

**JOINT REGIONAL PLANNING PANEL  
HUNTER AND CENTRAL COAST**

<b>Panel Reference</b>	2017HCC026
<b>DA Number</b>	2016/00564.01
<b>Local Government Area</b>	NEWCASTLE CITY COUNCIL
<b>Approved Development</b>	Erection of 14-storey shop top housing development (128 residential units and ground floor commercial units), two levels of parking (136 spaces) and associated works.
<b>Street Address</b>	643 Hunter Street, Newcastle West Lot 1 DP 1166015
<b>Modified Development Description</b>	Erection of 15-storey shop top housing development (54 residential units, 66 affordable housing units, two ground floor commercial units), two levels of parking (128 spaces) and associated works.
<b>Applicant/Owner</b>	<b>Applicant</b> - Catholic Diocese of Maitland-Newcastle  <b>Owners</b> - Catholic Diocese of Maitland-Newcastle
<b>Date of Section 96 lodgement</b>	2 June 2017
<b>Number of Submissions</b>	None
<b>Recommendation</b>	Approval
<b>Regional Development Criteria (Schedule 4A of the Act)</b>	The proposal is listed within Schedule 4A of the <i>Environmental Planning and Assessment Act 1979</i> , being general development over \$20 million. The development is valued at \$30,969,865.
<b>List of All Relevant s79C(1)(a) Matters</b>	<p><b>Environmental planning instruments: s79C(1)(a)(i)</b></p> <ul style="list-style-type: none"> <li>• State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy No. 55 - Remediation of Land</li> <li>• State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development</li> <li>• State Environmental Planning Policy No 64—Advertising and Signage</li> <li>• Newcastle Local Environmental Plan 2012</li> </ul> <p><b>Development Control Plan: s79C(1)(a)(iii)</b></p> <ul style="list-style-type: none"> <li>• Newcastle Development Control Plan 2012</li> <li>• Section 94A Development Contributions Plan 2009</li> </ul>

<b>List all documents submitted with this report for the panel's consideration</b>	<p><b>Appendix A</b> - Conditions to modify details of consent</p> <p><b>Appendix B</b> - Documents submitted with the application</p> <p><b>Appendix C</b> - Subsidence Advisory NSW comments dated 15 May 2017</p> <p><b>Appendix D</b> - Urban Design Consultative Group Comments</p> <p><b>Appendix E</b> - Letter from Affordable Housing provider</p>
<b>Report by</b>	Newcastle City Council
<b>Report date</b>	12 December 2017

### Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes / No**

### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes / No / Not Applicable**

**(Has been addressed in the body of the assessment report)**

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes / No / Not Applicable**

### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **Yes / No / Not Applicable**

*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

### Conditions

Have draft conditions been provided to the applicant for comment? **Yes / No**

*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

## ASSESSMENT REPORT AND RECOMMENDATION

### EXECUTIVE SUMMARY

Development application No. 2016-00564.01 has been lodged with Council, seeking modifications to the development consent granted by the Hunter Joint Regional Planning Panel on 24 March 2017 for:

- Reduction from 128 to 120 residential units;
- Reduction in commercial floor space from 702m<sup>2</sup> to 562.8m<sup>2</sup>;
- Reduction in car parking from 136 to 128 car parking spaces;
- Increase approved building height from 48m to 49.8m to accommodate roof to modified floor below and new lift overrun above;
- Increase floor space ratio from 4.75:1 to 4.97:1;
- Additional top floor level (Level 14) comprising reconfiguration of approved roof terrace and community room, stormwater management and plant equipment to accommodate additional four x two-bedroom units and associated private balconies;
- Modified ground floor level with double lift lobby and front entry split into two separate ground floor single lift lobbies and front entries, commercial floor space split into two separate tenancies;
- Modified parking layout at Levels 1 and 2 to reduce general parking from 130 to 119 spaces and increase accessible spaces from four to nine spaces;
- Modify Levels 3 to 5 with conversion of 24 x studio apartments to two x two-bedroom and 10 x one-bedroom + study apartments;
- Modify stormwater management to remove requirement for capture and re-use for use by individual apartments. Roof water proposed to be reticulated for irrigation (landscaping) use only;
- 66 units at Levels 3 to 8 to be utilised for affordable housing and associated reduction in Section 94A contributions; and
- Deferred and periodic payment of Section 94A contributions levies rather than paying all the contributions prior to the issue of the construction certificate.

The modification proposal was placed on public exhibition for a period of 14 days from 10 November 2017 in accordance with the *Environmental Planning and Assessment Act 1979* (EP&A Act), *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) and Section 8 of Newcastle Development Control Plan 2012. No submissions were received during the notification period.

The key issues raised in the assessment of the Section 96 modification application relate to the:

- Affordable housing provision and Section 94A contributions;
- Bulk, scale and design of the building; and
- Public activation at the street level to achieve urban renewal outcomes for the City Centre.

The application is recommended for approval, as the proposed modified development will provide additional residential accommodation in the City Centre and will generate positive economic and social benefits. The proposed development will assist in the renewal of the western part of the City Centre.

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 modification is a Section 96(2) application, for a proposed development listed within Schedule 4A of the EP&A Act, being general development over \$20 million. The proposed modified development has a capital investment value of \$30,969,865.

## 1. INTRODUCTION

This report provides a detailed overview of the modified development proposal for the construction of a shop top housing development at 643 Hunter Street, Newcastle West. The development application is reported to the Hunter and Central Coast Joint Regional Planning Panel in accordance with Section 23G and Schedule 4A EP&A Act, as the development is a type classified under as '*general development over \$20 million*', with the capital investment value of works being \$30,969,865.

## 2. BACKGROUND

Council's Urban Design Consultative Group (UDCG) reviewed the application on 20 September 2017, following lodgement of the application to modify details of the development consent. The Group provided comments regarding the design of the modified building and the application has been amended to address these comments.

