

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

Panel Reference	2016HCC035
DA Number	DA 2016/00528
Local Government Area	City of Newcastle Council
Proposed Development	Demolition of existing buildings, erection of 13 storey mixed use development including 76 residential units, 3 ground level commercial units, 5 floors of parking and associated site works.
Street Address	Lot 1 DP 24105 No. 990 Hunter street Newcastle West
Applicant/Owner	Brancourt Nominees 101/8 Parramatta Street Cronulla
Date of DA lodgement	18 May 2016
Number of Submissions	Nil
Recommendation	Approval
Regional Development Criteria (Schedule 4A of the Act)	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 \$20,616,764 including GST.
List of All Relevant s79C(1)(a) Matters	<p>Environmental planning instruments: s79C(1)(a)(i)</p> <ul style="list-style-type: none"> • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Urban Renewal) 2010 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy No. 55 - Remediation of Land • State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development • Newcastle Local Environmental Plan 2012 (LEP) <p>Development Control Plan: s79C(1)(a)(iii)</p> <ul style="list-style-type: none"> • Newcastle Development Control Plan 2012 (DCP) • Section 94A Development Contributions Plan 2009
List all documents submitted with this report for the panel's consideration	<p>Appendix A - Recommended Conditions of Consent</p> <p>Appendix B - Architectural Plans</p> <p>Appendix C - Landscape Plans</p>

	Appendix D - Civil Plans Appendix E - Applicant's SEPP65 Statement Appendix F - Urban Design Consultative Group Minutes Appendix - G - State Government Agency Responses Appendix H - Applicant's Clause 4.6 Variation Request Appendix I - Construction Management Plan
Report by	Tony Tuxworth Coastplan Consulting
Report date	

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?
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP **Yes / No / Not Applicable (Has been addressed in the body of the assessment report)**

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)?
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions **Yes / No / Not Applicable**

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

Proposed Development

The development application seeks approval for;

- Demolition of all existing structures and buildings, including commercial building;
- Construction of a building having 1 basement level and 13 storeys above, comprising;
 - 3 commercial premises at ground level
 - 76 residential apartments ranging from 35 m² studio to 175 m² four bedroom apartment on levels 1 to 12, including 10 studio units, 24 x one bedroom units, 33 x 2 bedroom units, 4 x three bedroom units and 4 x four bedroom units.
 - a car park at basement level and split level to level 3 in the south eastern end of the building, providing a total of 93 car spaces, 76 bicycle lockers, 7 motorbike spaces, waste storage rooms and residential storage lockers.
- Landscaping works throughout the building including on the green wall to the car park façade
- Removal and replacement of 3 existing trees and;
- Ancillary works as detailed on the proposed drawings.

Referral to Joint Regional Planning Panel

The proposal is referred to the Joint Regional Planning Panel for determination pursuant to Part 4 'regional development' of *State Environmental Planning Policy (State and Regional Development) 2011* as the proposal is listed within Schedule 4A of the *Environmental Planning and Assessment Act 1979*, being general development over \$20 million. The application submitted to Council nominates the value of the project as \$20,616,764.

Permissibility

The applicable planning instrument is the Newcastle Local Environmental Plan 2012 (NLEP2012). The subject site is zoned B4 Mixed Use Zone and is located within the West End precinct of the Newcastle City Centre.

The proposed uses, which are defined as shop top housing and commercial premises (retail or business premises), are permissible with consent within the B4 zone. The proposal is not integrated development.

Consultation

The application was publicly notified (via letters to adjoining and nearby owners and occupiers) and exhibited in a newspaper notice from 30 May to 14 June 2016 in accordance with Clauses 8.00.01 'Public Participation: Notification of Development Applications' and 8.00.04 'Public Participation: Advertised Development' of *Newcastle Development Control Plan (NDCP) 2012*.

No public submissions were received in relation to the proposal.

The application was referred to the following external agencies;

- Roads & Maritime Services
- Rail Corp NSW.

