Lower Hunter Regional Strategy (Department of Planning, October 2006)

The Regional Strategy is the strategic land use planning framework to guide the sustainable growth of the Lower Hunter over 25 years. A key element of the Strategy is the “promotion of Newcastle as the regional city of the Lower Hunter” (page 10). The proposed facility is a regional facility located within the Civic Precinct of Newcastle and is therefore consistent with this outcome. The strategy also indicates that a key action for is that the “cultural heritage values of major regional centres and major towns that will be the focus of urban renewal projects will be reviewed, with the aim of protecting cultural heritage.” The proposal is consistent with recently adopted/gazetted heritage provisions and is therefore consistent with this aspect of the Strategy. There are no further directly relevant elements of the Strategy to the proposed development.

Newcastle City Centre Renewal – Report to NSW Government (March 2009)

This report, prepared by the Hunter Development Corporation identifies catalytic projects to revitalise Newcastle City Centre and key recommendations include:

- **relocation of the State's justice facilities to the Civic Precinct as a priority project** (the Council's intended sale of the land and this development application is a direct outcome of this recommendation);
- staged delivery of an upgraded public domain plan;
- an improved public transport system (including committing to the investigation of the removal of the rail line in the City and creation of a new terminus at Wickham and associated Integrated Transport Action Plan to achieve transport connectivity to the City Centre); and
- relocation and expansion of the University of Newcastle's campus in the city centre.

The subject development application is consistent with the first of the above recommendations (highlighted in bold). The ‘benefits and opportunities’ and ‘costs and challenges’ of the relocation of a Justice Precinct (which in the report also incorporates a university law school, law library, in addition to legal services, and the State and Federal courts, and thereby larger floor area quoted as below) are identified in the report (p39 and p85) which are summarized as follows:

- ***“Benefits and Opportunities:** creation of approximately 800 temporary construction jobs in Newcastle LGA and 1700 temporary indirect jobs during construction; agglomeration of activity in a central location, through the relocation of an estimated 1400 jobs (assuming 50% of businesses that are affected by the relocation of the Legal Precinct would also shift to the new location); collaboration with University law faculty eg. law library; opportunities for residential development on the prime land that is occupied by the current Justice Precinct.*
- ***Costs and Challenges:** approx 25,000m² is required to accommodate both the State and Federal Law Courts at an estimated construction cost of \$125m; greenfields development constrained in Civic, and high cost of converting existing buildings; loss of revenue for businesses located around the current legal precinct, though there would be lead time to allow for relocation; resistance from the law Society to relocate; separation of law firms from Justice precinct, though general consensus is that lawyers do not need to be very closely located to the courts; no net gain in operational phase as 800 legal sector employees would shift from one location to another, although this would have benefits in terms of agglomerating activity.”*

Hunter Street Revitalisation Masterplan (HRSM)

The HRSM process includes the delivery of three interconnected components:

1. ***Contextual Framework:** building an understanding of the unique mix of social, environmental, and cultural elements that influence the vitality of Hunter Street. This was prepared by urban revitalization specialists SCAPE (July 2010).*
2. ***Strategic Framework:** identifying opportunities for revitalizing Hunter Street at a whole street scale as well as individual precincts. This Framework was publicly exhibited in September-October 2010 and Council adopted the HRSM Final Strategic Framework at its meeting of 14 December 2010. The document (p67) identifies the subject site as having an opportunity to “secure and locate regional justice court infrastructure on Council owned lands to support the administrative function of the Civic Precinct and associated ancillary legal support”, having the key benefit of “regional service, employment and inward investment.” Other key priorities include the themes of “People and Place, Greenways, Enterprise and Integrated Transport.” It is noted that the latter theme includes a “whole of city” parking strategy as a longer term priority.*
3. ***Implementation Framework:** delivering projects and actions that will revitalise Hunter Street. This is currently under preparation.*

7. Section 79C Considerations

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

State Environmental Planning Policy No.55- Remediation of Land

Clause 7 of SEPP 55 – Remediation of Land requires a consent authority to consider whether land for any development is contaminated, or can be remediated suitable for the development. It must also consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.

A Phase 1 and 2 Environmental Site Assessment of soils and groundwater (prepared by RCA Australia, February 2012) was submitted with the development application. This report concludes:

- a former service station near the site as the most significant potential contaminant source.
- laboratory analysed soil and groundwater samples demonstrated soil and groundwater on the site pose no significant risk to human health or the environment and remediation of the site is not required.
- as underground parking is proposed, management of excess material was also considered in the report. Preliminary sampling of the two general material types on the site (fill to an average

depth of 1.3m overlying natural sand from 1.3m to at least 3.6m below the ground surface) identified this material can be classified as General Solid waste. However, further sampling was recommended to confirm this for suitable off-site disposal.

- the site is suitable for commercial/industrial development.

The submitted documentation was reviewed by Council's Environmental Health Services Officer with respect to contamination and was considered to be satisfactory subject to conditions. The provisions of SEPP 55 – Remediation of Land (in particular Clause 7) have been satisfied.

State Environmental Planning Policy (Urban Renewal) 2010

The Newcastle CBD is one of the three priority areas identified by the Minister for Planning in 2010 for inclusion in this State Environmental Planning Policy which aims:

- a) to establish the process for assessing and identifying sites as urban renewal precincts,*
- b) to facilitate the orderly and economic development and redevelopment of sites in and around urban renewal precincts,*
- c) to facilitate delivery of the objectives of any applicable Government State, Regional or Metropolitan strategies connected with the renewal of urban areas that are accessible by public transport.*

The site (and the Newcastle CBD) is mapped and identified as a 'potential precinct' under the SEPP. Section 9 of the SEPP 'Proposals for potential precincts' requires the Director-General to undertake or arrange for a study to be undertaken to determine whether a precinct should be developed as an urban renewal precinct and associated appropriate development controls for that precinct. TCG Planning understands that this has not been finalised and therefore this section is not applicable. Section 10 applies to the proposal as it has a capital investment value of more than \$5 million. The proposal satisfies the provisions of the SEPP as the proposal does not prevent or restrict commercial development, requires amalgamation of sites to enable the development and improves public domain areas. Section 10(4) is not applicable.

State Environmental Planning Policy (Infrastructure) 2007

Sections 85 and 86 of the *State Environmental Planning Policy (Infrastructure) 2007* are discussed under section 5 (external referrals) of this report.

Division 14 'Public Administration Buildings and Buildings of the Crown' also permits the proposed development with development consent, however this clause is not relevant as the Local Planning Instrument also permits this use (refer below).

Division 17 'Roads and Traffic' is satisfied as the proposed development:

- while having frontage to a classified road (Hunter Street), provides vehicular access to the land via another road (Burwood Street), and hence the proposed access will not have an adverse impact on the operation of Hunter Street, and will include measures to ameliorate potential traffic noise or vehicle emissions (via a condition of development consent) (Clause 101); and
- is not a development type specified in Column 1 of the Table to Schedule 3, being "traffic generating development" (Clause 104).

State Environmental Planning Policy (State and Regional Development) 2011

The application is referred to the Joint Regional Planning Panel for determination pursuant to Part 4 'Regional development' of *State Environmental Planning Policy (State and Regional Development) 2011* as the proposal is listed within Schedule 4A of the Environmental Planning and Assessment Act 1979 being:

- General development over \$20 million;
- Council related development over \$5 million; and
- Crown development over \$5 million.

The application submitted to Council nominates the capital investment value of the project as \$74.8 million.

State Environmental Planning Policy No. 71 – Coastal Development

The land is located within the Coastal Zone and therefore *State Environmental Planning Policy No. 71 applies*. The site is located some distance from the coast and in this regard, many of the provisions are not applicable and/or are satisfied.

Newcastle City Centre Local Environmental Plan 2008

At the time the development application was submitted, the *Newcastle City Centre Local Environmental Plan (NCCLEP) 2008* applied. As of 15 June 2012, this LEP was repealed and the LGA-wide *Newcastle Local Environmental Plan 2012 (NLEP 2012)* was gazetted. The saving provisions of the new LEP mean that the NCCLEP 2008 applies to the proposed development and are addressed below.