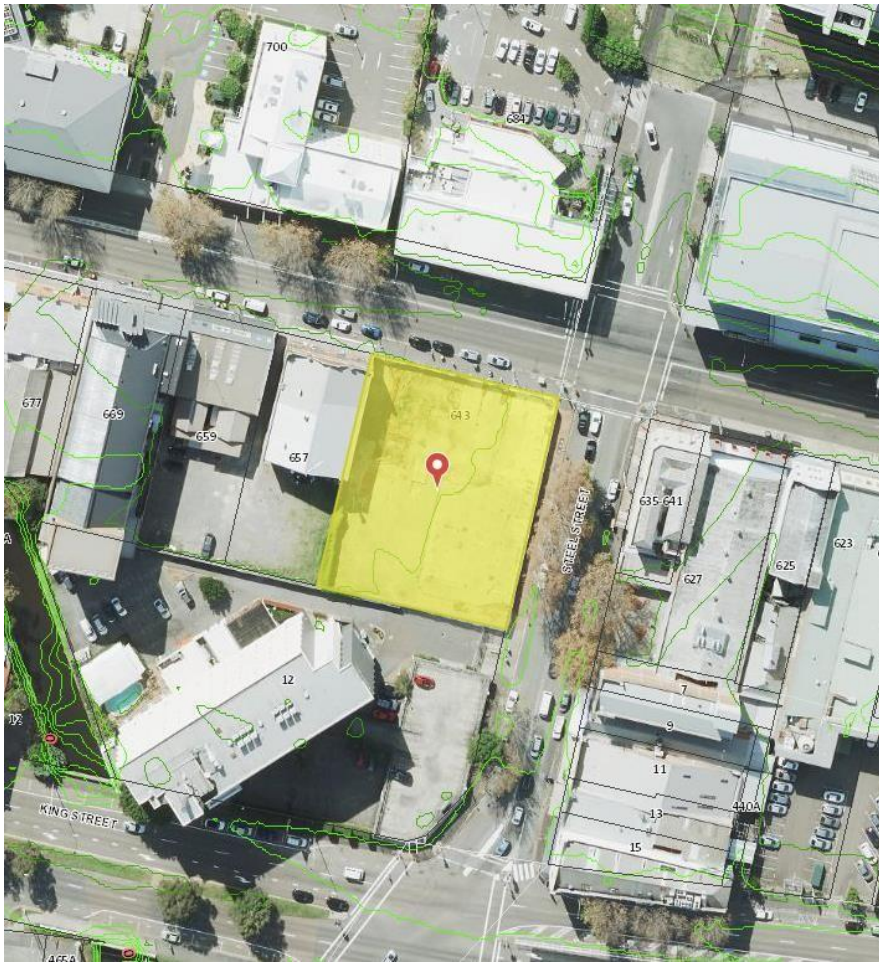
## 3. SITE DESCRIPTION

The site has an area of approximately 2,078.5m<sup>2</sup>, is rectangular in shape and is generally flat. The site is known as 643 Hunter Street, Newcastle West and comprises Lot 1 in DP 1166015. The site is located on a corner lot with a frontage to Hunter Street of 40.91m and a frontage to Steel Street of 50.77 metres (refer to Figure 1 below).

The historic use of the land is as a hotel and retail premises. The site is presently vacant with hardstand and footings of the former Empire Hotel. The site is generally devoid of vegetation and is almost wholly hardstand. The site has been subject to archaeological studies and there is a high probability of significant aboriginal objects.

There are a variety of different land uses in the general vicinity of the site, being predominantly commercial. The five storey '*Hunter New England Health*' polyclinic building, two storey '*Pizza Hut*' restaurant, '*KFC*' take away food premises and the four storey '*Ibis Newcastle*' hotel are located to the north of the site, across Hunter Street. To the south of the site is the seven-storey '*Travelodge Hotel Newcastle*'. The three-storey '*Family Hotel*' is to the east of the site, across Steel Street.

Adjoining the site to the west is a two-storey commercial retail building and adjacent to this premises is the state heritage-listed '*Theatre Royal*' building, being a three-storey brick and rendered building currently occupied by the Hillsong Church.



**Figure 1:** Location of the site at 643 Hunter Street Newcastle West.

#### 4. PROPOSAL

The application involves:

- Reduction from 128 to 120 residential units;
- Reduction in commercial floor space from 702m<sup>2</sup> to 562.8m<sup>2</sup>;
- Reduction in car parking from 136 to 128 car parking spaces;
- Increase approved building height from 48m to 49.8m to accommodate roof to modified floor below and new lift overrun above;
- Increase floor space ratio from 4.75:1 to 4.97:1;
- Additional top floor level (Level 14) comprising reconfiguration of approved roof terrace and community room, stormwater management and plant equipment to accommodate additional four x two-bedroom units and associated private balconies;
- Modified ground floor level with double lift lobby and front entry split into two separate ground floor single lift lobbies and front entries, commercial floor space split into two separate tenancies;
- Modified parking layout at Levels 1 and 2 to reduce general parking from 130 to 119 spaces and increase accessible spaces from four to nine spaces;
- Modify Levels 3 to 5 with conversion of 24x studio apartments to two x two-bedroom and 10x one-bedroom + study apartments;

- Modify stormwater management to remove requirement for capture and re-use for use by individual apartments. Roof water proposed to be reticulated for irrigation (landscaping) use only;
- 66 units at Levels 3 to 8 to be utilised for affordable housing and associated reduction in Section 94A contributions; and
- Deferred and periodic payment of Section 94A contributions levies rather than paying all the contributions prior to the issue of the construction certificate.

The applicant has submitted the following summary table of the proposed modifications:

Original and approved	Proposed amended
128 residential units: <ul style="list-style-type: none"> <li>▪ 24 x studio</li> <li>▪ 33 x 1-bedroom (all accessible to people with disabilities)</li> <li>▪ 68 x 2-bedroom</li> <li>▪ 3 x 3-bedroom</li> </ul>	120 residential units: <ul style="list-style-type: none"> <li>▪ Nil x studio</li> <li>▪ 43 x 1-bedroom (including 31 x disability accessible units and 10 x units with study)</li> <li>▪ 74 x 2-bedroom (including 15 x disability accessible units)</li> <li>▪ 3 x 3-bedroom</li> </ul>
All residential units for general residential use	<ul style="list-style-type: none"> <li>▪ 66 x units for 'affordable housing' purposes</li> <li>▪ 54 x units for general residential use</li> </ul>
Commercial space = 702m <sup>2</sup>	Commercial space = 562.8m <sup>2</sup>
136 car parking spaces: <ul style="list-style-type: none"> <li>▪ 130 x general parking spaces</li> <li>▪ 4 x disability-accessible spaces</li> </ul> 17 x motorbike parking spaces 95 x bicycle parking spaces	128 car parking spaces: <ul style="list-style-type: none"> <li>▪ 119 x general parking spaces</li> <li>▪ 9 x disability-accessible spaces</li> </ul> 17 x motorbike parking spaces 95 x bicycle parking spaces
Floor Space Ratio = 4.75:1	Floor Space Ratio = 4.97:1
Total building height = 48m (RL 50.3m AHD)	Total building height = 49.8m (RL 52.1m AHD)
Total number of building levels = 15	Total number of building levels = 15

The submitted plans are attached at **Appendix B**.

## 5. PLANNING ASSESSMENT

### 5.1 Environmental Planning and Assessment Act 1979 (EP&A Act)

#### 5.1.1 Section 23G – Joint Regional Planning Panels

Section 23G and Schedule 4A (3) of the EP&A Act requires the Joint Regional Planning Panel (JRPP) to determine applications for general development over \$20 million. The capital investment value of the application is \$30,969,865. The application is to be determined by the Hunter and Central Coast Regional Planning Panel, as the modification is a Section 96(2) application.

### **5.1.2 Section 91 – Integrated Development**

The proposal requires approval from Subsidence Advisory NSW (formerly the Mines Subsidence Board) under Section 15 of the Mine Subsidence Compensation Act 1961. The application was referred to Subsidence Advisory NSW by the applicant. Subsidence Advisory NSW provided a response to the revised design and a condition of consent has been recommended to require compliance with the conditions imposed.

### **5.1.3 Section 79C Evaluation**

The proposal has been assessed under the relevant matters for consideration detailed in s.79C (1) EP&A Act as follows:

#### **5.1.3.1 Section 79C(1)(a)(i) provisions of any environmental planning instrument**

##### **State Environmental Planning Policy (State and Regional Development) 2011**

This policy sets out the functions of regional panels in determining applications for regional development. Clause 20 and 21 of the SEPP require the Joint Regional Planning Panel to be the determining authority for development included in Schedule 4A of the Act. The Section 96(2) application is submitted to the Hunter and Central Coast Joint Regional Planning Panel for determination, as the capital investment value of the proposed development is over \$20 million.

##### **State Environmental Planning Policy (Infrastructure) 2007**

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) was introduced to facilitate the delivery of infrastructure across the State by improving regulatory certainty and efficiency.

Schedule 3 of the ISEPP relates to traffic generating development and requires certain applications to be referred to Roads and Maritime Services (RMS). Development involving ancillary parking for more than 50 motor vehicles, with access to a classified road or to a road that connects to a classified road (if access within 90m of connection, measured along alignment of connecting road), is specified in this Schedule.

This section of Hunter Street is not a classified road and the site access is not within 90m of connection of a classified road. Accordingly, the application was not required to be referred to RMS in accordance with Clause 104 of the ISEPP.