Key Issues

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

- Objection under Clause 4.6 NLEP 2012 regarding the floor space ratio and minimum lot size requirements
- The impact of the Railway on the new development in particular acoustically and setback from the boundary required by Sydney Trains
- Is the development acceptable in terms of Urban Design having regard to the unusual shape (triangular/wedge shape) of the land.
- The separation of the development from the adjoining site to the east
- Traffic generation in relation to the existing road network

Recommendation

- A. THAT the Hunter and Central Coast JRPP support the Clause 4.6 variation to Clause 7.10A (Floor Space Ratio) of Newcastle Local Environmental Plan 2012; and
- B. THAT the Hunter and Central Coast JRPP, as the consent authority, approve development consent to DA2016/00528 (2016HCC035) for the demolition of existing buildings, erection of 13 storey mixed use development including 76 residential units, 3 ground level commercial units, 5 floors of parking and associated site works at 990 Hunter Street Newcastle West, pursuant to Section 80 of the EP&A Act subject to the conditions in Appendix A.

1. Background

A formal Pre-DA meeting was held with the applicant and Council staff on 18 February 2015.

The applicant presented the design of the development to the Council's Urban Design Consultation Group (UDCG) on 22 July 2015. The panel made several recommendations and each has been addressed in the final design.

The development application DA2016/00528 was lodged with Council on 16 May 2016.

The development application was publically notified Saturday 28 May 2016 in the Newcastle Herald for 14 days.

Notification letters sent to nearby owners and occupiers on 30 May 2016.

The application was referred to the Roads & Maritime Services on 24 May 2016.

The application was referred to Rail Corp NSW on 24 May 2016.

Coastplan Consulting engaged as independent planning consultant June 2016.

Amended application referred to UDCG on 26 October 2016.

Amended plans submitted to Council on 29 May 2017 to address issues raised by Sydney Trains in relation to the setback to the boundary and by Councils UDCG.

2. Site and Locality Description

The subject site is Lot 1 DP 24105 No 990 Hunter Street, Newcastle West. The site is a triangular shape between the Newcastle railway line and Hunter Street.

The site has a total area of 1,416m² with a frontage of 80 metres to Hunter Street and a rear boundary to the railway corridor of 75 metres. The site currently contains a single storey commercial building with a basement area with two separate (vacant) tenancies.

The lot adjoining immediately to the east is privately owned and currently is occupied by a commercial premises and is also within the B4 Mixed Use Zone.

The site is situated in the western precinct of the Newcastle City Centre. This area of Newcastle City is recognised as the western gateway into Newcastle City Centre, and is currently an area of unrealised potential. The Wickham urban village precinct is located on the northern side of the railway line.

The Wickham Railway Station is approximately 600 metres to the east of the site and Hamilton Railway Station is approximately 700 metres to the west of the site.

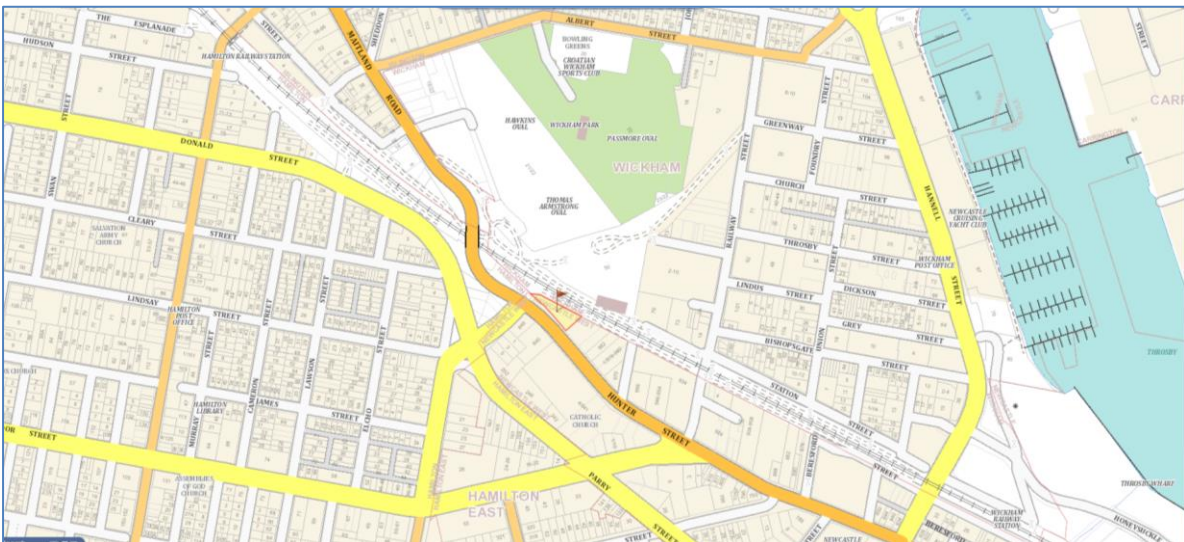
The site is located below road level and falls from the south-west to the east with a fall of approximately 4 metres.

