

JOINT REGIONAL PLANNING PANEL
(Hunter and Central Coast Region)

JRPP No.	2015HCC029 DA
DA No.	DA 2015/10299
Local Government Area	Newcastle
Proposal	An application has been received seeking consent for partial demolition of the existing commercial building and the erection of a residential flat building comprising of 119 apartments with 129 car parking spaces and 30 co-shared parking spaces at 28 Bolton Street, Newcastle.
Property	28 Bolton Street, Newcastle (Lot 1 DP 1036640)
Applicant	EG Fund Management Pty Ltd
Number of Submissions	Eight (8)
Report by	Newcastle City Council
Recommendation	Approval

1. EXECUTIVE SUMMARY

The purpose of this supplementary report is to provide additional information on two key matters raised by the Hunter & Central Coast Joint Regional Planning Panel (HCCJRPP) at their meeting on the 28 August 2016. These matters include:

- a) The Clause 4.6 Exception to Development Standard (height control); and
- b) Updated BASIX report.

The applicant has also requested that the draft recommended conditions of consent be modified to enable the section 94 contributions to be paid in a number of stages.

A further condition has been added to the draft schedule of recommended conditions to include a requirement specifying that the work on the heritage listed building is to be undertaken and completed prior to occupation of the development.

The applicant has also amended the privacy screen between the development site and the adjoining City Extra Apartments in response to concerns raised that the JRPP meeting in August by an adjoining resident. The amended privacy screen is proposing to use vertical non-climbable timber blades, rather than horizontal timber blades.

2. BACKGROUND

The HCCJRPP considered an assessment report on the proposed development at their meeting in Newcastle on 28 August 2016 and resolved the following:

That the Joint Regional Planning Panel defer determination of the subject matter until receipt of the following:

A. That the applicant submits an updated Clause 4.6 Exceptions to development standard to better reflect variation to the amended design and the 30 metre height limit; and

B. That the applicant submits an undated BASIX Certificate for the amended plans.

The applicant has submitted information addressing the above matters.

3. SUPPLEMENTARY INFORMATION

a) Building Height Clause 4.3 of Newcastle Local Environmental Plan 2012

The subject site has a maximum height limit of 30 metres under the provisions of the Newcastle Local Environmental Plan 2012. The proposed development includes elements on the building that exceed the height limit by up to 1.6 metres in particular areas.

The non-compliances are predominantly located at the eastern end of the building on Levels 6 and 7, as well as a minor non-compliance on Level 7 along the northern façade.

There are also protrusions through the 30m height limit control encompassing the building services and lift overruns.

The applicant has provided a height plan analysis which details the breach.

In response to the request from the HCJRPP for additional information on this matter, the applicant has provided a revised clause 4.6 request in which it is argued that adherence to the 30 metre high limit is unnecessary. The following is a full extract of the applicant's revised request:

Clause 4.6 of the Newcastle Local Environmental Plan 2012 (the LEP) states as follows:

- (1) The objectives of this clause are as follows:*
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) the concurrence of the Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Secretary must consider:*
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*

- (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note. When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition or Zone R5 Large Lot Residential.

- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) *clause 5.4,*
 - (ca) *clause 8.1 or 8.2.*

These matters are addressed below:

Clause 4.6 Response

Clause 4.6(1) provides for flexibility in the application of development standards to particular developments.

In this particular case, the proposal seeks flexibility in the strict application of Clause 4.3 of the LEP, which deals with Height of Buildings. The development standard for building height is 30 metres.

The proposal is generally in accordance with the 30 metre height limit, but for:

- (a) a minor protrusion of the built form on the northern elevation at the eastern end of the building. This is located towards the Bolton Street end of the site, but is set well back from the street frontage; and
- (b) the proposed roof top structures which are generally above the permitted height limit, as a result of the intended lift cores to service the communal open space area of the development. The proposed roof top area is a direct result of the request from the Urban Design Advisory Panel to relocate the originally proposed common open space area at Level 3, to the roof top of the building. The purpose of this change was to improve the usability of this space and reduce the potential impact on the neighbouring property directly north of the site.

Is the provision a development standard? If so, is the operation of the flexibility provision excluded in the LEP?

Section 4 of the EP&A Act defines 'development standards' as

"provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,"*

The planning control for Height, as set out at Clause 4.3 is a development standard in accordance with part (c) of the definition above, and as set out at Part 4 of the LEP entitled 'Principal Development Standards'.

Clause 4.6 only applies where the development standard is not excluded in accordance with clause 4.6(2). The height control, contained at Clause 4.3 is not expressly excluded from the operation of Clause 4.6. Therefore, it is open to the applicant to seek a variation to the development standard for height.

This is consistent with Paragraph 26 of the decision in Winten Property Group Limited V North Sydney Council [2001] NSWLEC 46 case (the Winten case) which requires consideration as to whether the control is, in fact, a development standard.

What is the underlying purpose or object of the development standard?

As per the Winten case, it is necessary to determine what the object or purpose of the development standard is. This is set out at Clause 4.3 as follows:

- (a) to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,*
- (b) to allow reasonable daylight access to all developments and the public domain.*

Is the proposed development, which does not comply with the standard, in the public interest because it is consistent with the underlying purpose or object of the standard and the objectives for development in the zone in which it is proposed to be carried out?

In relation to the issue of whether the proposed development is consistent with the objectives of the zone, the test for consistency with the objectives of a zone is set out in the case of Coffs Harbour Environment Centre v Coffs Harbour City Council (1991) 74 LGRA 185 (the Coffs Harbour case). The principles for determining what is meant by consistent are as follows:

- a development that is consistent with zone objectives does not need to promote the objective concerned strictly, but also encompasses development which may be complementary or ancillary to development which promotes the objective concerned; and
- a development is not consistent with zone objectives if it is antipathetic development to those objectives, irrespective of whether efforts have been made to minimise the extent to which it is antipathetic

Thus, development will be consistent with zone objectives if it is not antipathetic to them. It is not necessary to show that the development promotes, or is ancillary to those objectives, nor even show it is compatible, *Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21.

It is therefore the position in the case law that the threshold for 'consistency' is relatively low.

Objective (a): Scale of development and contribution to desired built form consistent with hierarchy

The public interest test is measured having regard to the objective of the development standard for height and the objectives of the zone.

In terms of non-compliance of the building form with the 30m height limit, the non-compliance is up to 1.6m in height and set back 19m from the property boundary. It is a derivative of the fall of the land from west to east and the outcome ensures uniformity in the internal layout of the building, as well as the general building appearance.

To determine the visibility of the bulk and scale attached to the non-compliant section of the building, a site analysis has been undertaken to determine the extent of visibility of the non-compliance. From both the King and Bolton Street frontages, standing on the opposing side of the streets, the non-compliant part of the building will not be visible, as the lower, complying levels of the building will intersect the view line, long before that section of the building that does not comply.

The City Extra building similarly remains unaffected as the view from the lower six levels of the building is impacted by the compliant part of this. When the proposed building form is considered from the southern elevation of the City Extra building at the seventh floor, standing at 1.6m high the non-compliant component of the building becomes visible at a sightline angle of 420. This impact is considered negligible and could not represent any substantial contribution to bulk and scale associated with the non-compliant element of the building.

Therefore, in terms of bulk and scale, the non-compliant component of the building will not result in an outcome that is substantial in terms of bulk and scale because it is not visible from the surrounding properties, or the adjoining street frontages.