##### **State Environmental Planning Policy (Building and Sustainability Index: BASIX) 2004**

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX SEPP) applies to buildings that are defined as '*BASIX affected development*', being "*development that involves the erection (but not the relocation) of a BASIX affected building*" (ie contains one or more dwellings).

Accordingly the provisions of the BASIX SEPP apply to the current development proposal. The applicant submitted an amended BASIX Certificate, which lists the commitments to achieve appropriate building sustainability for the modified

development. A condition was included in the original development consent, requiring that such commitments be fulfilled.

### **State Environmental Planning Policy No.55 (Remediation of Land) (SEPP No.55)**

The modified proposal remains acceptable having regard to this policy.

### **State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development**

This policy applies to the development of new residential flat buildings and aims to improve the quality of residential flat development. Clause 28(2) of the SEPP requires the consent authority to take into consideration the advice of a Design Review Panel; the design quality of the development when evaluated in accordance with the design quality principles; and the Apartment Design Guide (ADG).

A SEPP 65 Statement for the modified proposal has been submitted with the application, which addresses the nine design quality principles.

Council has an independent Urban Design Consultative Group (UDCG), that provided comments on the modified application, with extracts of the main points provided below. The modified proposal was considered by the UDCG on one occasion, on 20 September 2017.

#### *2. Built Form and Scale*

*There would be very small change in relation to these matters. The additional height increase from the 48 m as approved, to 49.8m, would hardly be noticeable from nearby or even distant viewing points, and would have minimal impact in relation to visual bulk or overshadowing. In any case the height as amended is well below the 60m permissible under the Newcastle LEP control.*

*Although developments over 45 m in height come within the ambit of the State Government requirement to undergo the 'Design Excellence' competition process, it is considered unreasonable to enforce this policy in the subject case for the reasons that firstly the proposed changes to the approved DA are very minor and would be unnoticeable in the context of this large development, and secondly that the design of the development is of good quality, and would remain so. The Panel would support the lodging of an application to the Director-General for waiver of the requirement for a competition.*

#### *3. Density*

*The S.96 seeks a small increase in density from an FSR of 4.75:1 to 4.99:1. This would remain well within the LEP maximum of 6.0:1 and is acceptable.*

#### *6. Amenity*

*The proposed change of 24 studio units to 12 x one-bedroom units is acceptable in principle. However, there is one amenity concern in that 10 of the new units are proposed to have entirely internal studies, which is contrary to the recommendations of the ADG, and cannot be supported.*

*Other changes in relation to the ground floor plan are reasonable and acceptable, as a number of other minor design amendments.*



Amendments Required to Achieve Design Quality

The following issues should be addressed:-

- Internal studies in 10 of the proposed new one-bedroom units.

Summary Recommendation

1. S.96 Application is supported subject to the one concern raised above being resolved to the satisfaction of Council
2. A waiver of the requirement for a Design Excellence competition is strongly supported.

The amended final design satisfactorily addresses UDCG's recommendations for amenity.

The applicant has provided a letter from the NSW Government Architect endorsing a request to waive a design excellence competition for the proposal.

A full copy of the Group's comments from each meeting is provided in **Appendix D**.

**Apartment Design Guide (ADG) - Key "Rule of Thumb" Numerical Compliances**

The ADG provides benchmarks and guidelines for the design and assessment of residential apartment development. The following contains an assessment of the development against key controls of the ADG.

1. Separation Distances

*"Minimum separation distances for buildings are:*

- *up to four storeys/12 metres*
- *12 metres between habitable rooms/balconies*
- *9 metres between habitable/balconies and non-habitable rooms*
- *6 metres between non-habitable rooms"*
  
- *five to eight storeys/25 metres*
- *18 metres between habitable rooms/balconies*
- *12 metres between habitable/balconies and non-habitable rooms*
- *9 metres between non-habitable rooms"*
  
- *nine storeys and above (over 25m):*
- *24m between habitable rooms/balconies*
- *18m between habitable rooms and non-habitable rooms*
- *12m between non-habitable rooms*

Comment

There is no change to the approved separation distances for the development.

2. Size of Units

*Apartments are required to have the following minimum internal areas:*

- *studio apartment 35m<sup>2</sup>*
- *1 bedroom apartment 50m<sup>2</sup>*
- *2 bedroom apartment 70m<sup>2</sup>*
- *3 bedroom apartment 95m<sup>2</sup>"*

*Additional bathrooms increase the internal area by 5m<sup>2</sup>.*

### Comment

The majority of apartments comply with the requirements with the exception of:

- One three-bedroom unit on Level 5 has an area of 87.2m<sup>2</sup>. It is noted that the original consent approved this unit with an area of 84.7m<sup>2</sup>.
- Two two-bedroom units with two bathrooms are proposed at 71.5m<sup>2</sup>.

The units referenced above are corner apartments, with decks larger than the minimum requirements. In this regard, apartments are considered to provide acceptable amenity. Accordingly the modified proposal is supported.

### 3. Unit Configuration

<b>'Rule of thumb'</b>	<b>Officer comment</b>
<i>"Provide primary balconies for all apartments with a minimum depth of 2 metres for 1-2 bedroom and 2.4 metres for 3 bedrooms."</i>	The modified proposal remains acceptable.
<i>"in mixed use buildings: 3.3 metre minimum for ground floor retail or commercial and for first floor residential, retail or commercial to promote future flexibility of use"</i>	The modified proposal remains acceptable.
<i>"Measured from finished floor level to finished ceiling level, minimum ceiling heights are 2.7m for habitable rooms"</i>	The modified proposal remains acceptable.
<i>"The back of a kitchen should be no more than 8 metres from a window."</i>	The modified proposal remains acceptable.
<i>The width of cross-over or cross-through apartments over 15 metres deep should be 4 metres or greater to avoid deep narrow apartment layouts"</i>	The modified proposal remains acceptable.
<i>"Every habitable room must have windows in an external wall with a total minimum glass area of not less than 10% of the floor area of the room"</i>	The modified proposal includes one-bedroom with study apartments. The studies do not have direct access to windows. The Section 96 plans have been amended to have an oversized opening to improve the amenity of this room. The modified proposal is considered to be acceptable.

### 4. Solar Access

*"Living rooms and private open spaces for at least 70 percent of apartments in a development should receive a minimum of two hours direct sunlight between 9 am and 3 pm in mid-winter."*

*"A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter."*

Comment

The applicant has confirmed that the proposal complies with this requirement, with 95% of apartments achieving solar access requirements.

5. Storage

*"In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:*

*Studio apartments 4m<sup>3</sup>*

*1 bedroom apartments 6m<sup>3</sup> 2 bedroom apartments 8m<sup>3</sup> 3 bedroom apartments 10m<sup>3</sup>*

*At least 50% of the required storage is to be located within the apartment"*

Comment

The modified proposal remains acceptable.

6. Natural Ventilation

*"At least 60% of apartments are naturally cross ventilated"*

*"Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line"*

Comment

The applicant has advised that the use of vertical natural ventilation ducts allows for 94% of apartments to achieve the cross ventilation requirements. The modified proposal remains satisfactory in this regard.

7. Private Open Space

*"1 bedroom apartments 8m<sup>2</sup> with 2m minimum depth*

*2 bedroom apartments 10m<sup>2</sup> with 2m minimum depth*

*3 bedroom apartments 12m<sup>2</sup> with 2.4m minimum depth"*

Comment

The modified proposal remains acceptable.

8. Communal and Public Open Space

*"communal landscaping 25% of the site"*

*"communal open space receives 50% direct sunlight in mid-winter"*

Comment

The proposal is required to provide 519 m<sup>2</sup> of communal landscaping.