The Hunter Street frontage comprises a concrete footpath, kerb and guttering with two street trees and a light pole. The site has two existing vehicle crossings and 1 hour limited on-street car parking.

The existing development along on Hunter Street is low scale commercial development. On

the opposite side of Hunter Street is located St Joseph's Convent and Sacred Heart Church and School which is identified as Heritage Item in Schedule 5 of the Newcastle LEP.

Figure 1 & 2 below shows the location of the site and the general location.



3. Project Description

The subject application seeks approval for the demolition of all existing structures and buildings on the site and the construction of a 13 storey mixed commercial and residential building and ancillary car parking.

The new building will have one basement level for car parking, 3 commercial premises at ground level, 76 residential apartments on levels 1 to 12 and a car park at basement level and on 9 split levels in levels ground to level 3 on the south eastern end of the building providing 93 car spaces, 76 bicycle spaces, 7 motorbike spaces, waste storage rooms, and resident storage lockers. The proposal will be stepped from 10 storeys at the north western end of the building to 13 storeys at the south eastern end of the building.

The development will be sited 900mm from the north eastern boundary adjoining the rail line,

up to the north western boundary and the south eastern boundary and up to the Hunter street alignment for the first 4 floors (level ground to level 3) and then setback 6m from the front boundary and 5.2m from the south eastern boundary for levels 4 to 13.

Excavation for the basement of the building will result in a depth of 3.5 metres below natural ground level in the west to nil at the natural ground level in the north eastern corner of the site.

The natural fall of the site supports an at grade access to the building from Hunter Street and a basement without excessive site excavation.

Vehicle access will be provided to the building from Hunter Street and pedestrian access is via a central lobby to the residential accommodation and to the three commercial premises at street level. Lift access is available from the car park levels to the central lobby.

The vehicle access provided from Hunter Street is by 6 metre wide vehicle crossing designed to allow combined entry and exit point for the site. A two-way ramp provides internal access from ground floor level to the basement parking level and a single-lane with ramp with traffic signal controls between the ground floor and upper floors of the car park. Car parking for the commercial premises along with the visitor's parking is located in the basement and ground levels. All resident parking is provided for in the upper levels of parking.

The 12 storeys above the commercial units and car parking at ground floor level accommodate 76 residential apartments. The units are a mix of 10 studio, 24x1, 33x2, 4x3 and 5x4 bedroom apartments. Access for disabled is facilitated throughout the building, and three internal lifts are provided. The apartments are designed having regard to SEPP 65 Design Quality of Residential Apartment Development and the Apartment Design Guide.

The applicant has included separate reports in relation to SEPP 65 and the Apartment Design Guide prepared by Michael Carr Architects.

Each apartment has a private balcony and there are communal terraces provided on levels 4, 10, 11 and 12, as well as a common room and gymnasium on Level 10.

A waste storage room for the commercial and residential components of the building is provided at ground level.

A Traffic Impact Assessment prepared by SECA Solution has been submitted with the application.