In terms of potential view loss, the impact of the proposal was considered as part of the development application. The conclusions of that assessment are as follows:

- from a public domain perspective, the proposal will have no adverse impact in terms of views, as the views are already obscured by the City Extra building;
- much of the existing view is obscured by existing vegetation when standing in Cathedral Park. While assessing the impact of vegetation should be discounted, this is also a key feature of the Park and is also in locations that aligns the footway areas through the Cathedral site. Therefore,

from the areas primarily used on the Park, the location of vegetation should be considered as part of the setting of the site; and

- there is no impact upon key visual corridors assigned in the DCP, despite that the building height is greater than that of the City Extra building as the alignment of the primary views is not across this location.

The view loss assessment should be read in conjunction with this Variation request.

The non-compliant component of the building is reasonable, with no impact in terms of bulk and scale.

In terms of solar access conditions, the non-compliant component of the building does not adversely impact any adjoining properties, being on the southern side of any potentially affected properties. Therefore, non-compliance with the height control is reasonable on the basis of no impact.

In terms of the lift overruns and screen structures associated with the common open space area, the size and scale of this will not result in detrimental impact to the neighbouring properties. Further, a sight line review shows that the structures will not be visible from the surrounding street frontages, therefore having no presence of bulk and scale from the surrounding street network.

Similar to the impact from the non-compliant section of the building, the City Extra building remains unaffected in terms of the proposed lift overruns and screen structures, as the view from the lower six levels of the building is impacted by the compliant part of this. When the proposed building form is considered from the southern elevation of the City Extra building at the seventh floor, standing at 1.6m high, the non-compliant component of the building becomes visible at a sightline angle of 420. There is, however, no view of the rooftop structures at all. Therefore, the proposed lift overruns and screens do not, in any way, impede the view corridor from the neighbouring City Extra building, on its southern side.

Again, the height of these structures is the same in terms of the perceived view loss, with no effect, and will not compromise the view corridors identified by the DCP.

In terms of the established commercial centres within the Newcastle local government area, there are five relevant commercial zones, being the B1 Neighbourhood Centre; B2 Local Centre; B3 Commercial Core; B4 Mixed Use (which the site is located in) and the B5 Business Development.

Neighbourhood and local centres, under the planning provisions allow for more localized and immediate services to assist and serve the communities that directly surround these. Neighbourhood centres are generally a smaller strip shopping arrangement, or small centre with convenience needs. A local centre is more likely to contain some level of supermarket facilities and some level of convenience service that compliment a supermarket.

The B3 Commercial core in Newcastle makes up the City Centre's employment base around public transport and key roadways that intersect to form the core employment area. This zoning is to the north of the subject site and forms a number of City street blocks, having a strong presence through larger building forms and increased height limits, north of 30 metres (aside from the eastern side of Hunter Street), heading towards 90 metres limits.

The B4 Mixed Use zone then forms a perimeter around the Commercial Core zoning and is represented by a scaling down of building heights to ensure that, in physical terms, the Commercial Core zone promotes, in both land use and building form, dominance over other commercial centres. The

Commercial Core zone does not prescribe residential development, but encourages a mix of commercial uses, while the B4 zone provides a more integrated approach to land use, that is of a lower scale and density to support the Commercial Core zone. Therefore, generally accordingly with the planning controls, it is evident that the response of the proposal in terms of use, building density and form, the proposal is acceptable having regard to the centres hierarchy that has been established for Newcastle as a whole.

It is therefore considered that the height of the building, and the development as a whole, is consistent with the desired built form under the centres hierarchy that has been established for Newcastle.

Objective b: Reasonable daylight access to all developments and the public domain

The proposal provides more than reasonable access to neighbouring properties. Those concerned with the effect of solar access are located to the north of the site and, as a result of location, are not affected by the proposal.

The design has also been carefully proportioned with the built form located such that it does not impede solar access to those properties to the south of the site.

Therefore, the proposal is consistent with the objectives of the development standard for building height.

Consistency with Zone Objectives

The objectives of the B4 Mixed Use zone are also consistent with the proposal as follows:

(a) To provide a mixture of compatible land uses.

The proposal will provide a mix of commercial and residential uses on the site, by retaining the commercial use of the older, existing heritage listed building at the Bolton Street frontage and complement this with residential product to the rear, western side to front King and Newcomen Streets, which are those streets less dominated by commercial activity than Bolton Street.

(b) To integrate suitable business, office, residential, retail and other development in accessible location so as to maximize public transport patronage and encourage walking and cycling

The proposal will ensure an integrated form of development that will allow separate uses to exist thereon and, having regard to detailed internal planning, will provide development that is in a suitable location, supported by access to public transport, walking and cycling.

(c) To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres

The proposal will ensure that the quantum of commercial development, which is consistent with what previously occupied the site, will not compromise any adjacent commercial centre, in terms of its on-going viability.

Therefore, the minor non-compliance of the proposed building with the height standard is consistent with the zone objectives. Further, the protrusion of structures on the roof level, which are as a result of the communal open space on the roof top (as requested by the Urban Design Advisory Review Panel), will allow for a more favourable solution on the site to service the residential component of the development, making it a more attractive development location than potentially other sites, due to the

quality of the space afforded. This space may be provided without impact to neighbouring properties and the general public, due to its design and location.

Therefore approving an exemption to the height standard is considered to be in the public interest as it will provide a better quality outcome in design terms, particularly for residents of the development.

Further, in the matter of *Wehbe v Pittwater Council* [2007] NSW LEC 827 (the *Wehbe* case), consideration is required of whether there is a public benefit for maintaining a planning control. The answer is no. By complying with the development standard does not see a greater public benefit than what is proposed, due to the lack of impact associated with the non-compliance, particularly when this is considered from the perspective of the public domain.

Is compliance with the development standard unreasonable or unnecessary?

Non-compliance with the height standard is generally limited to the eastern part of the building, at Level 7, towards Bolton Street. The non-compliance is generally towards the northern side of the building and extends 15m into the built form (westerly direction).

The remaining non-compliances are then associated with the lift overruns and screens associated with the communal open space area at the top of the building.

The courts have established ways in which compliance with the development standard can be shown to be unnecessary (in that the objective is achieved anyway) or unreasonable (in that no purpose would be served) are as follows:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard. Under this approach, development standards are viewed not as the planning objectives, but as a means to achieve those objectives. If there is an alternative means to achieve the objective, then the objective would be achieved anyway (and hence compliance with the standard is unnecessary) and there is no purpose served by requiring compliance with the standard (and hence compliance would be unreasonable). This tends to be the most common way of establishing that compliance is unreasonable or unnecessary.
2. To establish that the underlying objective or purpose of the standard is not relevant to the development, and hence compliance with the standard is unnecessary.
3. To establish that the underlying objective or purpose of the standard will be defeated if compliance was required, and hence compliance with the standard is unreasonable.

In determining whether compliance is unreasonable or unnecessary, this application relies upon the position that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

As stated previously, the objectives of the development standard are:

- (a) to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,
- (b) to allow reasonable daylight access to all developments and the public domain.

The proposal achieves the objectives of the aforementioned standards as the scale of development is generally consistent with built form within the locality surrounding the site and, aside from minor non-compliance, is consistent with the prescribed planning controls, in terms of floor space ratio and height.