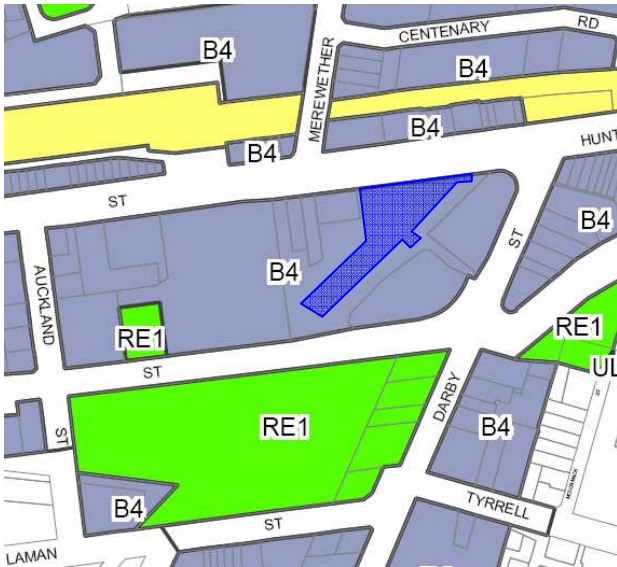


Figure 2: NCCLEP 2008: Land Zoning Map Sheet LZN-001 – B4 Mixed Use Zone

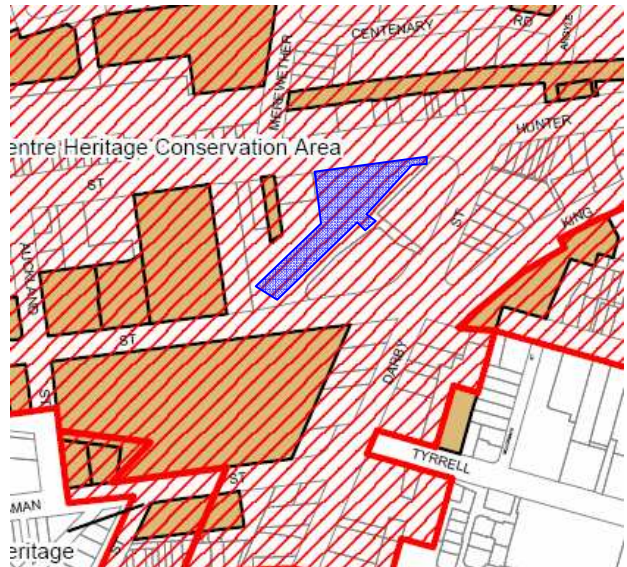


Figure 3: NCCLEP 2008: Heritage Map Sheet HER-001 – Heritage Conservation Area

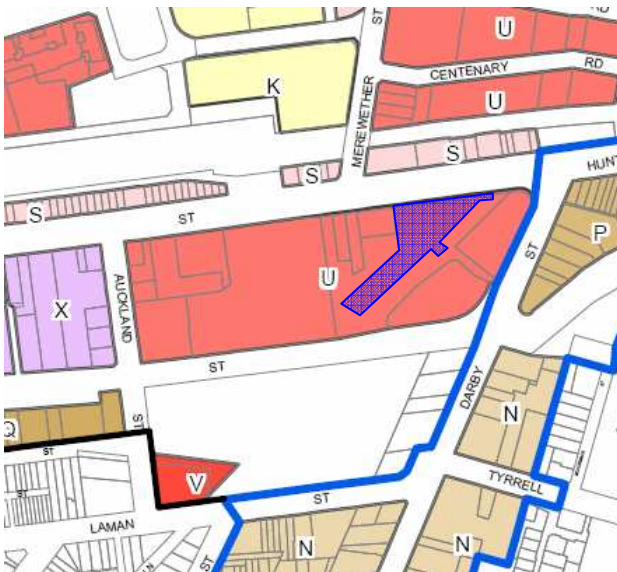


Figure 4: NCCLEP 2008: Height of buildings Map Sheet HOB-001 – 30m Height Limit

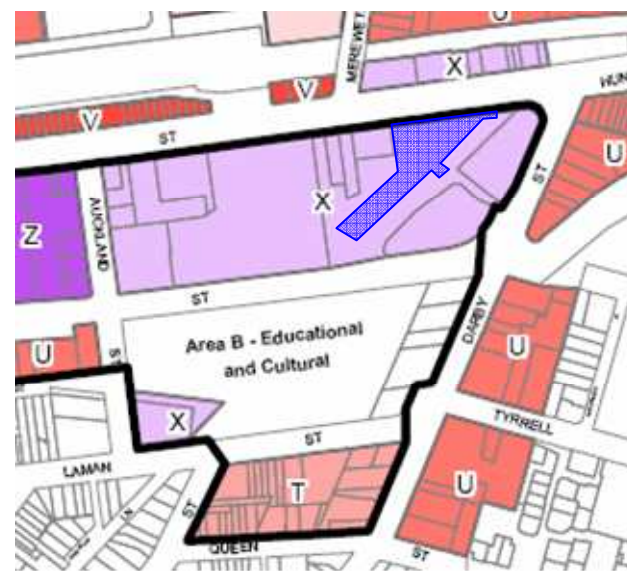


Figure 5: NCCLEP 2008: Floor Space Ratio Map Sheet FSR-001 – Max FSR 0.4:1

The table below sets out the development standards and other provisions applicable to the proposal.

Table 2: Compliance with NCCLEP 2008 Provisions			
Part/Clause	Requirement	Proposal	Consistent/ Complies
Part 1: Preliminary			
Clause 4 Dictionary	The proposed development is defined as a “ <i>public administration building</i> ” which means “ <i>a building used as offices or for administrative or other like purposes by the Crown, a statutory body, a council or an organisation established for public purposes and included a courthouse or a police station.</i> ”		Yes
Part 2 Permitted or Prohibited Development and Land Use Table (Clauses 12-13)			
Land Use Permissibility	The Land Use Zoning Map (refer Figure 2) indicates that the land is zoned B4 Mixed Use zone	“Public administration buildings” are permitted with development consent in the B4 zone”	Yes
Objectives of B4 Mixed Use Zone	<ul style="list-style-type: none"> ▪ 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: <ul style="list-style-type: none"> ○ 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. 	<p>The proposed development is consistent with the objectives of the B4 zone as:</p> <ul style="list-style-type: none"> ▪ The Courthouse is a compatible land use with the existing surrounding Civic, commercial and retail use of the area; ▪ The proposed courthouse will further integrate the existing surrounding diverse uses and will encourage and maximize public transport and walking and cycling; ▪ The proposal will retain identified view corridors; ▪ The proposed landscaping within the site and within the public domain (particularly the proposed area at the northern end of Burwood Street, intersecting with the Hunter Street footpath) improves the amenity of the site and streetscape; ▪ Will satisfactorily protect and enhance the existing character of the ‘Burwood Wedge’. 	Yes
Part 4: Principal Development Standards and Related Provisions			
Clause 21 – Height of Buildings	Maximum height limit 30m	35.5m (from lowest footpath level of RL 2.50)	No Refer to detailed discussion on Clause 28 ‘Exceptions to development standards’ below
Clause 23 – FSR	Maximum FSR 4:1 NB. The SEE incorrectly states max FSR is 3.0:1	FSR 2.8:1 Using the site area (Lots 41 and 42) as 2,739.8m ² . Burwood Street upgrading works not included in site area (ie. works within Lot 46)	Yes
Clause 26 – Car Parking	1 car parking space per 60m ² of GFA that is used for office	The GFA of 8400m ² generates 140 carparking spaces and 25 spaces are	No Refer to detailed

Table 2: Compliance with NCCLEP 2008 Provisions			
Part/Clause	Requirement	Proposal	Consistent/ Complies
	premises (b); and (a) as per <i>Newcastle Development Control Plan 2005</i> (Table 1A applies which indicates the same rate as above for all development).	provided (ie. shortfall of 115 spaces).	discussion on Clause 28 'Exceptions to development standards' below
Clause 28 - Exceptions to development standards		Refer to separate discussion after this table (due to space limitations of table)	
Part 5: Miscellaneous Provisions			
Clause 33: Ecologically Sustainable Development (ESD)	The consent authority must have regard to the principles of ESD as they relate to the proposed development based on a "whole of building" approach by considering a range of measures.	According to the SEE accompanying the application (p25), the proposed Courthouse is designed with identified energy and water saving features, with the final ESD initiatives to be resolved with future detailed design. While limited, the proposal is generally consistent with the considerations of Clause 33 and can be enhanced via future detailed measures imposed by a proposed condition of development consent requiring the building to achieve a 4 star rating under the Australian Building Greenhouse Rating Scheme (consistent with the DCP requirements).	Can be satisfied via a condition of development consent
Clause 36 Design Excellence	<p>(3) <i>In considering whether development to which this clause applies exhibits design excellence, the consent authority must have regard to the following matters:</i></p> <p>(a) <i>whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,</i></p> <p>(b) <i>whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain,</i></p> <p>(c) <i>whether the proposed development detrimentally impacts on view corridors identified in Newcastle Development Control Plan 2005,</i></p> <p>(d) <i>how the proposed development addresses the following matters:</i></p> <p>(i) <i>heritage issues (including archaeology) and streetscape constraints,</i></p> <p>(ii) <i>the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,</i></p> <p>(iii) <i>bulk, massing and modulation of buildings,</i></p> <p>(iv) <i>street frontage heights,</i></p> <p>(v) <i>environmental impacts, such as sustainable design, overshadowing, wind and</i></p>	<p>The applicant addresses the provisions of Clause 36 in the SEE submitted with the application (page 29-30) and this is concurred with. The revised design (incorporating an awning to the Burwood Street frontage) satisfies all of the considerations of the clause. Further, the application (and pre-application) was referred to Council's Urban Design Consultative Group (UDCG) as detailed earlier in this report and the revised plans are considered to now satisfactorily address the matters of architectural/design merit. In summary:</p> <ul style="list-style-type: none"> ▪ The design of the Court is appropriate to the building type (being an important civic building having a strong architectural character and street presence at the intersection of Hunter and Burwood Streets); ▪ The overall massing and form of the building had achieved an appropriate an attractive outcome; ▪ The view corridors/visual connections identified in NDCP 2005 (along Burwood Street alignment) are not adversely impacted. ▪ The design satisfactorily relates to the parapet heights of the heritage buildings fronting Hunter Street and relates well to other buildings and to the overall character of the precinct. ▪ The higher elements of the building are set back from the street frontages, and have an appropriate separation distance from the Council Administration Building. 	Yes