The following communal and public open spaces are included in the modified proposal:

- Community gardens on the Level 3 podium (361.7m<sup>2</sup>+97.6 m<sup>2</sup>)
- Community Room on Level 3 (63 m<sup>2</sup>)
- Roof terrace areas on Level 14 (140.8 m<sup>2</sup> + 52 m<sup>2</sup> + 46.5 m<sup>2</sup>)
- Community Room on Level 14 (46.8 m<sup>2</sup>)

In relation to the use of the spaces, the applicant has advised:

*The communal spaces are proposed to be utilised by the 'owners' of that building level, as specified in the 'Building & Apartment Key' box on the right-hand side of each floor plan (Note- CDMN = Catholic Diocese of Maitland Newcastle, SVP = St. Vincent de Paul). Therefore:*

- *Level 3 community facilities to be used by 'affordable housing' residents (Levels 3-8)*
- *Roof terrace areas to be used by 'general' residents (Levels 9-14)*

*This separation of use is required due to the separate tenancy / ownership of each of the floors. Note that each of the community areas have particular benefits, as follows:*

- *The Level 3 community facilities are much larger than the rooftop facilities, although they do not have the benefit of extensive views;*
- *The roof terrace areas are smaller in size than Level 3 areas, but benefit from sweeping rooftop views.'*

It is considered that the modified proposal remains acceptable.

#### 9. Deep Soil Zones

*"15% of the site as deep soil on sites greater than 1,500m<sup>2</sup>"*

#### Comment

The proposed landscaping is located on the podium and roof levels, and accordingly is considered to not be 'deep soil' landscaping. However, the proposal remains acceptable noting the constraints of the site and the style of the development, ie shop top housing development in a city centre location.

#### 10. Common Circulation Spaces

*"the maximum number of apartments off a circulation core to a single level is eight"*

#### Comment

On every residential floor of the development, the numbers of apartments off a circulation core exceed the maximum. As part of the original approval, this matter was specifically discussed by the UDCG and, while less than ideal, was generally considered to be acceptable in this instance. The modified proposal reduces the number of apartments on levels 3-5, which results in less non-compliance with this requirement.

### Concluding Comment

The proposal is acceptable having regard to SEPP 65, taking into consideration the comments received from the UDCG and the design criteria in the Apartment Design Guide.

### **State Environmental Planning Policy (Affordable Rental Housing) 2009**

The applicant has advised that the application is not seeking approval in accordance with this SEPP, in so far as the concessions for Affordable Rental Housing (ARH) are applicable.

The applicant has submitted that '*Affordable Housing*' is defined within the *Environmental Planning and Assessment Act 1979* as:

*means housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.*

SEPP ARH provides further framework surrounding the concept of ARH. However, as the proposal relates to '*shop top housing*' rather than a '*residential flat building*', it is considered that the provisions of the SEPP ARH do not strictly apply.

It is considered that the provisions relating to the imposition of conditions requiring the use of the applicable apartments for Affordable Housing are an appropriate mechanism for managing the requested exemption from Section 94A contributions.

### **State Environmental Planning Policy No.71 - Coastal Protection**

State Environmental Planning Policy No.71 does not apply to the Newcastle City Centre, as per clause 1.9 of the Newcastle Local Environmental Plan 2012.

### **State Environmental Planning Policy No 64—Advertising and Signage**

The application does not include approval of signage. A separate development application is to be submitted in this regard.

### **Regional Environmental Plan**

There are no regional environmental plans that are relevant to this proposal.

### **Newcastle Local Environmental Plan 2012**

#### *Clause 1.3 – Land to which Plan applies*

Newcastle Local Environmental Plan 2012 (LEP) applies to land identified upon the 'Land Application Map'. The subject development occurs within this area.

#### *Clause 2.3 Land Use Table - Zoning*

The site is zoned B3 Commercial Core under the LEP. The proposed development is defined as shop top housing under the LEP, which is permissible in the zone.

The modified development meets the objectives of the zone as it will encourage employment opportunities in an accessible location, will maximise public transport patronage and will assist in strengthening the role of the Newcastle City Centre as a regional business centre for the Hunter region.

#### *Clause 4.3 Height of Buildings*

The Height of Buildings Map has a maximum height limit for the site of 60m. The proposed development has a maximum height of 49.8m, which complies with this requirement.

#### *Clause 4.4 Floor Space Ratio*

The maximum floor space ratio for the site, provided for by this clause, is 6:1. The proposed development has a floor space ratio of 4.97:1, which complies with this requirement.

However, Clause 7.10 of the NLEP prevails over this clause (see below).

#### *Clause 5.5 Development within the Coastal Zone*

The proposed modifications do not result in any additional impacts with respect to coastal zone considerations. Accordingly, it is considered that the modified proposal remains acceptable.

#### *Clause 5.10 Heritage Conservation*

The subject site is not listed for its cultural heritage significance in Schedule 5 Part 1 of Newcastle Local Environmental Plan 2012. However, the site is located within a Heritage Conservation Area and is positioned in proximity to one listed heritage item.

The site is not specifically listed in the Newcastle Archaeological Management Plan 1997 or Newcastle Local Environmental Plan 2012 as an '*Archaeological Site*'. However, the site is in the vicinity of a listed Archaeological Site, being the former Palais Royale site at 684 Hunter Street Newcastle West.

The proposed modifications do not result in any additional heritage or archaeological impacts. Accordingly, it is considered that the modified proposal remains acceptable.

#### *Clause 6.1 Acid Sulfate Soils*

The proposed modifications do not result in any additional impacts. Accordingly, it is considered that the modified proposal remains acceptable.

#### *Clause 6.2 Earthworks*

The proposed modifications do not result in any additional impacts. Accordingly, it is considered that the modified proposal remains acceptable.

#### *Part 7 Newcastle City Centre*

The site is located within the Newcastle City Centre. There are a number of requirements and objectives for development within the City Centre, which includes

promoting the economic revitalisation of the City Centre, facilitating design excellence and protecting the natural and cultural heritage of Newcastle. The modified development will continue to meet the objectives of Part 7 of the LEP.

#### *Clause 7.3 Minimum Building Street Frontage*

The site is to have a minimum street frontage of 20m under clause 7.3. The frontage to both streets complies with this requirement, as the frontage to Hunter Street is 40.91m and the frontage to Steel Street is 50.77m.

#### Clause 7.4 Building Separation

This clause states:

*'A building on land to which this Part applies must be erected so that the distance from the building to any other building is not less than 24 metres at 45 metres or higher above ground level.'*

The additional units proposed on Level 14 do not impact the original assessment of this clause. The modified proposal remains acceptable.

#### Clause 7.5 Design Excellence

Newcastle City Council's Urban Design Consultative Group (UDCG) has reviewed the modified proposal. The UDCG are generally supportive of the application, as discussed under the comments on SEPP 65.

This clause specifies that buildings greater than 48 metres in height are required to undertake an architectural design competition. The original proposal was not greater than 48 metres, however the amended proposal is 49.8 metres in height. In this regard, the applicant has received a *'design competition waiver'* and accordingly this requirement does not apply.

The modified development continues to meet the design excellence criteria of the LEP and is of a high standard of architectural quality.

An Architectural Design Statement has been submitted with the application that addresses the design principles that have been used to formulate the proposal.

#### Clause 7.6 Active Street Frontages in Zone B3 Commercial Core

The modified design of the development remains acceptable having regard to the requirements of this clause.

#### Clause 7.7 Residential flat buildings in Zone B3 Commercial Core

The modified design of the development remains acceptable having regard to the requirements of this clause, which states:

*Development consent must not be granted to a residential flat building on land in Zone B3 Commercial Core unless it is a component of a mixed use development involving a permitted non-residential use.*

The ground floor of the proposed building is identified as commercial, which is a permissible use in the zone.

#### Clause 7.9 Height of Buildings

The site is not within 'Area A' or 'Area B' on the Height of Buildings map, and accordingly this clause does not apply.