While not as of right, these have been utilised to ensure a built form that accords with the expectations of the development standard and enables the proposal to make a positive contribution to reinforcing this site, as part of the City Centre of Newcastle, this occurs through the articulated elements of the building design that contribute to breaking up the façade as the building interfaces with each of its adjoining frontages, whether public or private, while achieving a density of development within this that is consistent with its inner city location.

The scale of the development is therefore achieved in alignment with the planning controls, ensuring its consistency with the established centres hierarchy.

In terms of reasonable access to adjoining development and the public domain, the proposal achieves this objective. The solar access studies accompanying the proposal demonstrate that these controls are achieved to these elements and, while there is some reduction to the King Street frontage, this is not considered detrimental to the enjoyment of this public space. Further, it does not compromise the use of existing tenancies or buildings along this section of King Street, with only a limited impact on 21 June. This has been achieved through the use of articulation and the stepped form of the building to reduce potential impact that may otherwise accrue.

This being the case, it is considered that the proposed building achieves the objectives of the development standard.

As the built form achieves the objectives of the height control, the application of the standard would be unreasonable given the limited visibility of that portion of the works that would exceed the height standard. Further, the non-compliance has no impact on the site itself, neighbouring properties, nor the public domain that warrants compliance with the development standard. This is consistent with the required consideration in the Wehbe case at Paragraph 38.

Having regard to both aspects, application of the standard is unreasonable and unnecessary as there is no material benefit in complying with the development standard. The objectives are achieved despite non-compliance with the express height control. Compliance would result in an architectural form that would create anomaly in the proposal's presentation to the streetscapes of both King and Bolton Streets and disunity within the building levels. The limited nature of non-compliance has no effect. Therefore, compliance is unnecessary and unreasonable in this case as the objectives of the development standard are achieved.

Is There Sufficient Environmental Planning Grounds to Justify Contravening the Development Standards?

As stated above, given that non-compliance does not result in adverse impact to neighbouring properties, particularly in terms of bulk, scale and overshadowing, and the proposed outcome provides a more consistent and uniform approach to streetscape presentation, it is considered that there are sufficient grounds to contravene the standards, from an environmental planning perspective.

The outcome will not result in a situation that would set a precedent to future cases, as the impact of the non-compliance is limited and without compromise to neighbouring properties. It is merely a derivative of the slope of the land and is not visible from surrounding properties or the streetscape, as set out previously.

Therefore, given that there is no impact on adjoining properties, nor the surrounding street network, there are sufficient environmental planning grounds to justify departure.

Conclusion

Having regard to:

- the tests set by Clause 4.6 of the LEP; and
- relevant case law, including the Winten and Wehbe judgments, compliance with the development standard is unreasonable and unnecessary and compliance with the standard would provide no material public benefit.

It is therefore requested that the variation to the height control be supported.

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

1. It adequately addresses the matters required to be demonstrated by clause 4.6(3); and
2. 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.

A merit assessment of the proposed development confirms that the likely resultant impacts in terms of privacy, overshadowing, streetscape, character of the locality, bulk scale and context are acceptable.

The issue of the proposed height variation was also examined and discussed at length by the Urban Design Consultative Group. The group raised no objections and considered it a minor variation.

b) BASIX Certificate

The applicant has submitted an updated BASIX Certificate demonstrating that the design of the proposed dwellings complies with energy rating requirements. A consent condition will ensure compliance with the submitted Certificate.

4. CONCLUSION

In summary, it is considered that the applicant's written submission, (i.e. a 'written request') has adequately justified that the compliance with the height control is unnecessary and unreasonable in the circumstances and has demonstrated that the requirements relating to streetscape, daylight, sunlight and privacy are satisfied.

The applicant has demonstrated that the objectives are achieved, in particular that the height relates to the desired future built form and that the privacy and overshadowing impacts on adjoining properties is satisfactory. It is therefore considered that the height of the proposed development is acceptable in this instance.

5. RECOMMENDATION

- A. That the Hunter & Central Coast Joint Regional Planning Panel note and support the clause 4.6 variation to clause 4.3 (height of building) to enable the proposed development to be approved in its current form; and**
- B. That the Hunter & Central Coast Joint Regional Planning Panel approve DA 2015/10299 for partial demolition of the existing commercial building and construction of a residential flat building comprising of eight storey (119 units) plus three level basement car parking (129 parking bays including 30 co-shared spaces) be approved subject to the nominated draft conditions of consent as detailed in Appendix A.**

Appendix A - Updated Draft Conditions of consent

APPENDIX A DRAFT SCHEDULE OF CONDITIONS

Application No: DA2015/10299

Land: Lot 1 DP 1036640

Property Address: 28 Bolton Street Newcastle NSW 2300

Proposed Development: Partial demolition of the existing commercial building and the erection of a residential flat building comprising of 119 apartments with 129 car parking spaces and 30 co-shared parking spaces at 28 Bolton Street, Newcastle.

SCHEDULE 1

REASONS FOR CONDITIONS

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

APPROVED DOCUMENTATION

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

Plan No / Supporting Document	Reference / Version	Prepared by	Dated
Site Plan	DA-02	Fender Katsalidis Mirams Architects	30/03/16
Demolition Plan	DA-104	Fender Katsalidis Mirams Architects	30/03/16
Site Constraints	DA-109	Fender Katsalidis Mirams Architects	30/03/16
Basement	Rev: 3 DA-302	Fender Katsalidis Mirams Architects	30/03/16
Ground Floor Plan	Rev: 5 DA- 301	Fender Katsalidis Mirams Architects	30/03/16
Basement 2	Rev: 4 DA-303	Fender Katsalidis Mirams Architects	20/05/16
Basement 3	Rev: 4 DA-304	Fender Katsalidis Mirams Architects	20/05/16
Level 1 Floor Plan	Rev:5 DA-305	Fender Katsalidis Mirams Architects	05/08/16
Level 2 Floor Plan	Rev: 3 DA-306	Fender Katsalidis Mirams Architects	30/03/16
Level 3 Floor Plan	Rev: 4 DA-307	Fender Katsalidis Mirams Architects	20/05/16
Level 4 Floor Plans	Rev: 5 DA-308	Fender Katsalidis	05/08/16