Table 2: Compliance with NCCLEP 2008 Provisions

Part/Clause	Requirement	Proposal	Consistent/ Complies
	<p>reflectivity,</p> <p>(vi) the achievement of the principles of ecologically sustainable development,</p> <p>(vii) pedestrian, cycle, vehicular, service and public transport access, circulation and requirements,</p> <p>(viii) impact on, and any proposed improvements to, the public domain.</p> <p>(6) The consent authority may grant development consent to the construction of a new building, or external alterations to an existing building, that has a floor space ratio of up to 10 percent greater than that allowed by clause 23 or a height of up to 10 percent greater than that allowed by clause 21, but only if:</p> <p>(a) the design of the building or alteration is the result of an architectural design competition, and</p> <p>(b) the concurrence of the Director-General has been obtained to the development application.</p> <p>(8) Nothing in subclause (6) restricts the operation of clause 28 to clause 21 or 23.</p>	<ul style="list-style-type: none"> ▪ The principles of ESD are satisfied (and can be enhanced via future detailed measures imposed by a proposed condition of development consent requiring the building to achieve a 4 star rating (consistent with the DCP requirements), consistent with Clause 33; ▪ The proposed landscaping within the site and within the public domain (particularly the proposed area at the northern end of Burwood Street, intersecting with the Hunter Street footpath) improves the amenity of the site and streetscape. <p>Subclause (6) does not apply (as the proposed height is <u>greater than 10 percent, rather than up to 10 per cent</u>), as confirmed by the Department of Planning and Infrastructure (Hunter Region, Newcastle Office) and is consistent with Council's previous interpretation of this clause. A design competition and/or concurrence is not required.</p> <p>Clause 28 applies to Clause 21 and is discussed after this table.</p>	
Clause 39: Classified Roads	<p>(2) ... the consent authority is (to be) satisfied that:</p> <p>(a) where practicable, vehicular access to the land is provided by a road other than the classified road, and</p> <p>(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the proposed development...</p> <p>(c) considers potential traffic noise or vehicle emissions within the site of the proposed development.</p>	<p>While having frontage to a classified road (Hunter Street), provides vehicular access to the land via another road (Burwood Street), will not have an adverse impact on the operation of Hunter Street, and will include measures, to ameliorate potential traffic noise or vehicle emissions (via a condition of development consent). This clause is therefore satisfied.</p>	Yes
Clause 41: Development within the Coastal Zone	<p>Council to consider matters relating to coastal foreshore amenity, environment and processes.</p>	<p>The site is located some distance from the coast and in this regard, many of the provisions are not applicable and/or are satisfied.</p>	Yes
Clause 43: Development on Floodprone land	<p>Council to consider:</p> <p>(a) the impact of that development on (various flood considerations (i) to (xii):</p> <p>(b) the impact that flooding will have on the proposed development, including the flood liability of access to the site of the proposed development, and</p> <p>(c) the provisions of any floodplain management plan adopted by the Council that applies to the land</p>	<p>Council's Engineer has assessed the application with respect to the flood prone nature of the site and indicated the development to be acceptable subject to conditions.</p>	Yes

Table 2: Compliance with NCCLEP 2008 Provisions			
Part/Clause	Requirement	Proposal	Consistent/Complies
Clause 44: Excavation and filling of land	<i>(1) The objective of this clause is to ensure that any land excavation or filling work will not have a detrimental impact on environmental functions and processes, neighbouring uses, or cultural or heritage items and features.</i>	The proposed development will require excavation of land for the basement of the building and has been considered in the assessment of the application. Appropriate conditions of development consent can be imposed with respect to this clause.	Yes
Clause 46: Heritage Conservation	<p>This clause stipulates that:</p> <ul style="list-style-type: none"> Development consent is required for a building within a heritage conservation area, and for the disturbance or excavation an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed. Consideration is to be given to the effect of the proposed development on the heritage significance of the heritage item or heritage conservation area concerned. requires a heritage impact statement to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned. 	The site is located in the Newcastle City Centre Conservation area. A Heritage Impact Statement and Archaeological Report accompanied the development application which concluded that the proposal "will not result in a substantial impact on the heritage significance of any heritage items in its vicinity (and) achieves an acceptable degree of compatibility with the Newcastle Heritage Conservation Area." The HIS was reviewed by Council's Heritage officer and deemed acceptable subject to a condition requiring an interpretation plan. It is also recommended a condition be imposed requiring approval from the Heritage Council of NSW (s139(4) of Heritage Act) with respect to disturbance of potential relics, which have been assessed to have low integrity.	Yes
Clause 51: Acid Sulfate Soils	<p>This clause requires development consent for land mapped as being Class 4 Acid Sulfate Soils if works are more than 2 metres below the natural ground surface; or works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface.</p> <p>If works are to be undertaken more than 2 metres below the natural ground surface, Clause 51(3) requires the preparation of an Acid Sulfate Soils Management Plan.</p>	<p>The Geotech report indicates that there is 0.9 to 2.1m of fill across the site. Depending on the intersection of this fill with the proposed excavations, works may not be more than 2m below the natural ground surface and therefore the above clause may not apply.</p> <p>To satisfy this clause, in the event that excavation exceeding 2m is required, it is recommended that a condition be imposed requiring preparation of a Acid Sulfate Soils Management Plan in accordance with the <i>Acid Sulfate Soils Manual</i>.</p>	Yes

Clause 28 Exceptions to Development Standards

This clause applies as the proposal does not meet the development standards set out in clauses 21(2) (Height of Buildings) and 26(1) (Car parking). The clause enables consent to be granted for development even though the development contravenes a development standard. The objectives of clause 28 are:

- “(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”*

In accordance with the subclause (3), the applicant provided a written request within the Statement of Environmental Effects accompanying the development application. The two tables below outline how the proposal relates to the provisions of Clause 28 as it applies to each of the contravened development standards Table 3 height of buildings and Table 4 car parking. The tables 3 indicate that contravention of Clause 28 with respect to the proposed building height (clause 21) is satisfied, however table 4 contravention of the development standard relating to car parking provision is not satisfactorily justified or satisfied.

Table 3: Compliance with NCCLEP 2008 - Contravention of Clause 21: Height of Buildings		
Part/Clause 28 Requirement	Applicant's Response and Assessment Review comments	Consistent/ Complies
(3) Written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:	The proposed maximum height of the building is 35.5m, measured from the lowest footpath level of RL 2.50. The height of the building therefore exceeds the allowable 30m height by a maximum of 5.5m. The average ground level of the site is approximately RL 3m AHD. Therefore, in average terms, the parts of the building exceeding RL33m AHD (which is the maximum allowable height) equates to approximately half way between the floor level and ceiling level of the top level of the building. The applicant's statement that the exceedence in height is limited to a roof structure, and does not include floor area is not correct (although it is noted that roof features are a key component of this height). Notwithstanding this, the assessment of the design is considered acceptable, as it is limited to the north-eastern (corner) portion of the site only; is consistent with and provides a transition to other adjacent taller buildings; is sufficiently set back from the parapets of the adjacent heritage building; and contributes to the interest and presence of the building at the Burwood Wedge site. The irregular shape of the site and building constraints for the design of a regional courthouse are acknowledged, as are the comments of the UDCG that the design and form of the building is suitable. The provisions are therefore satisfied.	Yes
(a) <i>that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</i>		
(b) <i>that there are sufficient environmental planning grounds to justify contravening the development standard.</i>		
(4) <i>Consent must not be granted for development that contravenes a development standard unless:</i>	The applicant's written request, while including some errors, adequately addresses the requirement of subclause (3). As indicated earlier in this report, the (revised) proposal, which includes an awning to the Burwood Street frontage is considered to be consistent with the objectives of the B4 Mixed Use zone and the objectives of Clause 21 (Building Height) which are: (a) <i>to allow sunlight access to key areas of the public domain by ensuring that further overshadowing of certain parks and community places is avoided or limited during nominated times,</i> (b) <i>to ensure that the built form of the Newcastle city centre develops in a coordinated and cohesive manner,</i> (c) <i>to ensure that taller buildings are appropriately located,</i> (d) <i>to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,</i> (e) <i>to ensure the preservation of view corridors that are significant for historic and urban design reasons.</i>	Yes
(a) <i>the consent authority is satisfied that:</i>		
(i) <i>the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</i>		
(ii) <i>the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and</i>		
(iii) <i>N/A</i>		
(b) <i>the concurrence of the Director-General has been obtained.</i>	The concurrence of the DG is assumed in accordance with Planning Circular PS 08-003-Variations to Development Standards (Department of Planning, May 2008).	Yes
(5) <i>In deciding whether to grant concurrence, the Director-General must consider:</i>	The exceedence in the height of the building does not raise any matter of significance for state or regional environmental planning as it is considered to be a suitable outcome for the site. The public benefit of the building in this location (within an established Civic Precinct with excellent proximity to public transport) is significant. The requirements for the regional facility on a difficult shaped, (but well-located) site are acknowledged and, on balance, the public benefit is acceptable as the increased height is satisfactory and there are no greater identifiable negative impacts resulting from the increased height at the north-eastern portion of the building than if the development standard was maintained. Therefore, the proposal is considered acceptable with respect the proposed height and concurrence should be granted.	Yes
(a) <i>whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</i>		
(b) <i>the public benefit of maintaining the development standard, and</i>		
(c) <i>any other matters required to be taken into consideration by the Director-General before granting concurrence.</i>		