#### Clause 7.10 Floor space ratio for certain development in Area A

The site is mapped as having an FSR of 6:1. However, the subject site is located within 'Area A' as shown on the Floor Space Ratio Map. In 'Area A' the maximum FSR for a building other than a commercial building on land with a site area of 1,500 square metres or more is reduced. In this instance, being a site with an FSR control of 6:1 (or greater), the resulting FSR is reduced to 5:1.

The proposal complies, as it has a FSR of 4.97:1.

#### **5.1.3.2 Section 79C(1)(a)(ii) any draft environmental planning instrument that is or has been placed on public exhibition**

##### Draft State Environmental Planning Policy Coastal Management

It is considered that the modified proposal remains satisfactory in respect of the provisions of Draft State Environmental Planning Policy (Coastal Management) 2016.

#### **5.1.3.3 Section 79C(1)(a)(ii) any development control plan (and section 94 plan)**

##### Newcastle Section 94A Development Contributions Plan 2009 (Contributions Plan)

The application attracts Section 94A Contributions pursuant to Section 80A(1) of the *Environmental Planning and Assessment Act 1979* and the Section 94A Development Contributions Plan.

The Section 96 modification seeks to amend some of the approved residential apartments to '*affordable housing*', and this has implications for the imposition of Section 94A contributions.

It is noted that Clause 25J Section 94A levy—determination of proposed cost of development of the *Environmental Planning and Assessment Regulation 2000* states:

*(1) The proposed cost of carrying out development is to be determined by the consent authority, for the purpose of a section 94A levy, by adding up all the costs and expenses that have been or are to be incurred by the applicant in carrying out the development...*

*(3) The following costs and expenses are not to be included in any estimate or determination of the proposed cost of carrying out development:*

*(l) the cost of any development that is provided as affordable housing,*



The *Environmental Planning and Assessment Act 1979* defines affordable housing as:

*housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.*

It is considered that the component of the development that comprises 'Affordable Housing' cannot be included in the calculation of Section 94A contributions.

It is acknowledged that the Contributions Plan references that:

*The following Directions under section 94E of the Environmental Planning and Assessment Act 1979 have been made by the Minister for Planning and therefore a section 94A levy cannot be imposed on development:*

- *for the sole purpose of affordable housing*

The Contributions Plan, however also references Clause 25J of the Regulations, and the Contributions Plan is subservient to the Act and Regulations (ie the above mentioned Clause 25J). Notwithstanding, the decision of *Antonakopoulus & Anor v Hurstville City Council [2013] NSWLEC 1216* provides guidance in circumstances where an application is partially affordable housing. In this decision, the Court was accepting that there were no contributions owed in relation to five units (out of six) due to those five units being 'affordable housing'.

The original approval included a condition requiring a 2% Section 94A contribution in accordance with the 'City Centre' requirements of the Contributions Plan (note that the application was determined prior to changes made to the Contributions Plan on 14 August 2017).

The original development application was valued at \$28,851,788, resulting in a contribution of \$577,035.76.

The applicant has provided a cost summary report for the 'affordable housing' portion of the proposal, which demonstrates an estimated cost of \$15,825,601. Accordingly, contributions for the remaining residential apartments and commercial tenancies would apply, to a value of \$260,523.00.

As discussed in this assessment report, the applicant has not lodged the application pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009, in so far as the concessions that this Policy provides. However, it is considered that the provisions relating to the imposition of conditions requiring the use of the applicable apartments for Affordable Housing are an appropriate mechanism for managing the requested exemption from Section 94A contributions. The applicant has submitted a 'Letter of Intent' from a Social Housing Provider to 'purchase and manage all (66) residential units on Levels 3-8 of approved DA 2016/00564 as Social and Affordable Housing for a period of 25 years'.

In relation to the applicant's request to seek deferred or periodic payments, it is noted that the Contributions Plan details a procedure for these requests. It is recommended that the Section 94A condition be amended to not preclude this process occurring, if the applicant seeks to pursue this process.

## Newcastle Development Control Plan 2012 Amendment - 3.03 Residential Accommodation

A draft amendment to the Newcastle Development Control Plan 2012 (DCP) has come into effect since the lodgement of the Section 96 modification. A savings provision is included in the DCP that states that any development application lodged but not determined will be determined as though the provisions of this section did not apply. On this basis, the application has been assessed under the previous provisions of the adopted DCP 2012.

### Newcastle Development Control Plan 2012

The modified proposal remains acceptable having regard to the DCP provisions. The main planning requirements of relevance to the modified proposal are discussed in detail below.

#### *3.10 - Commercial Uses*

This section requires that the ground level be activated through the provision of retail or business premises, minimising the use of solid walls that would affect visual connections.

The activation of the street frontages remains generally consistent with the original approved plans. It is noted that the original consent includes a condition regarding the fire boosters on Steel Street. The applicant has requested that this condition be deleted due to requirements limiting changes to the design. While it is acknowledged that the street activation to Steel Street is not ideal, the need to comply with the requirements for servicing is acknowledged.

#### *4.01 - Flood Management*

The modified proposal remains satisfactory having regard to this section.

#### *4.03 - Mine Subsidence*

The site is located within a proclaimed Mine Subsidence District and the Mine Subsidence Board (now known as Subsidence Advisory NSW) has forwarded their conditional approval for the modified proposal.

#### *4.04 - Safety and Security*

The applicant has submitted an updated Crime Risk Assessment Report in support of the application.

The activation of the street frontages remains generally consistent with the original approved plans. While it is acknowledged that the street activation to Steel Street is not ideal, the need to comply with the design requirements for servicing is acknowledged. The applicant has provided details of glazing to the residential entrances that improve surveillance.

The applicant has requested that the condition requiring CCTV be removed. Based on the scale of the development and the design of the Steel Street frontage, it is considered that the requirement for CCTV should remain a condition of consent.

Subject to conditions of consent, the modified proposal is considered to be acceptable.

#### *4.05 - Social Impact*

The applicant has submitted an Addendum to the original Social Impact Assessment, in support of the proposed modification.

It is considered that the proposed '*affordable housing*' will have positive social impacts, noting the central location of the proposal which has access to public transport and services.

#### *5.01 - Soil Management*

The modified proposal remains satisfactory having regard to this section.

#### *5.02 - Land Contamination*

The modified proposal remains satisfactory having regard to this section.

#### *5.04 - Aboriginal Heritage*

The modified proposal remains satisfactory having regard to this section.

#### *5.05 and 5.07 - Heritage Items and Heritage Conservation Areas*

As previously stated under clause 5.10 of the LEP, the site is not heritage listed for its cultural heritage significance in Schedule 5, Part 1 of Newcastle Local Environmental Plan 2012 and it is not an identified archaeological site. However it is located within a Heritage Conservation Area and located in the vicinity of adjoining heritage items.

It is considered that the modified proposal is acceptable having regard to the controls contained in the DCP relating to heritage.

#### *5.06 - Archaeological Management*

The modified proposal remains satisfactory having regard to this section.

#### *6.01 - Newcastle City Centre*

In relation to the modified proposal, key assessment matters are discussed in the below table.

<b>Criteria</b>	<b>Comment</b>
A1 - Street Wall Heights	The modified proposal remains acceptable in relation to street wall heights. The amended plans demonstrate that the podium level is 0.1 metres higher than approved, which is considered to create no significant impacts.
A2 - Building Setbacks	The DCP requires a nil front setback for the street wall height. The modified proposal generally complies with this requirement.