It is proposed to dispose of roof water and drainage from the car park levels to the existing downstream storm water system available to the north-eastern corner of the site. On Site Detention (OSD) will be provided with a capacity of 27m³.

A Stormwater Management plan has been prepared by Lyndsay Dynan Consulting Engineers and was submitted with the application.

A Landscape Design prepared by Mara Consulting has also been submitted with the application.

A tree is located at the western end of the lot and there are two street trees along the Hunter Street frontage of the site. The proposed development results in the building to the property boundary and provision of new vehicle access to the site which will require the removal of these trees.

The Landscape Design submitted incorporates suitable replacement tree plantings within the site as well as appropriate planting that complements the architecture and affords a level of amenity for the occupants. The design also contributes to the visual impact of the building incorporating a screen (green wall) to be constructed around the car park of the building.

4. Consultation

The application was publically notified from 30 May 2016 until 14 June 2016 in accordance with the Newcastle Development Control Plan 2012. It should be noted that the notification period included a public holiday resulting in an extra day being included.

Notification included a notice in the Newcastle Herald on Saturday 28 May 2016 and notification letters were sent to nearby owners and occupiers on 30 May 2016.

No public submissions were received in relation to the proposal

5. Referrals

Statutory Referrals

The application was referred to the Roads & Maritime Services under the State Environmental Planning Policy (Infrastructure) 2007 as the proposal involves traffic generating development as identified in Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007. RMS have provided a response on 15 August 2016 in support of the application subject to council imposing a number of conditions of consent.

The application was referred to Rail Corp NSW under the provisions of Clauses 85 and 86 of State Environmental Planning Policy (Infrastructure) 2007.

Transport Sydney Trains (now responsible for the rail line) have provided concurrence to the proposal subject to compliance with a number of conditions which have been included in the recommended conditions of the development consent. Condition A1 ix from Sydney Trains require the following:

ix. revised architectural drawings containing a minimum 1.5m setback from the rail corridor. Sydney Trains will consider a reduction in the 1.5m setback to a minimum of 900mm subject to the applicant demonstrating to Sydney Trains that the development can be constructed and maintained without use of, or access to the rail corridor land. In this regard a Construction Methodology and Management Plan shall be submitted and approved by Sydney Trains prior to the issue of any construction Certificate.

In this regard the applicant has amended the plans to show a 900mm setback from the boundary to the rail corridor and a Construction Management Plan has been prepared by Sterlings to indicate that the building can be constructed at a setback of 900mm without any encroachment onto the rail corridor.

Whilst this document has not been submitted to and approved by Sydney Trains it demonstrates that the condition can be complied with and therefore the amended proposal sited 900mm from the rail corridor is considered reasonable subject to the approval from Sydney Trains.

Internal Referrals

Internal referrals were made to the following:

- Engineering Services – Traffic and Parking
- Engineering Services - Stormwater and Flooding
- Environmental Services - State Environmental Planning Policy 55 (Contamination) and Noise.
- Food Surveillance – Fit out of proposed commercial premises
- House Numbering –Proposed Unit numbering
- Heritage Advisor – Heritage Impacts
- Economic Development – Economic Impacts
- Building Surveyor – BCA.

The comments received from these referrals are discussed in the assessment report.

6. Planning Assessment

Environmental Planning and Assessment Act 1979

The proposed development is subject to the provisions of the Environmental Planning and Assessment Act 1979 (EPA Act 1979).

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 application is not an Integrated Development pursuant to Section 91 of the EPA Act. The proposal requires approval from the Mines Subsidence Board (MSB). However, as the conditional approval from MSB was received by the applicant prior to the lodgement of the application, the proposal is not considered to be 'integrated development' pursuant to Section 91 of the EP&A Act.

Mine Subsidence Compensation Act 1961

The land subject of the application is within a mine subsidence district. The applicant has included a set of plans stamped by Mine Subsidence Board (MSB) and a letter from the Board stating that they had not placed any restriction on the erection of improvements on the site.