Table 4: Compliance with NCCLEP 2008 - Contravention of Clause 26: Car Parking		
Part/Clause 28 Requirement	Applicant's Response and Assessment Review comments	Consistent/ Complies
<p>(3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:</p> <p>(c) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</p> <p>(d) that there are sufficient environmental planning grounds to justify contravening the development standard.</p>	<p>Clause 26 and Table 1A requires 1 car parking space per 60m² of GFA that is used for office premises (b); and (a) as per <i>Newcastle Development Control Plan 2005</i>. The GFA of 8400m² generates 140 carparking spaces and 25 spaces are provided, resulting in a shortfall of 115 spaces. The applicant provides a request in the SEE (p52-54) justifying the contravention of the standard as:</p> <p>The control is generic presumably formulated by Council in anticipation of high traffic generating uses (eg offices, and retail space) and the proposal is a unique circumstance. The standard cannot be achieved due to the significant operational and security costs; other courthouses operational in the state have demonstrated that significant public car parking is not required; local controls are contrary to NSW Government's public transport policies; and does not recognise proximity to public transport and commercial car parks.</p>	No
<p>(4) Consent must not be granted for development that contravenes a development standard unless:</p> <p>(a) the consent authority is satisfied that:</p> <p>(c) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</p> <p>(d) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and</p> <p>(e) N/A</p>	<p>As indicated in Section 7 under the heading 'Access Parking, Traffic and Transport Impacts' these arguments are not supported. There are no particular objectives of the standard. The relevant objective of the zone is "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." The applicant indicates that the provision of less spaces than required by Clause 26 will not compromise the ongoing achievement of the zone objectives as it is a facility located within close proximity to transport and is located within cycling and walking distance of the CBD and immediate surrounds.</p>	No
<p>(e) the concurrence of the Director-General has been obtained.</p>	<p>The concurrence of the DG is assumed in accordance with Planning Circular PS 08-003-Variations to Development Standards (Department of Planning, May 2008).</p>	Yes
<p>(5) In deciding whether to grant concurrence, the Director-General must consider:</p>		
<p>(c) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</p>	<p>The contravention of this development standard does not raise any matter of significance for state or regional environmental planning.</p>	Yes
<p>(d) the public benefit of maintaining the development standard, and</p>	<p>The applicant indicates that compliance with the development standard would render the Newcastle Courthouse Development unfeasible. The assessment of this application with respect to the likely impacts for accessible parking to users of the facility and people accessing Newcastle by car are unacceptable and hence is not in the public interest. Refer to detailed discussion in Section 7 under the heading under the heading 'Access Parking, Traffic and Transport Impacts'</p>	No
<p>(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.</p>	N/A	N/A

(a)(ii) the provisions of any draft environmental planning instrument

Draft Newcastle Local Environment Plan 2011

At the time the development application was submitted, the *Draft Newcastle Local Environmental Plan 2011 (Draft NLEP 2011)* had been exhibited but not yet made. This draft environmental planning instrument has recently been gazetted (on 15 June 2012) and is known as Newcastle LEP 2012. The provisions of the (then) Draft NLEP 2011 were reviewed and were similar to the majority of the key relevant provisions of the NCCLEP 2008 detailed in the above section (including zoning, permissibility, development standards, miscellaneous provisions and provisions relating to the City Centre). In this regard, they are not reproduced in this report. The provisions of the applicable draft NLEP 2011 are satisfied. Development standards relating to car parking were not included within the draft NLEP 2011 (ie. equivalent to the provisions of Clause 26 of NCCLEP 2008), however these rates are reinforced in the recently adopted Newcastle Development Control Plan 2012.

(a)(iii) any development control plans

The applicable Development Control Plan at the time the application was submitted was Newcastle Development Control Plan (NDCP) 2005. A brief response to each of the relevant Elements/chapters contained within NDCP 2005.

Element 3.1 Public Participation

Addressed earlier in this report (Section 4. 'Consultation').

Element 4.1 Parking and Access:

The proposal does not comply with the following key objectives and controls of Element 4.1 of the DCP. Section 7 of this report provides a detailed discussion on areas of non-compliance with this aspect of the development proposal:

- 4.1.1 Objective: "ensure that on-site car parking and servicing provision is adequate relative to the likely demand and is managed in a way that enhances pedestrian safety and the quality of the public domain";
- 4.1.2 Objective: "ensure an appropriate level and mix of parking provision, having regard to the likely demand and the impacts of over/undersupply of parking" and "establish an appropriate parking standard for the City Centre that recognises its locational advantages in relation to public transport access."
- 4.1.2a) i): Parking Rates: car parking is to be provided in accordance with the rates set out in Table 1A (1 car space per 60m²; 1 motorcycle space per 20 car spaces; and 1 bicycle space per 200m² GFA). The proposal provides 25 car spaces (deficient by 115 spaces), 42 bicycle spaces (compliant) and 7 motorcycle spaces (numerically compliant but not provided on site and not shown on plans). Merit considerations have not been met.
- 4.1.2 b) i) and ii): Variations to Parking Rates: the proposal does not adequately justify the departures from the car parking rates set out in Table 1A. The benefits of the proposal are significant, and a variation to the car parking rate is warranted under this section, however not at the extent of parking deficiency proposed (even having regard to the considerations within specific provisions ii), and as justified by the applicant. Therefore the benefits of the proposal are not considered to outweigh concerns regarding the level of parking provision.
- 4.1.2c): the applicant is unlikely to provide a monetary contribution in lieu of parking provision nor a voluntary planning agreement for the reasons outlines in Section 6 of this report under the heading 'Circular C6 'Crown Development Applications and Conditions of Development Consent (Department of Planning, 1995)'.

Element 4.2 Contaminated Land Management

Potential contamination of the land has been addressed in an earlier section of this report (Section 7, SEPP 55 – Remediation of Land). The proposal is considered to be satisfactory having regard to the DCP.

Element 4.3 Flood Management

Other parts of this report address flood-prone land (NCCLEP 2008 Clause 43) and have been assessed by Council's Flood and Stormwater Engineer who deemed the proposal acceptable subject to conditions of development consent.

Element 4.4 Landscaping:

The Landscape Plans submitted with the application meet the requirements of the DCP and Council's Landscape Architect deemed the proposed landscape works to be acceptable subject to some amendments, which could be addressed via an appropriate condition of development consent.

Element 4.5 Water Management

Aspects of the development relevant to this element has been assessed by Council's Flood and Stormwater Engineer who deemed the proposal acceptable subject to conditions of development consent.

Element 4.6 Waste Management:

The SEE submitted with the application indicates that an Environmental, Works, and Site Management Plan for the construction phase of the development will be prepared and expect a standard condition requiring this prior to construction commencing. A waste management plan for the operational aspects of the completed development was not addressed or submitted with the DA in accordance with the DA requirements and a condition could also be imposed requiring this prior to construction commencing to satisfy the DCP requirements.

Element 4.8 Street Awnings and balconies over public roads:

The proposed street awnings are in accordance with the controls within this element. There is a 'gap' in the continuation of the awning to part of the Hunter Street frontage/footpath at the entrance to the site, however this is considered appropriate with regard to the entrance statement and forecourt design. Amended sketch plans for an awning to the Burwood Street frontage have been assessed and are considered acceptable. Final detailed designs will be required to be prepared prior to construction and an appropriate condition could be imposed requiring this.

Element 6.3 City Centre – West:

With the exception of the lack of parking provision, provision of waste disposal details (addressed in Element 4.5 above), provision of an Energy Efficiency report, provision of a wind effects report (being a building over 35m), and the non-compliance with the Burwood Street setback to upper levels, the controls of this Element are satisfied. With respect to the **wind effects report**, a variation to the requirement for this is warranted given that this occurs for a very minor portion for the building and relates only to the roof feature. With respect to the **energy efficiency** issue, an appropriate condition of consent could be imposed requiring compliance which demonstrates that the building will achieve a 4 star rating under the Australian Building Greenhouse Rating Scheme. With respect to the **setback** issue, a variation is sought for the non-compliance with the Burwood Street upper level setback (1.8m instead of 6m for the northern (higher) portions of the building only). However this variation, as justified by the applicant (page 33 of the SEE), is supported. In particular, any potential adverse effects from the non-compliance are largely resolved by the amended plans providing an awning to the entire Burwood Street frontage, which will significantly improve pedestrian amenity and visual appearance of the structure.