		Mirams Architects	
Level 5 Floor Plan	Rev: 5 DA-309	Fender Katsalidis Mirams Architects	05/08/16
Level 6 Floor Plan	Rev: 5 DA-310	Fender Katsalidis Mirams Architects	05/08/16
Level 7 Floor Plan	Rev: 5 DA-311	Fender Katsalidis Mirams Architects	05/08/16
Amended Roof Plan and Communal Garden	Rev: 5 DA-312	Fender Katsalidis Mirams Architects	20/05/16
Section AA	Rev: 3 DA313	Fender Katsalidis Mirams Architects	30/03/16
Section EE	Rev: 3 DA313A	Fender Katsalidis Mirams Architects	30/03/16
Section BB	Rev: 3 DA314	Fender Katsalidis Mirams Architects	30/03/16
Section CC	Rev: 3 DA315	Fender Katsalidis Mirams Architects	30/03/16
Section DD	Rev: 3 DA316	Fender Katsalidis Mirams Architects	30/03/16
Proposed Newcomen Street Elevation	Rev: 4 DA317	Fender Katsalidis Mirams Architects	02/06/16
Proposed Bolton Street Elevation	Rev: 5 DA-319	Fender Katsalidis Mirams Architects	05/08/16
Proposed King Street Elevation	Rev: 4 DA-318	Fender Katsalidis Mirams Architects	02/06/16
Proposed Boundary Elevation	Rev: 4 DA-320	Fender Katsalidis Mirams Architects	31/08/16
Northern Boundary Screen Details	Rev: 4 DA-321	Fender Katsalidis Mirams Architects	31/08/16
Visualisations King Street Perspective Existing	Rev: 3 DA-401	Fender Katsalidis Mirams Architects	03/03/16
King Street perspective Proposed	Rev: 3 DA-402	Fender Katsalidis Mirams Architects	30/03/16
Newcomen Street Perspective Existing	Rev: 3 DA-403	Fender Katsalidis Mirams Architects	30/03/16
Newcomen Street Perspective Proposed	Rev: 3 DA-404	Fender Katsalidis Mirams Architects	30/03/16
Bolton Street North Perspective Existing	Rev: 3 DA-405	Fender Katsalidis Mirams Architects	30/03/16
Bolton Street North Perspective Proposed	Rev: 4 DA-406	Fender Katsalidis Mirams Architects	30/03/16
Bolton Street South Perspective Existing	Rev: 3 DA-407	Fender Katsalidis Mirams Architects	30/03/16
Bolton Street South Perspective Proposed	Rev: 3 DA408	Fender Katsalidis Mirams Architects	30/03/16
Shadow Studies	Rev: 3 DA-501-503	Fender Katsalidis Mirams Architects	30/03/16
Height Plane Analysis	Rev: 3 DA603-604	Fender Katsalidis Mirams Architects	30/03/16
Direct Solar Analysis			05/08/16

King and Newcomen Street Articulation Setback Analysis		Fender Katsalidis Mirams Architects Fender Katsalidis Mirams Architects	05/08/16 08/08/16
Statement of Environmental Effects Request for additional information documentation Remediation Action Plan	Rev: 1, 2 and 3	Hamptons Property Services DLA Environmental Services Pty Ltd	2015/2016 Feb 2016
Statement of Heritage Impact Acid Sulfate Soils Management Plan Visual Impact Assessment	Ref: DLH1180- H00648	NBRS + Partners DLA Environmental Services Pty Ltd Hamptons Property Services	Nov 2015 Nov 2015
Traffic Impact Assessment Report Waste Management Plan	Ref: 9768/2	Colston Budd Hunt and Kafes Pty Ltd Elephants Foot Recycling Solutions	Nov 2015 Nov 2015
Engineering Fire Safe Report Arborist Report Impact Assessment Stormwater Plan	Ref: 114577.DAL01c Job No: 16-297 Rev: 3	Holmesfire Prepared for EG Developments MPC Consulting Engineers	Nov 2015 Nov 2015 Nov 2015
BCA Assessment Report	Ref: 2015/1461 R1.1	Steve Watson and Partners	Nov 2015
Geotechnical Investigation - Preliminary Report Concept landscape Design	81833.00.R.002.Re v: O Rev: D Ref:0215- 0809 LD 100 - 400	Douglass Partners Tract Landscape Design	Nov 2015 25/05/16

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

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

3. A total monetary contribution of \$800,057.00 is to be paid to Council, pursuant to Section 94A of the *Environmental Planning and Assessment Act 1979*, such contribution to be payable prior to the issue of the relevant Construction Certificate in respect of the proposed development.

The monetary contribution is to be paid as follows:

Payment No. 1 is to be paid prior to the release of the first construction certificate for demolition and excavation works. The amount payable is to be based on the construction value of \$5,411,100. The amount to be paid for this stage is \$108,222.00.

Payment No. 2 is to be paid prior to the release of the second construction certificate for the structure of the building works. The amount payable is based on the construction value of \$15,848,609. The amount to be paid for this stage is \$316,972.18.

Payment No. 3 is to be paid prior to the release of the third construction certificate for the main works associated with the development consent. The amount payable is based on the construction value of \$18,743,151. The amount to be paid for this stage is \$374,863.02

Note:

- a) This condition is imposed in accordance with the provisions of *The City of Newcastle S94A Development Contributions Plan 2009* (updated version operational from 15 March 2011). A copy of the plan may be inspected at Council's Customer Enquiry Centre, ground floor of the City Administration Centre, 282 King Street Newcastle 8.30 am to 5.00 pm, excluding public holidays.

The amount of contribution payable under this condition has been calculated on the basis of the current rate as at the date of consent and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of Statistics (ABS). The CPI index rate is expected to rise at regular intervals and therefore the actual contribution payable is indexed and recalculated at the CPI rate applicable on the day of payment.

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

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

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

4. On-site parking accommodation is to be provided for a minimum of 159 cars and 8 motor cycles. A minimum of 19 spaces including a designated service vehicle space is to be allocated and delineated for the commercial premises and a minimum of 8 spaces is to be allocated and delineated as visitor car parking. This parking is to be set out generally in accordance with the minimum parking layout standards indicated in Element 7.03 'Traffic, Parking and Access' of Council's adopted Newcastle Development Control Plan 2012 and the plans submitted with the development application. Full details are to be included in documentation for the relevant Construction Certificate application.
5. The heritage restoration work being carried out strictly in accordance with the scope of works listed in the document prepared by NBRS + Partners (dated 24 November 2015, 30 March 2016 and specified in the applicant response for request for additional information 2016, page 34). All restoration work is to be carried out under the direction of a qualified Heritage Architect and include the minimum scope of works.

a) *undertaking façade conservation works; and*

- b) reinstating original elements within the building, including the terrazzo flooring in the main foyer, which will complement the façade works, upon entry to the building itself*

Full details are to be included in documentation for the relevant Construction Certificate application.

6. Six replacement street trees are to be installed in accordance Council's specifications to replace the two existing trees proposed to be removed. An application is to be made to Council's City Greening Coordinator requesting the planting of the required compensatory tree with the associated fee. Evidence that the application has been approved by the Greening Coordinator is to be submitted to the Accredited Certifier prior to the release of the relevant Construction Certificate.
7. The car park is to be designed to comply with AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking and AS/NZS 2890.6:2009 - Parking facilities - Off-street parking for people with disabilities. Full details are to be included in documentation for the relevant Construction Certificate application.
8. Prior to the release of the construction certificate the applicant shall submit a comprehensive waste management report in accordance with the better practice guide for Waste Management in Multi-unit Dwellings by the Department of Environment and Climate Change June 2008. The report shall address the storage and disposal of commercial and residential waste. The report shall include a list of recommendations, including but not limited to: sound insulated chute and/or additional garbage storage areas that are located in close proximity to the residential units. The recommendations of the report shall be included on the relevant construction certificate drawings.
9. Opposing traffic flows on car park ramps are to be separated by the provision of an appropriate kerb and/or safety barrier. Full details are to be included in documentation for the relevant Construction Certificate application.
10. All proposed driveways, parking bays, loading bays and vehicular turning areas are to be constructed with a basecourse of adequate depth to suit design traffic, being sealed with either bitumen seal, asphaltic concrete, concrete or interlocking pavers and being properly maintained. Full details are to be included in documentation for the relevant Construction Certificate application.
11. The visitor parking bays are to be constructed in paving bricks or in a suitable alternative visually unobtrusive paving material which contrasts in colour and texture with that used in the construction of the driveway. Full details are to be included in documentation for the relevant Construction Certificate application. The visitor car parking shall remain as common property under any future strata scheme.
12. Kerbing or dwarf walls having a minimum height of 100mm are to be constructed along the edge of all garden or lawn areas adjacent to driveways and parking bays sufficient to discourage the encroachment of vehicles thereon. Full details are to be included in documentation for the relevant Construction Certificate application.
13. Roof water from the proposed new work is to be directed to the proposed water tank (minimum size 60 m3) and being reticulated there from any new toilet cisterns and cold water washing machine taps, with a mains water top up being installed to maintain between 10% and 15% of the tank capacity. Alternatively, an electronically activated mechanical valve device is to be installed to switch any new toilet cisterns and laundry taps to mains water when the tank falls below 10% capacity. The water tank and plumbing is to be installed in accordance with Australian Standard AS 3500, the relevant plumbing regulations and the requirements of the Hunter Water Corporation. Full details are to be provided with the relevant Construction Certificate application.
14. Overflows from the roof water tank and any additional discharge controls (if required)

are to be directed to Council's drainage system by means of an interallotment drainage line or underground pipe directly to the street gutter. Full details are to be included in documentation for the relevant Construction Certificate application.