Section 79C Evaluation

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

a) i) 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. This includes applications for development over \$20 million in value. The application is submitted to the Hunter and Central Coast Joint Regional Planning Panel for determination as the

value of works is over \$20 million.

State Environmental Planning Policy No. 55 - Remediation of Land

The development proposes the excavation of the land on the site and State Environmental Planning Policy No. 55 applies.

The applicant has provided a Phase 1 report from WSP/Parsons Brinckernhoff in relation to the site. It states that the site represents a LOW to MODERATE risk of environmental liability.

The application was referred to Council's Senior Environmental Protection Officer. The officer's comments are as follows;

The applicant has lodged a Preliminary Site Investigation prepared by WSP Parsons Brinckerhoff dated April 2016. Following a desktop study, Section 3 of the Assessment outlines the sources of potential contamination at the site. The Assessment states "Based on site topography and site inspection, the land appears to have been subject to some filling on the northern boundary, and possibly cutting on the eastern side to form the basement beneath the main building, and the storage area beneath the eastern car park. The source of fill, where present, is uncertain".

As the proposed development is for a more sensitive land use (i.e. commercial to residential) and in accordance with Section 7 of State Environmental Planning Policy 55 - Remediation of Land, Council needs to be satisfied that the land is suitable for the proposed use. Therefore Council will require a detailed contamination assessment.

It is worth noting that Council records also indicate that DA 1986/344 was approved for a motorcycle servicing and repair workshop at 3/990 Hunter St Newcastle West. The applicant should also be advised that Council may require the involvement of a Site Auditor to review or sign off on any contamination reports or RAPs submitted as per Council's Contaminated Land policy outlined in section 5.02 of the DCP. This investigation is to satisfy Council that the land is suitable (or can be made suitable after remediation) for the purpose for which the development is proposed. The contamination assessment is to be carried out by a suitably qualified consultant and is required to be submitted to Council prior to further review of this application.

The applicant has subsequently submitted a letter prepared by WSP Parsons Brinckerhoff dated 6 July 2016 detailing that due to the extensive amount of earth works required at the site a contamination assessment may not be necessary. Following the submission of the additional information, Council's Senior Environmental Protection Officer advised:

The applicant submitted a letter prepared by WSP Parsons Brinckerhoff dated 6 July 2016 detailing that due to the extensive amount of earth works required at the site a contamination assessment may not be necessary. The RSU notes from the plans prepared by Lindsay Dynan dated 8 July 2016 excavations will range from 2 - 3m below ground level, the RSU anticipates given the extensive earth works that will occur on site, the material being classified and disposed of to a licenced facility along with the low level of risk associated with any potential contamination a detailed contamination assessment will not be required. The applicant has proposed that following the excavation works a validation report will be undertaken to demonstrate the sites suitability. This will be addressed by an appropriate condition of consent.

The Council's Regulatory Service Unit (RSU) notes from the plans prepared by Lindsay Dynan dated 8 July 2016 excavations will range from 2 - 3m below ground level, the RSU anticipates given the extensive earth works that will see the material classified and disposed of to a licenced facility along with the low level of risk associated with any potential contamination a detailed contamination assessment will not be required.

The applicant has proposed that following the excavation works a validation report will be undertaken to demonstrate the sites suitability. This will be addressed by an appropriate condition of consent.

State Environmental Planning Policy (Urban Renewal) 2010

This policy aims to facilitate the orderly and economic development of sites in and around urban renewal precincts. The site is identified in the Newcastle Potential Precinct Map and the development has a capital investment value of over \$5 million. Development consent cannot be granted unless the consent authority is satisfied that the development is consistent with the objectives of developing the precinct for urban renewal and does not restrict or prevent:

- higher density housing or commercial or mixed development;
- future amalgamation of sites; or
- access to future public transport in the precinct.

The proposed development will meet the objectives of the SEPP as it will provide for higher density mixed use development in an area that will have easy access to public transport in the future. The site does not restrict future development opportunities in the area.