The application was considered against the newly adopted Development Control Plan 2012. The DCP 2012 does not contain any new standards or controls that would affect the assessment of the application. The proposed development is considered to be consistent with the above policy with the exception of Section 7.03 Traffic, Parking and Access.

(a)(iia) any planning agreement that has been entered into or any draft planning agreement that the developer has offered to enter into

Not applicable.

(a)(iv) any matters prescribed by the regulations

The proposal was reviewed with respect to the relevant EP&A Regulations and are considered satisfactory and/or are addressed elsewhere in this report.

(a) (v) any coastal zone management plan (within the meaning of the *Coastal Management Plan Act 1979*).

Not applicable

(b) the likely impacts of the development

Social and Economic Impact

The key social and economic impact of the proposed development will be a significant improvement in the functioning of judicial and tribunal services for the Hunter Region by a purpose built Courthouse facility. The replacement of the current outdated facility will provide compliance with building codes and will operate more efficiently, with associated reduced costs to the court system and all its users. The second key social and impact will be the revitalisation of the Civic Precinct and of an underutilised site in an established civic and commercial area, having good access to public transport. The increased activity to the Courthouse will have flow on effects to the surrounding commercial areas, both directly from use of the building, and potentially indirectly via relocation of legal service businesses to the precinct. The direct activation will occur predominantly during weekday working hours. While the building will not be used after normal hours, it's quality design and associated public domain works will positively contribute to a more attractive streetscape. Potential relocation and agglomeration of legal services businesses over time to the precinct will also further activate the area during and after business hours.

The site has very good accessibility to public transport and, while the lack of on-site and other convenient parking is a negative social impact to some, the associated forced use of public transport by visitors to the facility (and any associated convenience visitation while in the area) is in principle a positive broader social and environmental outcome.

The proposed development will provide employment opportunities during construction, and potentially during operation, although most jobs will be transferred from the existing facility.

A potential negative impact is to the businesses located in the vicinity of the existing Legal Precinct in East Newcastle that service the many staff and visitors to the Courts and legal services there. The future use of this site is not identified in the application, however its prime location would indicate that it would likely to be redeveloped and/or the part of the site having heritage significance could potentially be restored for an adaptive re-use as determined by a future development application. The application indicates that the existing court facilities will not be vacated until the proposed building is fully operational and systems have been tested, therefore there will be a significant lead time for these businesses to potentially adapt to the change.

Architectural Design, Built Form and Visual Impact

The SEE submitted by the applicant provides the following statements with respect to the architectural design of the proposed Newcastle courthouse (p19):

“The design of the court facilities and the qualities of their construction and fitout must reflect the importance of the functions performed within them and the value that the community places on the rule of law. The architectural response has therefore been to demonstrate a

distinguished character and convey sobriety, commensurate with the dignity and authority of the court. This has been reflected in the Courthouse's spatial sequences; ceremonial and functional hierarchies; the fabric of the building; and the demeanour cued within these spaces. The new Courthouse is required to be clearly identifiable as a public institution, with civic dimensions, rather than simply another commercial project."

The key features of the design of the building are:

- building used for the public realm; court administration; trials; hearings; mediation; jury; judiciary and custody;
- responds to site's irregular shape and anchors the corner site position;
- respects the established heritage parapets of the Clarendon Hotel and Old Fred Ash Building;
- street front podium wraps around the Hunter and Burwood Street intersection, and the upper levels are set back from the boundaries;
- elevated main entry courtyard and lobby feature to Hunter Street;
- awnings to the Hunter and Burwood Street frontages provide interest and amenity at the ground level, together with public domain (including paving and landscaping) improvements – refer section below.

Details on height, setback and external materials are provided earlier in this report (Section 3). The building will be seven storeys in height, which is generally consistent with height of surrounding taller buildings including the Council Administration Building to the south and the ATO and Telstra buildings to the east. The important 10m wide view corridor along Burwood Street, identified in NDCP 2005 will be preserved. While some loss of views from the Council Administration Building (to the north) and ATO and Telstra building (to the north-west) are expected, these are considered to be acceptable in the context of the permitted 30m height for any development for the site.

The architectural design and built form of the proposed Newcastle Courthouse building has been a key consideration in the assessment of the development application. This is also referenced in Section 5 'Referrals' which outlines the review of the proposal's design and built form by Council's Urban Design Consultative Group, and Section 7 which addresses the proposal's consistency with the provisions of the NCCLEP 2008 (Design Excellence and Building Height). In summary, the proposed development, as amended during the assessment process is considered to be a very good outcome for the site and exhibits a high level of architectural design.

Public Domain and Landscaping

As indicated earlier in this report, Council is preparing guidelines for public domain work along Hunter Street, and a key component of the vision is the widening of the Hunter Street footpath to a total width of 6.5m (including in front of the subject site adjacent to Burwood Street) from the current footpath width of 3.6-4m. Council advised the applicant at the pre-DA meeting of this strategic work. The amended landscaping and public domain works proposed include: awnings along Hunter and Burwood Streets; a link to Wheeler Place from Burwood Street; planting along the southern boundary adjoining the Council Administration Building; landscape works at the Hunter Street entrance to the courthouse and at the corner of Hunter and Burwood Streets (including bicycle racks and seating); street tree planting along Hunter and Burwood Streets; and repaving of all of the public domain areas. A vehicular drop-off zone is also proposed in Hunter Street. The public domain works will be a positive outcome for the precinct and will result in a far more attractive public space.

During the assessment of the development application Council Officers sought for the proposal to incorporate the proposed public domain works (via draft conditions of consent including the widening of the Hunter Street footpath), however the applicant objected on the basis that "the widening of the footpath would require significant infrastructure relocation works that would render the project unfeasible". These works do not fall under the required contributions for Crown development applications, a nexus for a width of 6.5m is not established and the draft Hunter Street Master Plan is under preparation and not publicly available. The Independent Planning Consultant has considered this matter and is of the opinion that, while the provision of funds to

assist in the works would be beneficial to Council and the public, having regard to the status of the Hunter Street Master Plan (draft, not exhibited or adopted by Council) it is an unreasonable requirement to impose on the applicant.

Council forwarded requirements for specific materials (particularly pavement), and the applicant has responded in correspondence to Council stating “DAGJ asks that Council accept the proposed landscaping plans (dated 8 May 2012, at **Appendix D**) as the proposed works are an upgrade to what is currently provided in the area. DAGJ commits to continuing discussion regarding the Hunter and Burwood Street landscaping and external works following tender when available funds for those works become clearer. Removal of the gravel components are accepted.”

It is considered that the public domain materials should be consistent with Council's plan and the required paving and other materials specified by Council could be imposed as a condition of development consent, with a provision enabling flexibility for modification to the materials as agreed in writing between the proponent and Council. While funding of the widening of the footpath by the proponent is not considered to be warranted, a development of this scale should have adequate funds available for materials utilised/required by Council so as to provide consistency with public domain outcomes for the precinct.

Heritage and Archaeology

The site is located in the Newcastle City Centre Conservation area. There are no heritage items located on the site or immediately adjoining the site. There are numerous properties/buildings in the vicinity of the subject site having heritage significance, including the Old Fred Ash Building (359-361 Hunter Street) and NESCA House (300 King Street) which are listed on the State Heritage Register. Other heritage items in the vicinity include the Civic Theatre Building, City Hall and Lamp posts, and Civic Park.

A Heritage Impact Statement (HIS) and Archaeological Report prepared by Goddon Mackay Logan accompanied the development application, which assessed the proposal's impact on the conservation area and on each of the heritage items in the vicinity of the site. Non-statutory listings were also considered in the report being the Frederick Ash Building Group (to the immediate west of the site, including the Clarendon Hotel) and the Newcastle Administration building. The report concluded that the proposal “will not result in a substantial impact on the heritage significance of any heritage items in its vicinity (and) achieves an acceptable degree of compatibility with the Newcastle Heritage Conservation Area.” The report concludes that “the proposed development will reinforce the street and the street wall on the southern side of Hunter Street and re-establish the strong corner at Burwood Street that was historically defined by wedge-shaped buildings built right to the lot boundary. The use of awnings and a three storey component along Hunter Street will help relate the proposed development to the existing heritage buildings in the streetscape.” The report also indicates that the massing of the proposed courthouse is appropriate with respect to its relationship to the Newcastle City Council Administration Building (ie. stepped back from) and, while the proposed building will be visible from City Hall and will impact on some views of it, there will be no impact on the significance of City Hall. The report also indicates that “the site has been assessed as having little or no potential to contain intact Aboriginal objects or sites.” The HIS was reviewed by Council's Heritage Officer and deemed acceptable subject to a condition requiring an interpretation plan. A condition could also be imposed requiring approval from the Heritage Council of NSW (s139(4) of Heritage Act) with respect to disturbance of potential relics, which are assessed to have low integrity.