A3 - Building Separation	The subject site will not accommodate more than one building, and accordingly the provisions of this clause do not apply.
A4 - Building Depth and Bulk	The modified proposal remains acceptable.
A5 - Building Exteriors	The modified proposal adequately responds to the performance criteria of the DCP. The proposed materials and finishes have been considered by the UDCG.
A6 - Heritage Buildings	The modified proposal is considered to be acceptable in relation to heritage matters.
A7 - Awnings	The application provides awnings as required by the DCP.
A8- Design of Parking Structures	The modified proposal remains acceptable.
B1 - Access Network	The modified proposal remains acceptable.
B2 - Views and Vistas	The modified proposal is acceptable having regard to this section.
B3 - Active Street Frontage	The activation of the street frontages remains generally consistent with the original approved plans. It is noted that the original consent includes a condition regarding the fire boosters to Steel Street. The applicant has requested that this condition be deleted due to requirements limiting changes to the design. While it is acknowledged that the street activation to Steel Street is not ideal, the need to comply with the design requirements for servicing is acknowledged.
B4 - Addressing the street	It is considered that the modified proposal remains acceptable. The applicant has provided details of glazing to the entrances, to improve surveillance.
B5 - Public Art	The DCP requires that developments over 45m in height are to allocate 1% of the capital cost of the development towards public art for development.  A condition of consent requiring the allocation of 1% of the capital cost of the development towards public art is appropriate in this instance (refer to condition 35).
B6- Sun Access to Public Spaces	The building will have no impact on sun access to any significant public spaces in the City Centre. The proposal is acceptable having regard to this section.

### 7.01 - Building Design Criteria

The modified proposal remains acceptable having regard to the requirements of this section. It is noted that these requirements overlap with criteria elsewhere within the Newcastle DCP 2012 and SEPP 65.

### 7.02 - Landscape, Open Space and Visual Amenity

The proposal is identified as a 'category 3' development. In this regard, a suitably qualified Landscape Architect has prepared the submitted landscape plan.

The modified proposal remains acceptable having regard to the requirements of this section. It is noted that these requirements overlap with criteria elsewhere within the Newcastle DCP 2012 and SEPP 65.

### 7.03 - Traffic, Parking and Access

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

*With the loss of 8 units the traffic generation and on-site parking demand is likely to reduce by approximately 5 vtpd and 5 spaces respectively. This will have little if any impact on the local road network.*

The applicant has requested that the condition requiring 145 bicycles spaces be amended to reflect the original proposal of 95 spaces. It is however considered that the proposed condition should only be amended to reduce the bicycle parking as a result of the reduction in the number of units, which results in a requirement of 137 spaces. As noted in the original assessment report, there is provision for a reasonably sized communal bike storage rooms that could accommodate the requirement.

In relation to the allocation of parking spaces, the applicant has advised:

*'As shown on the amended plans, the Level 1 carpark is nominally provided for the 'general' residents (Levels 9-14) while Level 2 carpark is nominally to be used by the 'affordable housing' residents (Levels 3-8). Whether or not individual carparking spaces will be allocated to individual units is to be determined by the owners / managers.'*

The affordable housing units require 52.5 resident spaces and 10 visitor spaces. However, considering the variation provided to visitor parking (total 10 spaces) in the original assessment, on a pro-rata consideration (51%), the affordable housing units require 5 spaces, resulting in a total requirement of 57.5 spaces. Level 2 carpark contains 59 spaces, and is accordingly considered to be acceptable.

The remaining units require 58.1 spaces (noting the visitor car parking pro-rata). The Level 1 carpark contains 60 spaces, and accordingly is considered to be acceptable.

An additional condition ensuring the equitable allocation of car parking is recommended.

In relation to the applicant's request in relation to commercial parking, it is noted that the amended commercial spaces require 9.4 spaces, and 9 spaces are proposed on the modified ground floor. It is considered that this proposal is acceptable.

The applicant's request to modify the number of residential visitor spaces from 10 to 8 is not supported, noting that the standard requirement would be 24.4 spaces.

It is considered, subject to the recommended conditions, that the modified proposal is satisfactory in relation to the DCP parking requirements.

### 7.05 - Energy Efficiency

The modified application includes the required BASIX certificates and as discussed in the assessment is acceptable in relation to solar access and provisions in SEPP 65.

### 7.06 Stormwater and 7.07 Water Efficiency

The applicant has requested amendment to the imposed condition 12, advising:

*'The project engineers (Acor Consulting) undertook calculations in response to this condition. Results indicated that the use of rainwater for toilet cisterns, washing machines and irrigation (as required by Condition 12) would require a far greater roof area than approved to meet the estimated demand. Therefore, the system would likely bypass to the use of mains water 92% of the time providing ineffective.*

*Based on the above, revised advice from Council's engineer indicated irrigation of Level 3 vegetation and servicing of the 10 proposed units on Level 13 with rainwater would therefore be more appropriate. However, Acor noted that 'to provide rainwater for toilet flushing and irrigation on Level 13 we will require the provision of pumps, which will need electricity, maintenance and replacement in the future. With the 20kL capacity being fully utilised for the podium irrigation we see no benefit in using this water elsewhere, and note the environmental impact of adding pumps for its use in other areas.*

*Accordingly, it is submitted that this condition should be amended so that rainwater is required to be reticulated and reused for the purposes of 'irrigation' only.*

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

*I have reviewed the statement provided by ACOR and concur with the statement to some extent. It is understood that the pumping stormwater to multi-level apartments is difficult as pumps will need to be designed which may not be sustainable. However it is also noted that the water supply proposal seems to have changed from the original DA with dependence from mains supply from the street instead of the tanks that was initially provided. This means that mains water will come up to level 14. The roof design has been modified as well and there appears to be more catchment area. Estimates have been done for approx. 14 units (combination of 1 and 2 bedrooms) that have been proposed on levels 13 and 14 and it is evident that the 4 x 5,000L (total 20,000L capacity) will be sufficient to service these two levels of units.*

*The proposed tanks (4 x 5000L - total 20,000L capacity) are located on the podium level. In this regard, stormwater can therefore be used for landscaped areas (as noted in the statement by ACOR ) and to Units on Levels 13 and 14. The 20,000L rainwater tank capacity should be able to service the 14 Units on Levels 13 and 14 and for landscape purposes if possible.*

Based on the advice provided, the modified proposal is satisfactory in relation to stormwater management.

### 7.08 - Waste Management

The modified proposal remains satisfactory having regard to this section.

### 7.09 Outdoor Advertising and Signage

Signage is not part of the current application.

### 7.10 - Street Awnings & Balconies

The DCP requires the provision of an awning on Hunter Street and Steel Street. The modified proposal includes amendments to the proposed street awning to accommodate street trees. The modified proposal is considered to be acceptable subject to the standard conditions imposed on the original consent.

### 8.00 - Public Participation

The modified proposal was notified in accordance with this policy. The application was notified for period of 14 days and no submissions were received.

#### **5.1.3.4 Section 79C(1)(a)(iia) Planning agreements**

No planning agreements are relevant to the proposal.

#### **5.1.3.5 Section 79C(1)(a)(iv) the regulations (and other plans and policies)**

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act and Regulation 2000*. The modified application remains acceptable.

#### **5.1.3.6 Section 79C(1)(a)(v) Coastal management plan**

No Coastal Management Plan applies to the site or the proposed development.

#### **5.1.3.7 Section 79C(1)(b) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

The modified application remains acceptable. The site is located in the Newcastle City Centre in an area that is currently undergoing transformation. The development will have positive social and economic benefits. The modified proposal will increase the 'affordable housing' supply in the city centre, which provides ready access to public transport, employment and services.

#### **5.1.3.8 Section 79C(1)(c) the suitability of the site for the development**

The site is suitable for the proposed development as it is located within the Newcastle CBD and is in close proximity to the proposed Newcastle Light Rail (currently under construction) and the Wickham Transport Interchange. The site has been identified for development of this scale and is not affected by significant environmental constraints.