SEPP Building Sustainability Index: BASIX 2004

The SEPP BASIX 2004 is applicable to the subject development proposal. The Statement of Environmental Effects (SEE) submitted with the application states that the proposed development complies with the BASIX requirements and satisfies the relevant targets for water, energy and thermal comfort.

A BASIX Certificate for the residential component of the development is included with the application and the plans have been stamped by the Assessor.

SEPP 71 Coastal Protection

SEPP71 does not apply to the city centre.

SEPP 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 (constituted under Part 3 of the Policy), the design quality of the development when evaluated in accordance with the design quality principles and the Apartment Design Guide (ADG).

Council does not have a constituted Design Review Panel under the SEPP. However, Council has an Urban Design Consultative Group (UDCG) who provided comments on the application.

The application was considered by the UDCG prior to completion of the final design and submission of the development application and on a number of occasions during the assessment process to address the issues raised at the initial meeting.

The architect, Michael Carr Architects Pty Ltd have provided a Design Verification Statement and have addressed the nine (9) Design Quality Principles of SEPP 65 in the “Design Report” dated May 2017. The architect’s table addresses the Design Quality Principles is reproduced in Appendix E.

The following discussion relates to compliance with the key design criteria contained in Part 3 (Siting the Development – Visual Privacy) and Part 4 (Amenity) of the Apartment Design Guide (ADG). Clause 6A of the SEPP requires compliance with these requirements and if a development control plan contains provisions that specify requirements, standards or controls in relation to a matter to which this clause applies, those provisions are of no effect.

Visual Privacy:

Design Criteria 3F of the ADG specifies that minimum separation distances from the building to the side and rear boundary are as follows:

Height of Building	Habitable Rooms & Balconies Setback	Non-habitable Rooms Setback
Up to 12m (4 storeys)	6m	3m
Up to 25m (5 to 8 storeys)	9m	4.5m
Over 25m (9+ storeys)	12m	6m

The proposal does not comply with these requirements in that the south eastern end of the building is sited approximately 6m from the boundary which complies up to Level 4, however, does not comply from Level 5 to 12. This has been discussed with the UDCG and the plans were amended as suggested by the UDCG to address the issue of overlooking from the bedrooms at this end of the building. The recommendation was to provide an angled wall arrangement with windows facing the north east to reduce any overlooking. Justification has been provided by KDC Planning in relation to the variation to the above requirements. This recommended angle wall provides a satisfactory outcome.

The setback of the private open space area for Unit 4.6.C2 in the north-eastern corner of the building provides a 1.7m high courtyard wall that is sited approximately 3.5m from the south eastern boundary which is less than the 6m required. This is the only unit within this corner of the building that encroaches on the setback to the south eastern boundary and is supported on the basis that it provides a larger and functional private open space area on the south eastern corner of this unit without impacting significantly on any future development on the adjoining property to the south.

Communal Open Space:

Design criteria 3D of the ADG specifies that the communal open space should have a minimum area equal to 25% of the site and should achieve 2 hours of sunlight between 9.00am and 3.00pm on 21 June. Communal open spaces within the site includes an area of 150m² on the southern side of the building at 4th floor level, an area of 116m² on the western end of the building at 10th floor level, an area of 35m² on the western end of the building at 11th floor level and an area of 30m² on the western end of the building on the 12th floor level.

The total area provided is 331m², which is 23% of the site being less than the 25% required. It is noted that the communal open space also includes an enclosed area in gymnasium and common room at 10th floor level which if included in the communal open space would increase the communal area so that it was compliant with the requirements of the ADG. The

communal open space areas provided will achieve in excess of 2 hours of sunlight between 9.00am and 3.00pm on 21 June.

Deep Soils Zones:

Design Criteria 3E of the ADG specifies that the sites between 650m² and 1500m² must have a deep soil zone of 7% of the site with a minimum dimension of 3m. The proposed development does not comply with the requirements of this design criteria in that a small area on the north east corner of the site provides an opportunity for deep soil planting which is approximately 1% of the site. This is not uncommon for development within the B4 Mixed Use zone, as residential development in this zone is limited to shop top housing which comprises commercial development at ground floor level which, together with access to the site and parking, tends to occupy all of the ground floor level. Further the planning controls allow for development in this zone to extend to the boundary. Landscaping is provided at the podium levels and within the communal open space areas in accordance with the landscape plan submitted with the application which is considered to provide a satisfactory level of landscaping to the development.