15. All stormwater runoff from the proposed development being managed in accordance with the requirements of Element 7.06 'Stormwater' of Newcastle Development Control Plan 2012, the associated Technical Manual and the latest issue of AS 3500.3 as applicable, as indicated on the stormwater management concept plan prepared by MPC Consulting Engineers Job No. 16-297 Drawing C01 Issue 3 dated 16/11/2015. Full details are to be included in documentation for the relevant Construction Certificate application.
16. All new impervious surfaces, including driveways and paved areas are to be drained to the nominated discharge controls, full details are to be included in documentation for the relevant Construction Certificate application.
17. All proposed planting and landscape elements indicated on the submitted landscape concept plan or otherwise required under the conditions of this consent are required to be detailed on a comprehensive landscape design plan and specification. The required comprehensive landscape design plan and specifications is to be in accordance with the provisions of Newcastle Development Control Plan 2012 and is to include details of the following:
 - a) cross sections through the site where appropriate
 - b) proposed contours or spot levels
 - c) botanical names
 - d) quantities and container size of all proposed trees
 - e) shrubs and ground cover
 - f) details of proposed soil preparation
 - g) mulching and staking
 - h) treatment of external surfaces and retaining walls where proposed
 - i) drainage, location of taps and
 - j) appropriate maintenance periods.

The plan is to be prepared by a qualified landscape designer and be included in documentation for the relevant Construction Certificate application.

18. The applicant is to comply with all requirements of the Hunter Water Corporation regarding the connection of water supply and sewerage services, including the payment of any required cash contribution towards necessary amplification of service mains in the locality as a result of the increased intensity of land use proposed. A copy of the Corporation's compliance certificate (refer s50 Hunter Water Act 1991) is to be included in documentation for the relevant Construction Certificate application.
19. A group type mailbox is to be provided at the street frontage in accordance with the requirements of Australia Post, clearly displaying individual unit numbers and the required house number. Full details are to be included in the documentation for the relevant Construction Certificate application.
20. A dilapidation report prepared by a suitability qualified person shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate. The dilapidation

report shall document and photograph the current structural condition of the adjoining buildings, infrastructure and roads.

21. A commercial vehicular crossing is to be constructed across the road reserve in King Street, in accordance with the following criteria:
- a) Constructed in accordance with Council's A1300 – Driveway Crossings Standard Design Details.
 - b) The driveway crossing, within the road reserve, shall be a maximum of 6 metres wide.
 - c) Letterboxes, landscaping and any other obstructions to visibility should be kept clear of or limited in height to 1.2 metre, in the 2 metre by 2.5 metre splay within the property boundary each side of the driveway entrance.
 - d) The proposed driveway shall be a minimum of 3 metres clear of the trunk of any tree within the public reserve.
 - e) The proposed driveway shall be a minimum of 750mm clear of the centre of any pole or obstruction within the public reserve and 1 metre clear of any drainage pit.

These works are not approved until consent under Section 138 of the Roads Act 1993 (NSW) has been granted by Council. An application under Section 138 must be applied for and approved before the issue of the relevant Construction Certificate.

22. A separate application must be lodged and consent obtained from Council for all works within the road reserve pursuant to Section 138 of the *Roads Act 1993 (NSW)*, before the issue of the relevant Construction Certificate.
23. A design verification statement from a qualified designer shall be submitted to the Certifying Authority. The statement shall confirm the Construction Certificate plans and specifications achieve or improve the design quality of the development for which consent is granted, having regard to the design quality principles set out in Part 2 of *State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development*.

Full details are to be included in the documentation for the relevant Construction Certificate for the residential flat development.

Note: 'Qualified Designer' means a person registered as an architect in accordance with the *Architects Act 2003*. This condition is imposed in accordance with Clauses 143A of the *Environmental Planning and Assessment Regulation 2000*.

24. Prior to the issue of a the relevant Construction Certificate, the proponent is to prepare and submit to the PCA and Council an Environmental Management Plan (EMP) for construction/demolition works on the site, which is to be kept on site and made available to authorised Council officers upon request. The EMP is to include but not be limited to:
- a. A site management strategy, identifying and addressing issues such as environmental health and safety, site security, and traffic management.
 - b. A water management strategy, detailing erosion and sediment control, management of soil stockpiles, control and management of surface water, groundwater and process water. Procedures should also be included to ensure that all roads adjacent to the site are kept free and clear from mud and sediment.
 - c. A dust management strategy, detailing procedures to minimise dust generation, with particular reference to control techniques and operational

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

- d. A soil management strategy, detailing measures to be implemented to manage the identification and control and disposal of any acid sulphate soils or soil contamination identified during site works.
 - e. A noise and vibration management program detailing measures to minimise the impact of the construction phase on the amenity of the locality in accordance with Australian Standard AS 2436. 2010 (*Guide to Noise and Vibration control on Construction, Demolition and Maintenance Sites*).
 - f. A waste minimisation strategy, which aims to avoid production of waste and maximise reuse, recycling or reprocessing of potential waste material.
 - g. A community relations plan, which aims to inform local residents and other local stakeholders of the proposed nature and timeframes for demolition and construction activities together with contact details for site management.
25. All onsite stormwater detention or water quality treatment systems are to be individually identified and sign posted in accordance with Council's Stormwater and Water Efficiency for Development Technical Manual (Updated 2013). Full details are to be included in documentation for the relevant Construction Certificate application.
26. The Developer constructing / reconstructing, the public footways adjacent to the site generally in accordance with Council's 'City Centre Public Domain Technical Manual', such works to be implemented prior to any occupation of the premise and comprising the following:
- a) Road shoulder pavement
 - b) Kerb and gutter .
 - c) Full width reconstruction of the footway
 - d) Stormwater Drainage
 - e) Regulatory signage
 - f) Street Lighting in accordance with AS 1158 - Road Lighting P3 Category and pole upgrade
 - g) 6 New Street Tree.

In this regard the separate approval from Council must be obtained for all works within the public road reserve, pursuant to Section 138 of the Roads Act 1993, prior to commencement. Engineering design plans and specifications for the works being undertaken in the public road reserve are required to be prepared by a suitably qualified practising civil engineer with experience and competence in the related field and submitted to Council for approval with the Section 138 application.