Solar Access and Overshadowing

Solar access to the proposed development, in particular to the north-facing entry plaza, internal public areas and proposed public domain landscaping (at the corner of Burwood Street and Hunter Streets) is achieved via good orientation and many internal areas will achieve good natural light, making attractive public spaces. Shadow diagrams submitted with the application for midwinter (shown in the set of plans provided at **Appendix B** to this report) demonstrate that overshadowing of adjoining properties is limited to a minor additional portion of the Clarendon Hotel courtyard and some additional overshadowing impacts to the ATO and Telstra buildings (in midwinter only) which generally coincides with shadowing impacts resulting from a maximum permissible 30m height control. This is considered to be reasonable. The majority of Burwood Street currently enjoys significant solar access during midwinter as the site is vacant. As would be expected for the site, which has a south-eastern orientation, the proposed development will result in Burwood Street being overshadowed all day during midwinter. However, the landscaped area at the northern end of Burwood Street will achieve direct solar access for more than half of the day.

Utilities, Infrastructure and Services

The site is serviced and a report of the existing services is contained in Appendix I of the SEE. The SEE (p25) states that “infrastructure and utility services will generally be detailed within the construction drawings as detailed design evolves. Appropriately sized new sewer and water connections, telecommunications and energy services will be made the Courthouse Building in consultation and agreement with relevant authorities.” Appropriate conditions of development consent can be imposed ensuring appropriate infrastructure and service upgrades are addressed. A condition could be imposed requiring demonstration that all easements identified in the recently registered plan of subdivision (DP1169149) are addressed in the detailed design.

Energy/ESD

According to the SEE accompanying the application (p25), the proposed Courthouse is designed with identified energy and water saving features, with the final ESD initiatives to be resolved with future detailed design. While limited, the proposal is generally consistent with ESD measures and can be enhanced via future detailed measures imposed by a condition of development consent requiring the building to achieve a 4 star rating under the Australian Building Greenhouse Rating Scheme. The proposed stormwater detention tank has been designed to hold 100% detention with sufficient volume for water reuse within the building.

Construction

The applicant indicates that an Environmental, Works and Site Management Plan (EWSMP) will be prepared by the appointed contractor prior to commencement of works. This plan will address the impact of construction works for the site and surrounds including traffic, noise and the like and will include the various measures that will be implemented during the construction phase. A draft Sediment and Erosion Plan has also been submitted with the application. Appropriate conditions of development consent can be imposed to formalise these required measures, if the application is approved.

Waste Management

The application does not address how the proposed courthouse facility will accommodate waste disposal in terms of storage and generation of waste. It is anticipated that a designated waste area is provided in the basement for collection by a contractor from the service dock accessed from Burwood Street. A condition could also be imposed requiring that a Waste Management Plan be prepared prior to works commencing for both the construction and operational phases of the development, if the application is approved.

Environmental Constraints and Associated Impacts

- *Flooding and Stormwater:* The site is flood prone and the proposed development is designed so that the ground floor and basement car park entry will be above the flood planning level of RL 3.9m AHD. There is no anticipated flood impacts or increased risk from the development on the future occupants of the site, or on flood behaviour or on other properties. An (amended) Stormwater Concept Plan submitted with the application proposes an on-site detention area to

be connected to the existing stormwater system, includes sand filter details and incorporates water quality control measures. Council's Engineer assessed the design which was accepted subject to conditions of development consent.

- *Contamination:* A Phase 1 and 2 Environmental Site Assessment of soils and groundwater was submitted with the development application and concludes the site is suitable for development. The submitted documentation was reviewed by Council's Environmental Health Services Officer with respect to contamination and was considered to be satisfactory subject to conditions. Refer also to Section 7 earlier (addressing SEPP 55 – Remediation of Land) for further detail.
- *Groundwater:* Groundwater samples provided with the application confirmed that groundwater on the site is not impacted by the presence of hydrocarbons or metals and sample reported concentrations that were undetectable or are below guidelines.
- *Geotechnical and Mine Subsidence:* The site is located within the Newcastle Mine Subsidence District and is underlain by three coal seams which were mined in the late 19th and early 20th century. A geotechnical investigation was submitted with the development application which provided information on the subsurface conditions of the site, noted the stabilisation and remedial works proposed (ie. now approved by Development Consent DA 2011/1351) and made recommendations with respect to footings for the building, excavation of the site, potential peak groundwater levels, potential dewatering requirements and design requirements for batter slope and retaining walls. The detailed of the building should be in accordance with the recommendations of this report and any development consent should be conditioned accordingly (refer also comments earlier in this report under Section 4 'Consultation – Mine Subsidence Board).
- *Acid Sulfate Soils:* The site is mapped as having class 4 ASS. The Geotechnical report indicates that there is 0.9 to 2.1m of fill across the site. Depending on the intersection of this fill with the proposed excavations, works may not be more than 2m below the natural ground surface and therefore there may not be disturbance of ASS. A condition could be imposed requiring preparation of an Acid Sulfate Soils Management Plan in accordance with the *Acid Sulfate Soils Manual*.

Building Codes and Standards

The application indicates that the future detailed design process will address all relevant codes and standards and in accordance with the various reports accompanying the application including:

- Building Code of Australia (including Fire Engineering requirements),
- access to the building for people with disabilities (including the BCA, AS1428, and the *Commonwealth Disability Discrimination Act*);
- structural adequacy (numerous Australian Standards including *AS1170.4 Minimum Design Loads on Structures Earthquake Loads*).

Standard conditions of development consent requiring the above could be imposed.

Noise and Vibration

The application is accompanied by a Noise Impact Assessment (AECOM) that concludes "the increase in traffic noise generated by the courthouse has been assessed and is considered minor. No mitigation is warranted for the surrounding receivers. Noise emissions from mechanical plant associated with the courthouse have been considered. One rooftop cooling tower will be located at the southern end of the building and unmitigated noise impacts are predicted to exceed the environmental noise criteria at one commercial receiver. Standard acoustic treatment to the cooling tower, such as an acoustically louvered enclosure is expected to reduce noise emissions to compliant levels. Further assessment of the mechanical services noise impact will be carried out at the design stage. Glazing and window constructions have been recommended and should be used to meet the architectural acoustic design criteria." AECOM also confirmed that the project generally satisfies the requirements of the (then) Department of Planning's "Development Near Railway Corridors and Bust Roads – Interim Guidelines". Standard conditions of development consent requiring the above can be imposed.

Safety and Security

As is appropriate for the building's use, the proposed development will include high level security measures/system, including CCTV monitoring to public areas, foyer and basement/loading dock and will be controlled by 24 hour security staff from a centralised security room. A security screening/concierge will be located within the lobby during normal business hours. Other safety and security measures have been addressed in the design and include an active podium/main entry, minimal opportunity for concealing potential offenders (eg alcoves), selected lighting and external materials to limit vandalism and landscaping which will not screen views of the site.

Access, Parking, Traffic and Transport Impacts

The proposal provides:

- 25 basement car parking spaces which are only to be used for serving judges and magistrates and departmental vehicles (of which two designated spaces will be allocated for disabled persons). The basement will be accessed from Burwood Street;
- 42 bicycle spaces (14 within basement presumably for staff use only, and 28 at grade);
- Seven on-street motorcycle spaces (however these are not indicated anywhere on the submitted plans and the applicant indicates this could be conditioned to comply with the applicable standards and with approval from Council's Traffic Committee);
- A drop off zone at the Hunter Street frontage which will replace an existing bus stop, to be relocated 50m to the east. There has not been any consultation with Hunter Buses with respect to this and the applicant states that "this matter can be addressed post-approval and during the detailed design process once the certainty of a DA consent is available to DAGJ" and would "accept a suitably worded condition of consent requiring written confirmation to be provided to Council for information advising of the agreed arrangements and timing of any relocation of the bus stop in question" and via Council's involvement for these works under the Roads Act 1993;
- Removal of three on-street parking spaces on Burwood Street. The applicant has indicated it is willing to work with Council in the detailed design process to relocate that space in consultation with Council's Traffic Committee.

The applicant provided numerous documents by JBA Planning and traffic planners Taylor Thompson Whitting and Better Transport Futures. The submitted documents included a Traffic and Parking Report, and a Statement from the NSW Department of Attorney General and Justice regarding parking policy, a Independent Technical Review, Car Parking Surveys of existing CBD parking and existing Courthouses (Newcastle and Wollongong), and manoeuvring details for vehicles accessing the adjacent Clarendon Hotel site.