### **5.1.3.9 Section 79C(1)(d) any submissions made in accordance with this act or the regulations**

The modified application was notified in accordance with the Regulations. No submissions were received.

### **5.1.3.10 Section 79C(1)(e) the public interest**

The development is in the public interest as it will allow for the orderly and economic development of the site. It will allow for the creation of residential accommodation in a range of apartment sizes and the proposed modification will create additional '*affordable housing*' accommodation.

## **6. CONCLUSION**

Subject to a number of new/modified conditions as recommended in the attached draft condition schedule, the modified proposal is considered to be acceptable against the relevant heads of considerations under section 79C of the *Environmental Planning and Assessment Act 1979*.

## **7. RECOMMENDATION**

- A. THAT the description of the development be modified from:

*'Erection of 14-storey shop top housing development (128 residential units and ground floor commercial units), two levels of parking (136 spaces) and associated works*

to:

*'Erection of a 15-storey shop top housing development (54 residential units, 66 affordable housing units, two ground floor commercial units), two levels of parking (128 spaces) and associated works'*

- B. THAT the Hunter and Central Coast JRPP, as the consent authority, determine to grant a modified development consent to DA2016/00654 (2016HCC036) for '*Erection of a 15-storey shop top housing development (54 residential units, 66 affordable housing units, two ground floor commercial units), two levels of parking (128 spaces) and associated works*' at 643 Hunter Street Newcastle West, pursuant to Section 96(2) of the EP&A Act, subject to the modified conditions in **Appendix A**.



## **Appendix A - Conditions to modify details of consent**

### **New condition 120A**

For 10 years from the date of the issue of the Occupation Certificate:

- (i) the 66 dwellings proposed to be used for the purposes of affordable housing will be used for the purposes of affordable housing, and
- (ii) all accommodation that is used for affordable housing will be managed by a registered community housing provider.

A relevant restriction is to be registered, before the date of the issue of the Occupation Certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the *Conveyancing Act 1919*.

### **New condition 120B**

The Level 1 carpark is to be allocated to Levels 9-14, and the Level 2 carpark is to be allocated to Levels 3-8. Details of the required allocation are to be approved prior to the issue of any Occupation Certificate.

### **Amendment to Condition 2**

#### **Existing Condition:**

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.

<b>Plan No / Supporting Document</b>	<b>Reference / Version</b>	<b>Prepared by</b>	<b>Dated</b>
Site Plan - A001	Rev D	EJE Architecture	22.02.17
Ground Level Floor Plan - A102	Rev N	EJE Architecture	22.02.17
Level 1 Floor Plan - A103	Rev H	EJE Architecture	22.02.17
Level 2 Floor Plan - A104	Rev G	EJE Architecture	22.02.17
Level 3 Floor Plan - A105	Rev L	EJE Architecture	22.02.17
Level 4 Floor Plan - A106	Rev H	EJE Architecture	22.02.17
Level 5 Floor Plan - A107	Rev K	EJE Architecture	22.02.17

Level 6 Floor Plan - A108	Rev J	EJE Architecture	22.02.17
Level 7 Floor Plan - A109	Rev G	EJE Architecture	22.02.17
Level 8 Floor Plan - A110	Rev G	EJE Architecture	22.02.17
Level 9 Floor Plan - A111	Rev G	EJE Architecture	22.02.17
Level 10 Floor Plan - A112	Rev G	EJE Architecture	22.02.17
Level 11 Floor Plan - A113	Rev G	EJE Architecture	22.02.17
Level 12 Floor Plan - A114	Rev G	EJE Architecture	22.02.17
Level 13 Floor Plan - A115	Rev G	EJE Architecture	22.02.17
Plant Level Plan - A116	Rev H	EJE Architecture	22.02.17
Roof Level Plan - A117	Rev G	EJE Architecture	22.02.17
North Elevation - A501	Rev H	EJE Architecture	22.02.17
East Elevation - A502	Rev H	EJE Architecture	22.02.17
South Elevation - A503	Rev G	EJE Architecture	22.02.17
West Elevation - A504	Rev G	EJE Architecture	22.02.17
Section A-A & B-B - A505	Rev D	EJE Architecture	22.02.17
Street Elevations - Coloured - A511	Rev D	EJE Architecture	22.02.17
Schedule of external finishes - A1016	Rev E	EJE Architecture	22.02.17
Historic Archaeological Assessment		Umwelt	Jan 2017
Aboriginal Cultural Heritage Assessment Report		Umwelt	Feb 2017
Heritage Impact Assessment	Rev A	EJE Heritage	May 2016
Traffic Impact Assessment	Ver03	Seca Solution	25.08.16
Landscape Design Report	Rev B	Terras Landscape Architects	13.05.16
Ground Level Landscape Plan	Rev C	Terras Landscape Architects	24.11.16
Landscape Level 3 Plan	Rev C	Terras Landscape Architects	24.11.16

Landscape Roof Plan	Rev B	Terras Landscape Architects	13.05.16
Planting Palette	Rev B	Terras Landscape Architects	13.05.16
Statement of Environmental Effects		deWitt Consulting	May 2016
Erosion and Sediment Control Plan	Rev A	Northrop	03.05.16
Stormwater Management and Levels Plan	Rev A	Northrop	03.05.16
Stormwater Management and Levels Plan - roof/podium level	Rev A	Northrop	03.05.16
Acoustic Assessment		Spectrum Acoustics	13.05.16
Geotechnical Desk Study Assessment		Coffey	23.05.16
Site Minimisation and Management Plan		deWitt Consulting	May 2016

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.

Proposed Condition:

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.

<b>Plan No / Supporting Document</b>	<b>Reference / Version</b>	<b>Prepared by</b>	<b>Dated</b>
Site Plan - A001	Rev K	EJE Architecture	02.11.17
Ground Level Floor Plan - A100	Rev AA	EJE Architecture	18.10.17
Level 1 Floor Plan - A101	Rev U	EJE Architecture	04.12.17
Level 2 Floor Plan - A102	Rev T	EJE Architecture	04.12.17
Level 3 Floor Plan - A103	Rev W	EJE Architecture	04.12.17

Level 4 Floor Plan - A104	Rev T	EJE Architecture	04.12.17
Level 5 Floor Plan - A105	Rev U	EJE Architecture	04.12.17
Level 6 Floor Plan - A106	Rev T	EJE Architecture	18.10.17
Level 7 Floor Plan - A107	Rev R	EJE Architecture	18.10.17
Level 8 Floor Plan - A108	Rev R	EJE Architecture	18.10.17
Level 9 Floor Plan - A109	Rev Q	EJE Architecture	18.10.17
Level 10 Floor Plan - A110	Rev Q	EJE Architecture	18.10.17
Level 11 Floor Plan - A111	Rev Q	EJE Architecture	18.10.17
Level 12 Floor Plan - A112	Rev Q	EJE Architecture	18.10.17
Level 13 Floor Plan - A113	Rev Q	EJE Architecture	18.10.17
Level 14 Floor Plan - A114	Rev R	EJE Architecture	04.12.17
Roof Level Plan - A115	Rev P	EJE Architecture	04.12.17
North Elevation - A201	Rev N	EJE Architecture	06.11.17
East Elevation - A202	Rev P	EJE Architecture	13.10.17
South Elevation - A203	Rev M	EJE Architecture	06.11.17
West Elevation - A504	Rev M	EJE Architecture	06.11.17
Section A-A - A301	Rev J	EJE Architecture	18.10.17
Section B-B - A302	Rev C	EJE Architecture	18.10.17
Schedule of external finishes - A1016	Rev E	EJE Architecture	22.02.17
Historic Archaeological Assessment		Umwelt	Jan 2017
Aboriginal Cultural Heritage Assessment Report		Umwelt	Feb 2017
Heritage Impact Assessment	Rev A	EJE Heritage	May 2016
Traffic Impact Assessment	Ver03	Seca Solution	25.08.16
Landscape Design Report	Rev B	Terras Landscape Architects	13.05.16
Ground Level Landscape Plan	Rev C	Terras Landscape Architects	24.11.16