Note: a) It will be necessary for the Developer to notify water, telecommunications, and gas and electricity authorities of the proposed footway works in order to enable the various authorities to carry out and complete any necessary repairs and/or amplification to their respective services before such works are commenced.

- b) The provision of additional regulatory signage and alterations to existing regulatory signage will need to be referred to the Newcastle City Traffic Committee for approval prior to installation.
 - c) The existing sandstone kerb is to be replaced with concrete kerb & gutter. The sandstone blocks are to be returned to Council's Works Depot at Turton Road, Waratah.
27. The waste collection for the development being undertaken by a private contractor as detailed in the Site Waste Minimisation Plan. Full details shall be provided prior to the release of the relevant Construction Certificate.
28. Prior to the work commencing and before the release of the relevant Construction Certificate an archival record of the building, both internally and externally is to be made that is consistent with the NSW Department of Planning Heritage Branch Guidelines for Undertaking Archival recordings. Such documents and photographs are to be submitted to Council for inclusion in the City Library collection prior to the issue of the Occupation Certificate.

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

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

Each toilet is to:

- a) Be a standard flushing toilet connected to a public sewer, or
 - b) Have an on-site effluent disposal system approved under the *Local Government Act 1993* (NSW), or
 - c) Be a temporary chemical closet approved under the *Local Government Act 1993* (NSW).
30. Building demolition is to be planned and carried out in accordance with Australian Standard 2601:2001 - The Demolition of Structures.
31. A Hazardous Substances Management Plan is to be prepared by a competent person for the building(s) or parts of the building(s) proposed to be demolished in accordance with Australian Standard 2601:2001 - The Demolition of Structures. A copy of the Hazardous Substances Management Plan is to be provided to Council (marked to Attention: Compliance Services) and the demolisher prior to commencement of work.
32. The demolition works are to be undertaken in accordance with Australian Standard 2601:2001 - The Demolition of Structures and the following requirements:
- a) Demolition works shall be conducted in accordance with the submitted Hazardous Substances Management Plan and a copy of the Hazardous Substances Management Plan shall be kept on-site for the duration of the proposed development
 - b) The removal, handling and disposal of any asbestos material is to be undertaken only by an asbestos removal contractor who holds the appropriate class of Asbestos Licence, issued by the WorkCover Authority of NSW
 - c) A copy of all waste disposal receipts are to be kept on-site for the duration of the proposed development and made available to authorised Council Officers upon request

- d) Seven working days' notice in writing is to be given to Council and the owners/occupiers of neighbouring premises prior to the commencement of any demolition works. Such written notice is to include the date demolition will commence and details of the name, address, contact telephone number(s) and licence details (type of licences held and licence numbers) of any asbestos removal contractor and demolition contractor. Notification to owners/occupiers of neighbouring premises shall also include Council's contact telephone number (49742000) and the Workcover Authority of NSW telephone number (49212900) and
 - e) On sites where asbestos materials are to be removed, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent position during asbestos removal works.
33. The demolisher is to ensure that all services (ie water, telecommunications, gas, electricity, sewerage etc), are disconnected in accordance with the relevant authority's requirements prior to demolition.
34. Any waste containers used in association with the proposed demolition are to be located on the site where possible.
- Note: Where this is not feasible, application must be made for Council's approval to position the container on the adjacent public road in accordance with Council's adopted Building Waste Container Policy.
35. The demolisher is to ensure that all demolition material is kept clear of the public footway and carriageway as well as adjoining premises.
36. Any demolition/waste building materials that are not suitable for recycling are to be disposed of at Council's Summerhill Waste Management Facility or other approved site.
37. Waste management shall be implemented in accordance with the approved Waste Management Plan. At a minimum, the following measures shall be implemented during the construction phase:
- a) A waste container of at least one cubic metre capacity shall be provided, maintained and regularly serviced from the commencement of operations until the completion of the building for the reception and storage of waste generated by the construction of the building and associated waste
 - b) The waste container is to be, at minimum, constructed with a 'star' picket (corners) and weed control mat (sides), or equivalent. The matting is to be securely tied to the pickets
 - c) Appropriate provision is to be made to prevent windblown rubbish leaving the site and
 - d) Footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

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

38. A rigid and durable sign is to be erected on any site on which building work, subdivision work or demolition work is being carried out, before the commencement of the work:

- a) showing the name, address and telephone number of the Principal Certifying Authority for building work and subdivision work, and
- b) showing the name, address and telephone number of the Principal Contractor for any building work and also including a telephone number on which the Principal Contractor may be contacted at any time for business purposes, and
- c) stating that unauthorised entry to the work site is prohibited, and
- d) being erected in a prominent position that can be read easily by anyone in any public road or other public place adjacent to the site.

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

- 39. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- 40. In the case of residential building work for which the *Home Building Act 1989* (NSW) requires there to be a contract of insurance in force in accordance with Part 6 of that Act, such a contract of insurance is to be in force before any building work authorised to be carried out by this consent commences.
- 41. All excavations and backfilling are to be executed safely in accordance with appropriate professional standards and excavations are to be properly guarded and protected to prevent them from being dangerous to life and property.
- 42. If the soil conditions require it, retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided and adequate provision must be made for drainage.
- 43. All building materials, plant and equipment is to be placed on the site of the development so as to ensure that pedestrian and vehicular access in public places is not restricted and to prevent damage to the road reserve. The storage of building materials on Council reserves including the road reserve is not permitted.
- 44. Prior to commencement of site works the developer is to submit to Council for approval a Construction Traffic Management Plan addressing traffic control measures to be utilised in the public road reserve during the construction phase.
- 45. The Construction Traffic Management Plan is to be prepared by a Roads & Maritime Services accredited person with a Design and Audit Traffic Control Plans Certificate in accordance with Australian Standard 1742.3:2009 - Manual of uniform traffic devices - traffic control for works on roads. The plan is to ensure the provision for safe, continuous movement of traffic and pedestrians within the road reserve.
- 46. Any alteration to natural surface levels on the site is to be undertaken in such a manner as to ensure that there is no increase in surface water runoff to adjoining properties or that runoff is impounded on adjoining properties, as a result of the development.
- 47. The proposed visitor parking bays are to be clearly indicated by means of signs and/or pavement markings. The (8) visitor parking spaces are to be allocated to common property under any future strata scheme.
- 48. All parking and loading bays are to be permanently marked out on the pavement surface, with loading bays and visitor parking facilities being clearly indicated by signs.
- 49. The vehicular entrance and exit driveways and the direction of traffic movement

within the site are to be clearly indicated by means of reflectorised signs and pavement markings.

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

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

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

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

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

52. Any excavated material to be removed from the site is to be assessed, classified, transported and disposed of in accordance with the Department of Environment and Climate Change's (DECC) 'Waste Classification Guidelines Part 1: Classifying Waste'.
53. Any fill material imported into the site is to be Virgin Excavated Natural Material or material subject to a Resource Recovery Order that is permitted to be used as a fill material under the conditions of the associated Resource Recovery Exemption, in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment (Waste) Regulation 2014*.
54. Documentation demonstrating the compliance with the conditions of the appropriate Resource Recovery Order and Resource Recovery Exemption must be maintained for any material received at the site and subsequently applied to land under the conditions of the Resource Recovery Order and Exemption. This documentation must be provided to Council officers or the Principal Certifying Authority on request.
55. Erosion and sediment control measures are to be implemented prior to the commencement of works and maintained during the period of demolition and/or construction in accordance with the requirements of Managing Urban Stormwater: Soils and Construction 4th Edition - Vol. 1 (the 'Blue Book') published by Landcom, 2004. Controls are not to be removed until the site is stable with all bare areas supporting an established vegetative cover.
56. Prior to the commencement of work, a 3m wide all weather vehicle access is to be provided from the kerb and gutter to the building under construction, to reduce the potential for soil erosion. Sand shall not be stockpiled on the all weather vehicle access.
57. All necessary measures are to be undertaken to control dust pollution from the site. These measures must include, but not are limited to:
- a) Restricting topsoil removal
 - b) Regularly and lightly watering dust prone areas (note: prevent excess watering as it can cause damage and erosion)
 - c) Alter or cease construction work during periods of high wind and
 - d) Erect green or black shade cloth mesh or similar products 1.8m high around the

perimeter of the site and around every level of the building under construction.