The applicant argues that the anticipated additional vehicle movements per peak hour represent a minor increase to the existing surrounding network, and there is sufficient capacity within the existing performance of the surrounding street network to absorb the additional traffic movements. The applicant indicated that the proposed shortfall in car parking is justified on the basis of the public administration use of the building, the security issues associated with operation of the Courthouse, and the inappropriateness in this instance of applying the generic City Centre car parking control. More specifically, the applicant has indicated:

- *"The proposed approach is consistent with integrated land use and transport policy objectives which discourage car usage having regard to the Burwood Wedge's location, and existing affordable supply of car parking;*
- *The Burwood Wedge is well located with good access to frequent public transport – Civic Railway Station is approximately 130m north-west of the Burwood Wedge and frequent bus services are available from King Street and Hunter Street – and the promotion of public transport is a key Government Policy;*
- *The Burwood Wedge is within close proximity to ample on-street and commercial car parking throughout the Newcastle CBD; and*
- *Courthouses by their very nature are high security areas and restricting car parking maintains security.*

- *Further, the DAGJ has provided a policy statement outlining the NSW Government's and DAGJs car parking requirements. That Statement outlines that the security and public safety concerns associated with providing open parking beneath a courthouse (and commensurate costs) outweigh broader NSW Government policies which are aimed at providing environmental benefits; ensuring non-competition with private enterprise (car parks); promoting healthy living opportunities; and supporting public transport use. The NSW State Government Policy (M2008-06 State Property Authority and Government Property Principles – Principle 11) identifies that car parking spaces that incur a cost to an agency should only be provided for official government vehicles and private vehicles (owned or used by employees for personal purposes) are not permitted to park on DAGJ sites that are located within a one kilometre radius of a commercial car park.*
- *Finally, if car parking is required to be provided in accordance with the planning controls, the project is not viable and will not proceed. This would leave an increasingly redundant and disconnected Court complex at Church and Bolton Streets and result in the lost opportunity to construct a significant civic building at the Burwood Wedge."*

In addition:

- *Having regard to "the good access to pedestrian, bicycle and public transport links....DAGJ has committed to preparing a workplace travel plan to optimise non-private travel to the Courthouse. The workplace travel plan will be a package of measures for managing travel to and from the Courthouse and will give staff and visitors better transport choices. DAGJ would accept an appropriately worded draft condition of development consent requiring the preparation of the workplace travel plan prior to occupation for the Courthouse.*
- *In relation to the availability of nearby parking, the report indicates that the Courthouse site benefits from over 600 off-street parking spaces within 400m radius and over 2,900 spaces within an 800m radius which is considered an acceptable walking distance. This equates to a 33% increase in off street car parking supply from the current Courthouse location. An analysis of short and long term stay parking indicates that 344 spaces within 800m of the Courthouse site are short stay, whilst the remaining 2,570 spaces are long term. The considerable supply of both short and long term off street parking offsets the time-restricted on street parking around the site."*
- *The proposed building is a court facility that has low staff numbers for the size of the facility but a higher level of short term visitors;*
- *The proposed building is not a new facility but is being relocated from another close by site in the Eastern part of the CBD;*
- *There are demonstrated successfully managed precedents within DAGJ's portfolio including Bankstown, Sydney West (Parramatta), and Downing Centre (Sydney CBD) all of which are subject to restricted parking conditions (ranging from 0-30 private spaces) similar to those proposed at Newcastle.*

An assessment of the above documentation was undertaken by Council's Senior Development Officer (Engineering) who concluded that the proposal is unsatisfactory and *"is not supported from a parking and associated traffic perspective given the significant shortfall in parking provided and the potential adverse traffic impacts that the shortage will have on the surrounding on-street parking and public parking network"* **Appendix G** of this report is a copy of this assessment report and provides a comprehensive response to the issue. Inclusion of the Engineer's assessment as an attachment to this report is considered to be necessary having regard to the importance of this issue to the overall suitability of the proposed development and as this assessment addresses the key areas for consideration. TCG planning have taken into consideration and concurs with the Council Engineer's assessment.

'The proposed courthouse is a building within city centre with a gross floor area of 8400m², and a development of this size within the city centre would require at least 140 car spaces using Council's NCCLEP 2008 and NDCP 2005 City Centre rate of 1 space per 60m². This is also the rate required in the current Newcastle DCP 2012 . The courthouse site is proposing 25 parking spaces, this is a shortfall of 115 spaces from the DCP requirement.

The unique use of the development (as a regional courthouse) and the site's excellent proximity to public transport within an established Civic Precinct are acknowledged. However, the extent of the parking shortfall is considered to be unacceptable on the basis of adverse impact on the parking availability of the surrounding area (which already experiences high on-street short term parking demand) and associated potential adverse impacts to the traffic situation in the vicinity (from visitors looking for a parking space). Notwithstanding the significant benefits to the community by the provision of an excellent regional court facility, on balance this adverse impact is not in the public interest.

The NSW State Government Policy (M2008-06 State Property Authority and Government Property Principles – Principle 11) and DAG&J Policy (both not provided) are noted, the latter citing security reasons. It is considered that secure outcomes for visitor parking can be achieved through good design and/or via the provision of conveniently located parking on a conveniently accessible separate site which is part of the development. The statutory weight of these policies is questioned in terms of the planning process. For example, if this policy had significant importance to the planning process for public administration buildings, parking reductions/policies should be incorporated within State-wide planning policies (such as the *SEPP (Infrastructure) 2007*, similar to the parking reduction provisions embodied within other SEPPs such as that for boarding houses within the *SEPP (Affordable Housing) 2009*.

Having regard to the unique use, proximity to public transport, the proposed 'green plan' policy for staff of the facility and consideration of existing available parking, a partial reduction in parking provision would be supported. This is on the basis that these considerations are acceptable for a majority of the regular users of the building (staff, solicitors, legal practitioners, corrective services etc) and a suitable proportion of the infrequent users/members of the community of the facility only. The SEE (p36) indicates that there could be anywhere from 80 to 500 persons in the Courthouse at any one time. Therefore permanent on-site or conveniently-located accessible parking for a suitable proportion of the average number of infrequent visitors to the court building (many of whom have statutory obligations for the visit eg. jurors, defendants and the like) should be provided by the development. The submitted parking survey information does not support the proposal as it does not demonstrate that the likely majority of the visitors to the site (being the members of the public) will have reasonable availability of parking either now or in the future. Failure to provide this will result in a development that is unlikely to satisfactorily meet its functional requirements, and places an unreasonable burden on existing parking infrastructure in the locality (already experiencing high demands). The practical reality is that a likely proportion of the hundreds of infrequent/unfamiliar visitors to the Courthouse per day (which could be from anywhere in the Hunter, being a Regional facility) will drive, and they will be required to drive through the CBD to search for a parking space, already in high demand. On balance, this is a poor outcome of the development.

Newcastle Council does not have a comprehensive parking policy for the City Centre (however it is noted that the implementation of a "whole of city" parking strategy is a longer term priority within the 'Integrated Transport' theme of the Hunter Street Revitalisation Strategy (Scape Strategy, December 2010). The absence of a strategic direction for parking facilities in the City Centre, which is already at near capacity, is of concern with respect to the likely parking and potential traffic impacts to the City Centre resulting from the proposed development.

The benefits of the proposal are significant, and a variation to the car parking rate is considered to be warranted as permitted by the provisions of the NCCLEP 2008 (Clause 28) and NDCP 2005 (Element 4.1.2.b), however not at the extent of parking deficiency proposed and is unjustified having regard to the required considerations. The significant shortfall in parking provided (including parking for disabled persons) will not meet the demands for the facility and will have unsatisfactory impacts on the surrounding street parking and public parking network. Therefore, the benefits of the proposal are not considered to outweigh concerns regarding the level of parking provision. The Traffic Engineer's comments are concurred with, and the parking deficiency is

considered to be a significant issue with respect to the proposal and warrants refusal of the application.

Even if the applicant (or the consent authority) were to provide or require additional parking for vehicles, the building design provides little scope for the provision of this. Furthermore, the Department of Attorney General and Justice has indicated that provision of public parking is contrary to NSW Policy for public buildings and its own policy in part for security reasons. In addition, the applicant is unlikely to provide a monetary contribution in lieu of parking provision or a voluntary planning agreement as it is not required pursuant to the Department of Planning's Circular C6 'Crown Development Applications and Conditions of Development Consent'. In this regard there is considered to be little scope for negotiation with the applicant on this fundamental aspect of the proposal via the dispute resolution process also outlined in this Circular.

In addition, the impact on the operation of bus services due to the removal of a bus zone to make way for a drop-off zone on Hunter Street is unknown, and the parking arrangements on Burwood Street for cars and motorcycles have not been demonstrated. While inadequate, these matters are likely to be able to be overcome by future design and consultation the Traffic Committee (which includes Council and the RMS), and Hunter Buses and do not warrant a reason for refusal of the application. In addition, vehicular access to the Clarendon Hotel site has not been satisfactorily established, however this matter would ordinarily have been addressed in the assessment of the subdivision application and little opportunity is available to resolve it at this stage noting that the subdivision has been registered.

Should the JRPP not support this assessment and are of the opinion that the parking shortfall is acceptable and that the application should be approved, draft conditions of consent have been provided with respect to parking, road and traffic matters.

(c) the suitability of the site for development

The subject site has a number of attributes that are suited to the proposed development including suitable land use zoning and planning provisions (height, FSR etc), location within an existing commercial and civic precinct, excellent public transport linkages and it is a vacant level and serviced site. The studies undertaken in relation to the site indicate that the site is not considered to be contaminated and there is low potential for substantially intact Aboriginal and historical archaeological remains.