Landscape Level 3 Plan	Rev C	Terras Landscape Architects	24.11.16
Level 14 General Arrangement Landscape Plan	Rev B	Terras Landscape Architects	13.10.17
Planting Palette	Rev B	Terras Landscape Architects	13.05.16
Statement of Environmental Effects		deWitt Consulting	May 2016
Erosion and Sediment Control Plan	Rev B	Northrop	05.10.17
Stormwater Management and Levels Plan	Rev B	Northrop	05.10.17
Stormwater Management and Levels Plan - roof/podium level	Rev B	Northrop	05.10.17
Acoustic Assessment		Spectrum Acoustics	18.10.17
Geotechnical Desk Study Assessment		Coffey	23.05.16
Site Minimisation and Management Plan		deWitt Consulting	May 2016

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.

### **Amendment to Condition 3**

#### **Existing Condition:**

The development shall be undertaken in accordance with the conditions of Subsidence Advisory NSW (formerly known as Mine Subsidence Board) dated 19 June 2015 (as received by Council on 17 June 2016).

#### **Proposed Condition:**

The development shall be undertaken in accordance with the conditions of Subsidence Advisory NSW (formerly known as Mine Subsidence Board) dated 15 May 2017 (referenced within an undated letter which refers to amended plans received by Subsidence Advisory NSW on 6 October 2017).

**Amendment to Condition 6****Existing Condition:**

A total monetary contribution of **\$577,035.76** 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 a Construction Certificate in respect of the proposed development.

**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.
- b) The City of Newcastle S94A Development Contributions Plan 2009 permits deferred or periodic payment of levies in certain circumstances. A formal modification of this condition will be required to enter into a deferred or periodic payment arrangement. Refer to the s94A Development Contributions Plan 2009.
- c) 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:

<b>Indexation quarters</b>	<b>Approx release date</b>
September	Late October
December	Late January
March	Late April

June	Late July
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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.

Proposed Condition:

A total monetary contribution of **\$260,523** 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 a Construction Certificate in respect of the proposed development.

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.
- b) The City of Newcastle S94A Development Contributions Plan 2009 permits deferred or periodic payment of levies in certain circumstances. Deferred and periodic payments shall be processed in accordance with the procedure outlined in the s94A Development Contributions Plan 2009.
- c) 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:

<b>Indexation quarters</b>	<b>Approx release date</b>
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.

### **Amendment to Condition 9**

#### Existing Condition:

On-site parking accommodation is to be provided for a minimum of 134 cars, 17 motor cycles and 145 bicycles. A minimum of 12 spaces including a designated service vehicle space is to be allocated for the commercial premises and a minimum of 10 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 a Construction Certificate application.

#### Proposed Condition:

On-site parking accommodation is to be provided for a minimum of 128 cars, 17 motor cycles and 137 bicycles. A minimum of 9 spaces including a designated service vehicle space is to be allocated for the commercial premises and a minimum of 10 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 a Construction Certificate application.

### **Amendment to Condition 10**

#### Existing Condition:

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. Any additional parking for those with a disability after compliance with this Condition and Condition 8 shall be such to not



increase the overall provision of 134 cars, but may reduce the quantum of parking below this to comply with accessible parking requirements. To the extent of any inconsistency with Condition 9, this condition shall prevail. Full details are to be included in documentation for a Construction Certificate application.

**Proposed Condition:**

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. Any additional parking for people with a disability, after compliance with this Condition and Condition 8, shall be such to not increase the overall provision of 128 cars, but may reduce the quantum of parking below this to comply with accessible parking requirements. To the extent of any inconsistency with Condition 9, this condition shall prevail. Full details are to be included in documentation for a Construction Certificate application.

**Amendment to Condition 12**

**Existing Condition:**

Roof water from the proposed new works is to be directed to the podium level rainwater tank (minimum size 20m<sup>3</sup>) and detention tank (minimum size 32m<sup>3</sup>) and being reticulated to the building to 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 Construction Certificate application.

**Proposed Condition:**

Roof water from the proposed new works is to be directed to the podium level rainwater tanks (total capacity 20m<sup>3</sup>) and detention tank (minimum size 32m<sup>3</sup>) and being reticulated to the new toilet cisterns and cold water washing machine taps on Level 13 and for landscaped areas where possible, as indicated on the concept stormwater management plan prepared by Northrop Consulting Engineers Job No. NL140263 Dwg. No's C02DA & C03DA Rev B dated 05/10/2017, 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 the 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 Construction Certificate application.

### **Amendment to Condition 14**

#### **Existing Condition:**

All stormwater runoff from the proposed development being managed in accordance with the requirements of Section 7.06 'Stormwater' of Newcastle Development Control Plan 2012, as indicated on the concept stormwater management plan prepared by Northrop Consulting Engineers Job No. NL140263 Dwg. No's C02DA & C03DA Rev A dated 03/05/2016. Full details are to be included in documentation for a Construction Certificate application.

#### **Proposed Condition:**

All stormwater runoff from the proposed development being managed in accordance with the requirements of Section 7.06 'Stormwater' of Newcastle Development Control Plan 2012, as indicated on the concept stormwater management plan prepared by Northrop Consulting Engineers Job No. NL140263 Dwg. No's C02DA & C03DA Rev B dated 05/10/2017. Full details are to be included in documentation for a Construction Certificate application.

### **Amendment to Condition 45**

#### **Existing Condition:**

The proposed Fire Boosters to Steel Street shall be relocated southwards to be within the services area or reduced in width to the greatest extent possible, in order to increase the active frontage to Steel Street, with details to be included in the application for a Construction Certificate.

#### **Proposed Condition:**

Delete condition 45.

### **Amendment to Condition 46**

#### **Existing Condition:**

The building shall not exceed 48m in height, (to a maximum of RL50.30m AHD), as measured using the definition of Building Height in NLEP 2012. Compliance with this condition is to be demonstrated prior to the issue of a Construction Certificate. Certification of this shall occur prior to the issue of an Occupation Certificate for any units on Level 12 of above.

Proposed Condition:

The building shall not exceed 49.8m in height, (to a maximum of RL52.1m AHD), as measured using the definition of Building Height in NLEP 2012. Compliance with this condition is to be demonstrated prior to the issue of a Construction Certificate. Certification of this shall occur prior to the issue of an Occupation Certificate for any units on Level 12 of above.

**Amendment to Condition 109**

Existing Condition:

Appropriate acoustic treatment is to be implemented in accordance with the recommendations set out in the report prepared by Spectrum Acoustics dated 13 May 2016. Written final certification confirming the recommended acoustic treatment has been implemented in accordance with the requirements of the above report is to be submitted to the Principal Certifying Authority and Council prior to the issue of an Occupation Certificate.

Note: The acoustic consultant may need to be involved during the construction process in order to ensure final certification is achieved.

Proposed Condition:

Appropriate acoustic treatment is to be implemented in accordance with the recommendations set out in the report prepared by Spectrum Acoustics dated 25 October 2017. Written final certification confirming the recommended acoustic treatment has been implemented in accordance with the requirements of the above report is to be submitted to the Principal Certifying Authority and Council prior to the issue of an Occupation Certificate.

Note: The acoustic consultant may need to be involved during the construction process in order to ensure final certification is achieved.

**Amendments to Advice K**

*Note: Street numbering to be updated in accordance with amended plans.*