58. Where the proposed development involves the destruction or disturbance of any existing survey monuments, those monuments affected are to be relocated at no cost to Council by a Surveyor registered under the *Surveying and Spatial Information Act 2002* (NSW).

59. All public trees that are required to be retained must be physically protected in accordance with the City of Newcastle Urban Forest Technical Manual 'Section 8.0 Protection Measures'.

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

60. Acid sulfate soil - as per management plan

The development being carried out in accordance with the details set out in the Acid Sulfate Soil Management Plan prepared by DLA Environmental Services Pty Ltd (November 2015) Acid Sulfate Soils Management Plan.

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

61. All commitments listed in the relevant BASIX certificate for the development are to be satisfactorily completed prior to the issue of an Occupation Certificate. Should there be any changes to the specifications of the dwelling that have implications for compliance with the approved certificate, except where restricted or excluded by any other condition of consent, an amended BASIX Certificate can be relied upon as having complied with this condition. A copy of any amended BASIX Certificate is to be provided to Council within fourteen days of receipt.
62. All public footways, footpaving, kerbs, gutters and road pavement damaged during the works are to be immediately repaired following the damage, to a satisfactory state that provides for safe use by pedestrians and vehicles. Full restoration of the damage is to be carried out to Council's satisfaction prior to the completion of demolition work or prior to the issue of any occupation certificate in respect of development involving building work.
63. All works within the road reserve required by this consent are to be completed prior to the issue of a Final Occupation Certificate.
64. Any redundant existing vehicular crossing is to be removed at no cost to Council. The road reserve and kerb being restored to, Council's satisfaction, to match the existing infrastructure. Works are to be completed prior to the issuing of a Final Occupation Certificate for the proposed development.
65. A copy of the stormwater drainage design plans approved with the Construction Certificate with 'work as executed' levels indicated, shall be submitted to the Principal Certifying Authority and to The City of Newcastle prior to the issue of an Occupation Certificate. The plans shall be prepared by a Practising Professional Engineer or Registered Surveyor experienced in the design of stormwater drainage systems.
66. The water management measures as indicated on the submitted plans and Statement of Environmental Effects and/or as modified under the terms of this consent are to be implemented and the nominated fixtures and appliances are to be installed and operational prior to issue of an Occupation Certificate.
67. A Landscape Practical Completion Report is to be submitted to the Principal Certifying Authority prior to the issue of the Final Occupation Certificate. The report is to verify

that all landscape works have been carried out in accordance with the comprehensive landscape design plan and specifications that were required to be included in documentation for a the relevant Construction Certificate application and is to verify that an effective maintenance program has been commenced.

68. The premises are to be identified by the provision of house and street numbers on the building exterior and mailbox, respectively, such that they are clearly visible from the road frontage.

The minimum numeral heights shall be:

- a) Exterior of the building = 75mm and
 - b) Group mailbox - street number = 150mm
- house number = 50mm
69. A design verification statement from a qualified designer shall be submitted to the Principal Certifying Authority prior to the issue of an Interim or Final Occupation Certificate, whichever occurs first. The statement shall confirm the development has been constructed in accordance with the quality principles set out in Part 2 of *State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development*.

Note: 'Qualified Designer' means a person registered as an architect in accordance with the *Architects Act 2003*. This condition is imposed in accordance with Clauses 154A of the *Environmental Planning and Assessment Regulation 2000*.

70. Prior to the issuing of an Occupation Certificate, a Validation Report is to be prepared by a suitably qualified person in accordance NSW Government endorsed contaminated land guidelines and submitted to Council and the PCA.
71. Prior to the issuing of an Occupation Certificate, all restoration work specified by condition No 5 shall be completed.

CONDITIONS TO BE SATISFIED DURING THE OPERATION AND USE THE DEVELOPMENT

72. The driveway crossing, parking areas and stormwater management system are to be properly maintained for the life of the development.
73. Proposed parking areas, vehicle bays, driveways and turning areas are to be maintained clear of obstruction and be used exclusively for purposes of car parking, loading and unloading, and vehicle access, respectively. Under no circumstances are such areas to be used for the storage of goods or waste materials.
74. The premises are to be identified by the provision of house and street numbers on the building exterior and mailbox, respectively, such that they are clearly visible from the road frontage.

The minimum numeral heights shall be:

- a) exterior of the building = 75mm and
 - b) group mailbox - street number = 150mm
house number = 50mm
75. A Community Liaison Officer is to be appointed prior to construction works commencing to act as a point of contact for adjacent occupiers throughout the construction phase of the development. The Community Liaison Officer is to be engaged until construction works are completed. Contact details of the Community Liaison Officer are to be provided to Council and adjoining occupiers via a letterbox drop/community newsletter and signage at the site.

76. The proposed remediation work being carried out in accordance with the requirements set out in the submitted Remedial Action Plan (RAP) prepared by DLA Environmental Services Pty Ltd dated February 2016.

ADVISORY MATTERS

77. Retaining walls not clearly noted on the approved plans or outside of the parameters of 'exempt development' as specified in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (NSW) are to be subject to a separate development application. An application in this regard is to be approved prior to any works relating to the retaining wall taking place.
78. An application is to be submitted to Council for the removal or pruning of any trees located more than three metres from the dwelling, wall measured from the centre of the trunk to the footings of the dwelling, excluding carports and pergolas.
79. It is recommended that, prior to commencement of work, the free national community service 'Dial before you Dig' be contacted on 1100 or by fax on 1200 652 077 regarding the location of underground services in order to prevent injury, personal liability and even death. Inquiries should provide the property details and the nearest cross street/road.
80. Any necessary alterations to public utility installations are to be at the developer/demolisher's expense and to the requirements of both Council and any other relevant authorities. Council and other service authorities should be contacted for specific requirements prior to the commencement of any works.
81. Any approval for fences on side boundaries, common to other private properties, is independent of any consent or agreement which may be required of any adjoining owner under the provisions of the *Dividing Fences Act 1991* (NSW).
82. Prior to commencing any construction works, the following provisions of the *Environmental Planning and Assessment Act 1979* (NSW) (the 'Act') are to be complied with:
- a) A Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act
 - b) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act and
 - c) Council is to be given at least two days' notice of the date intended for commencement of building works, in accordance with Section 81A(2)(c) of the Act.
83. Prior to the occupation or use of a new building, or occupation or use of an altered portion of, or an extension to an existing building, an Occupation Certificate is to be obtained from the Principal Certifying Authority appointed for the proposed development. An application for an Occupation Certificate must contain the information set out in Clause 149 of the *Environmental Planning and Assessment Regulation 2000* (NSW).
84. It is an offence under the provisions of the *Protection of the Environment Operations Act 1997* (NSW) to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.
85. Failure to comply with the conditions of consent constitutes a breach of the

Environmental Planning and Assessment Act 1979 (NSW), which may be subject to a penalty infringement notice ('on-the-spot fine') or prosecution.