The key constraint of the site that provides a challenge for the proposed development is the irregularity of the shape and resultant floor plate and building design, and the requirement for vehicular access for service vehicles to the adjacent Clarendon Hotel. This matter would ordinarily be addressed in the assessment of the subdivision application and little opportunity is available to resolve it at this stage noting that the subdivision has been registered. Other environmental site constraints include the site's location within a flood prone area, potential impact on heritage and conservation values, and the site's location in a mine subsidence area. The site also has a high water table. While the design exceeds the maximum height for the site, this is considered to be acceptable as detailed in an earlier section of this report. These constraints have been addressed in the design and/or can be satisfied via appropriate conditions of development consent.

(d) any submissions made in accordance with this Act or the Regulations

The submissions received in relation to the development application were taken into consideration in the assessment of the development application and are discussed elsewhere in this report and/or as identified below.

- Gross deficiency in car parking spaces provided and is unjustified; and lack of parking for disabled persons – refer to Section 7 'Access, Parking, Traffic and Transport Impacts'

- Excessive height and contravention of height development standard; and inappropriate building design – refer Section 7 under 'NCCLEP 2008' (Clauses 31, 28 and 33), 'Architectural Design, Built Form and Visual Impact', and Sections 5 'Referrals: 'Urban Design Consultative Group'.
- Negative impact from relocating from East Newcastle not identified; project benefits are unjustified: employment will just replace existing Court house jobs; and revitalisation of Civic precinct is not likely given short hours of operation of Courts during business hours on Monday to Friday only – refer Section 7 under heading 'Social and Economic Impact'.
- Poor choice of site: in shape and location – refer to Section 7 'Suitability of the site for development'
- Conflict of interest as Council is selling the land: Council engaged an Independent Planning Consultant to assess the application. Council undertook the public notification and managed correspondence between the applicant and the independent planning consultant.
- Lack of information provided and public briefing – the application was notified in accordance with Council's Notification DCP. Council cannot comment on the request for information from DAGJ and the Member for Newcastle to provide information.
- Proposal fails Environmentally Sustainable Design principles – refer Section 7 'Energy/ESD'
- Heritage Impact Statement flawed, and proposal will have a negative impact on existing buildings (including heritage buildings) in Civic Precinct – refer Section 7 'Heritage and Archaeology'.

(e) the public interest

With the exception of the significant on-site parking deficiency (which is not in the interest of the public/users of the facility as detailed in Section 7 of this report under the heading 'Access, Parking, Traffic and Transport Impacts'), the proposed Newcastle Courthouse development is considered to be in the public interest as:

- It will provide improved and upgraded judicial and tribunal services for the Hunter Region, which will replace a currently dysfunctional group of buildings with a modern facility in a location having superior access to public transport and other established services;
- It will assist in economic revitalisation of the Civic Precinct within the Newcastle City Centre and will utilise a current vacant site;
- The building is a civic use well-suited to the location within the established Civic Precinct;
- The building design and proposed public domain works are a good response to the site's constraints and existing character, including heritage values of the locality; and
- It will provide employment opportunities during construction, and potentially during operation (although most jobs will be transferred from the existing facility).

8. Conclusion

The proposed Regional Courthouse facility will provide an improved and upgraded judicial and tribunal facility for the Hunter Region and a much-needed replacement of the existing dysfunctional group of buildings currently located in East Newcastle. The building is a civic use well-suited to the location within the existing Civic Precinct in a location having superior access to public transport and other established services. The Courthouse is a major development for the Newcastle Centre which is identified in key strategic planning documents as a catalyst for the revitalisation of this area of the CBD.

The building design and proposed public domain works are a good response to the site's constraints and existing character, including heritage values of the locality.

The proposed development meets the objectives of, and is permissible within the B4 Mixed Use Zone, and generally complies with the provisions of the NCCLEP 2008 (which was the planning instrument applicable at the time that the development application was lodged), with the exception

of Clause 21 'Height of Buildings' and Clause 26 'Car Parking'. Pursuant to Clause 28 'Exceptions to development standards', the non-compliance with the maximum 30 metre building height was assessed and considered to be satisfactory. However, the significant departure of on-site parking does not satisfy the provisions of this clause and is considered unacceptable.

The benefits of the proposal are considerable and variation (ie. reduction) to the car parking rate is considered to be warranted for the project. However the extent of the variation sought is not adequately justified by the applicant, and the significant shortfall in parking provided (including parking for disabled persons) will not meet the demands for the facility, and will have unsatisfactory impacts on the surrounding street parking and public parking network.

Newcastle City Council does not have a comprehensive parking policy for the City Centre however it is noted that the implementation of a "whole of city" parking strategy is a longer term priority within the 'Integrated Transport' theme of the Hunter Street Revitalisation Strategy (Scape Strategy, December 2010). The absence of a strategic direction for parking facilities in the City Centre, which are already at near capacity, is of concern with respect to the likely parking and potential traffic impacts to the City Centre resulting from the proposed development. There is little scope for the provision of on-site parking under the existing building design. Furthermore, the Department of Attorney General and Justice has indicated that provision of public parking is contrary to NSW Policy for public buildings and its own policy in part for security reasons. In addition, the applicant is unlikely to provide a monetary contribution in lieu of parking provision or a voluntary planning agreement as it is not required pursuant to the Department of Planning's Circular C6 'Crown Development Applications and Conditions of Development Consent'. In this regard there is considered to be little scope for negotiation with the applicant on this fundamental aspect of the proposal via the dispute resolution process also outlined in this Circular.

The parking deficiency is therefore considered to be a significant issue with respect to the proposal and impacts to the City Centre. The benefits of the proposal are not considered to outweigh these concerns regarding the level of parking provision and therefore it is considered that this warrants refusal of the development application.

Other relevant considerations under Section 79C (including but not limited to NDCP 2005 requirements, architectural design and built form, social and economic benefits, heritage impacts, environmental constraints, and the public interest) were assessed to be generally satisfactory and/or could be addressed via appropriate conditions of development consent.

Should the JRPP consider the parking provision to be adequate, an option is available to grant consent to the development subject to the draft conditions of development consent provided at **Appendix F**, which will require approval of the applicant in accordance with the regulations for Crown development applications.

9. Recommendation

- A. That the Joint Regional Planning Panel (pursuant to Section 89(1)(a) of the *Environmental Planning and Assessment Act 1979*) refer the development application DA-2012/141 to the Minister for Planning to refuse the application for the following reasons:
- (i) The proposed development is not consistent with Clause 26 ‘Car Parking’ and Clause 28 ‘Exceptions to development standards’ (with respect to the non-compliance of Clause 26) of Newcastle City Centre Local Environmental Plan 2008 [Section 79C(1)(a)(i) Environmental Planning and Assessment Act 1979].
 - (ii) The proposed development is not consistent with the objectives and development controls within Newcastle Development Control Plan 2005 – Element 4.1 ‘Parking and Access’, specifically
 - 4.1.1 Objective: “ensure that on-site car parking and servicing provision is adequate relative to the likely demand and is managed in a way that enhances pedestrian safety and the quality of the public domain”;
 - 4.1.2 Objective: “ensure an appropriate level and mix of parking provision, having regard to the likely demand and the impacts of over/undersupply of parking” and “establish an appropriate parking standard for the City Centre that recognises its locational advantages in relation to public transport access.”
 - 4.1.2a i): Parking Rates: car parking is to be provided in accordance with the rates set out in Table 1A; and
 - 4.1.2 b) i) and ii): Variations to Parking Rates: the proposal does not adequately justify the departures from the car parking rates set out in Table 1A.
 [Section 79C(1)(a)(iii) Environmental Planning and Assessment Act 1979].
 - (iii) The proposed development will have unreasonable and adverse impacts on the existing on-street parking, and associated likely adverse traffic impacts on the surrounding street network in the locality [Section 79C(1)(b) Environmental Planning and Assessment Act 1979].
 - (iv) The proposed development is contrary to the public interest with respect to lack of convenient and accessible on-site car parking (or alternative appropriate parking options) for a large proportion of the users of the proposed facility (including for persons with disabilities [Section 79C(1)(e) Environmental Planning and Assessment Act 1979].

OR

- B. In the event that the Joint Regional Planning Panel considers the on-site parking of the proposed development to be parking adequate, development application DA-2012/141 be approved subject to concurrence of the applicant to the proposed conditions of consent set out in **Appendix F** to this report as required by Section 89(1)(b) of the *Environmental Planning and Assessment Act 1979*

APPENDIX A: DP1169149

APPENDIX B: Plans by Cox Richardson

APPENDIX C: Sketch Plans – Burwood Street awning, Cox Richardson Architects.

APPENDIX D: Landscape Plans, Turf Landscape Architects dated 8 May 2012

APPENDIX E: List of submitted and assessed documents and current plans

APPENDIX F: Draft recommended Conditions of Development Consent (should the JRPP resolve to approve the development)

APPENDIX G: Assessment Report of Senior Engineering Development Officer (Engineering) dated 25 July 2012