END OF CONDITIONS

Appendix B - Updated Privacy Screen

- C1

PRECAST CONCRETE (PATTERN)
- C2

PRECAST CONCRETE (GREY)
- C3

PRECAST CONCRETE (WHITE)
- C4

INSITU CONCRETE
- R1

RENDER (CHARCOAL)
- T1

TIMBER BATTENS

M1

COLOUR COATED METAL PANEL

B1

METAL BALUSTRADE

G1

GLAZING AND ALUMINIUM FRAME

G2

COLOUR BACKED GLASS

G3

GLAZING AND ALMUMINIUM FRAME

A1

ALUMINIUM LOUVRES

REVISION		
01	20.11.15	DEVELOPMENT APPLICATION
02	16.02.16	URBAN DESIGN REVIEW PANEL
03	30.03.16	UPDATED DEVELOPMENT APPLICATION
04	31.08.16	REVISED HINGED DOOR TO SLIDING DOOR
		UPDATED SCREEN TO VERTICAL TIMBER BATTENS

NOTES

Check and verify all dimensions prior to commencement of work. This drawing shall be read in conjunction with all other contract documents including those by other consultants, and including specifications. Seek clarification of inconsistencies/ conflicts. Figure dimensions shall take precedence to scaled dimensions.

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DRAWN	DATE	CHECKED	PLOT DATE	JOB NO.
RAS	-	RM	31/08/2016	13032

SCALE

1:300 @A3

PROJECT

NEWCASTLE APARTMENTS
28-30 BOLTON ST & 44-46 KING ST
NEWCASTLE 2300

FENDER KATSALIDIS MIRAMS (SYDNEY) Architects			
LEVEL 3, 4, 14 KENT STREET SYDNEY 2000 NSW AUSTRALIA 8 216 3 500 TELEPHONE 8 216 3 501 FACSIMILE			
DRAWING TITLE		REVISION/ DRAWING NO.	
PROPOSED BOUNDARY ELEVATION		04 DEVELOPMENT APPLICATION	

DA320

VISUAL PRIVACY



THE HERALD

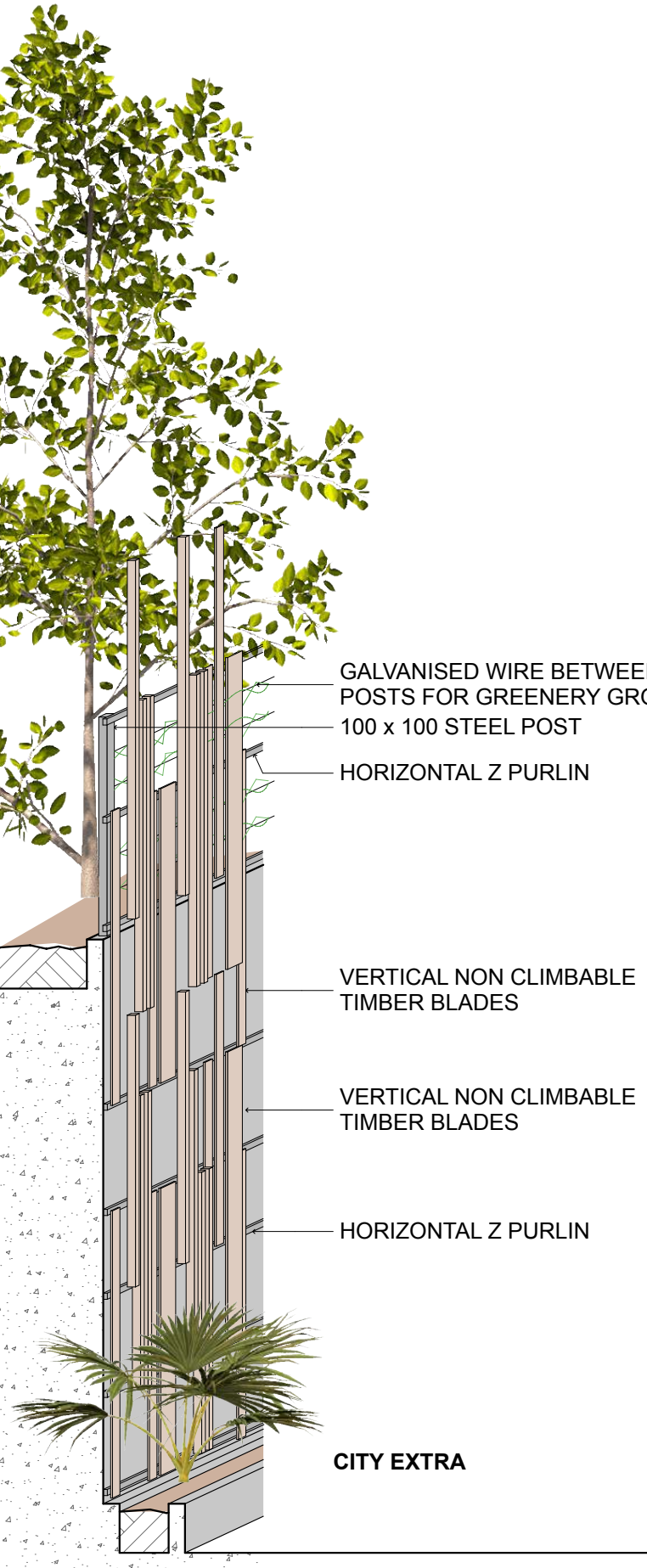
GALVANISED WIRE BETWEEN
POSTS FOR GREENERY GROWTH
100 x 100 STEEL POST
HORIZONTAL Z PURLIN

VERTICAL NON CLIMBABLE
TIMBER BLADES

VERTICAL NON CLIMBABLE
TIMBER BLADES

HORIZONTAL Z PURLIN

CITY EXTRA



REVISION		
01	20.11.15	DEVELOPMENT APPLICATION
02	16.02.16	URBAN DESIGN REVIEW PANEL
03	30.03.16	UPDATED DEVELOPMENT APPLICATION
04	31.08.16	UPDATED SCREEN TO VERTICAL TIMBER BATTENS

LEGEND	
	1 Bedroom / 1 Bathroom
	2 Bedroom / 1 Bathroom
	2 Bedroom / 2 Bathrooms
	3 Bedroom / 2 Bathrooms
	Ventilation
	Commercial
	Services
	Landscaping
	Lobby / Corridors

NOTES
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RAS	-	RM	31/08/2016	13032

SCALE
@A3



PROJECT
NEWCASTLE APARTMENTS
28-30 BOLTON ST & 44-46 KING ST
NEWCASTLE 2300

DRAWING TITLE
NORTHERN BOUNDARY SCREEN

FENDER KATSALIDIS MIRAMS (SYDNEY) Architects	
LEVEL 3, 4, 14 KENT STREET SYDNEY 2000 NSW AUSTRALIA 61 2 8 216 3 500 TELEPHONE 61 2 8 216 3 501 FACSIMILE	

REVISION/ DRAWING NO.
04 DEVELOPMENT APPLICATION

DA321