Natural ventilation, solar, daylight access and room apartment depth:

Design Criteria 4A of the ADG specifies that at least 60% of the apartment should be naturally cross ventilated. All of the 76 units are naturally cross ventilated. This equates to 100% of the total development, meeting the natural ventilation criteria which exceeds the recommended 60%.

Criteria 4B of the ADG specifies that living rooms and private open space of at least 70% of the apartments must receive a minimum of 2 hours direct sunlight between 9.00am and 3.00pm on 21 June. The SEPP 65 Compliance Report prepared Michael Carr Architects indicates that in excess of 70% of the apartments comply with the requirements of this design criteria. However it appears that 50 of the 74 units (65%) would meet this requirement which is less than the 70% required. The ADG also recommends that a maximum of 15% of apartments on the building should receive no direct sunlight between 9.00am and 3.00pm midwinter. There are no units within the development that do not receive at least 2 hours of sunlight between 9.00am and 3.00pm midwinter. As all units will achieve some level of direct sunlight between 9am and 3pm mid-winter, the variation to the requirements of the ADG is considered acceptable.

Ceiling Heights:

Minimum 2.7 ceiling heights are proposed for all habitable rooms in compliance with design criteria 4C of the ADG.

Apartment Size and Layout:

Design Criteria 4D of the ADG specifies the minimum internal size of 30m² for a studio apartment, 50m² for 1 bedroom apartment, 70m² for 2 bedroom apartments and 90m² for 3 bedroom apartments with an increase of 5m² for a second bedroom. All of the units within the proposed development comply with the requirements of this design criteria.

Private Open Space and Balconies:

The minimum balcony area specified in Design Criteria 4E of the ADG are 4m² for studio, 8m² for 1 bedroom, 10m² for 2 bedroom, 12m² for 3 bedroom. All of the apartments within the proposed development comply with the requirements of this design criteria.

Common Circulation:

The maximum number of units services off a single lift for a building of 10 storeys and over is 40. The proposed development complies with this design criteria.

Storage:

Design Criteria 4G of the ADG recommends a minimum required storage area of 4m² for studio apartments, 6m² for 1 bedroom apartments, 8m² for 2 bedroom apartments and 10m² for 3 bedroom apartments. The proposed development complies with the requirements by either the provision of storage areas within the individual units or within the storage areas at basement floor level.

Clause 30 of the SEPP sets out certain standards that the Consent Authority cannot use as grounds to refuse an application subject to satisfying the following design criteria;

- (a) *if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide.*

Newcastle City Council's DCP parking rate requires a total of 83 spaces for a development within Newcastle City Centre and Renewal Corridors. The RMS Guide to Traffic Generating Developments also requires a total of 65 spaces for the proposal being a high-rise residential unit development in a sub-regional centre. The development proposes 93 car parking spaces. It is considered that this complies with the DCP & the RMS Guide satisfying this Clause of SEPP 65.

- (b) *if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide.*

The internal area of each apartment is equal to or greater than those specified within the SEPP. The development provides a mix of apartments from studios through to four bedroom units.

- (c) *if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in the Apartment Design Guide.*

All apartments have ceiling heights of 2.7metres and greater.

- (2) *Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:*
- (a) *the design quality principles, and*
 - (b) *the objectives specified in the Apartment Design Guide for the relevant design criteria.*

Adequate regard has been given to the quality principles and the objectives of the Apartment Design Guide for relevant design criteria.

It is considered that the proposal is acceptable having regard to SEPP65.

State Environmental Planning Policy 2007 (Infrastructure)

The relevant clauses of this Policy are set out below.

Clause 86 – Excavation in, above or adjacent to rail corridors

This clause applies to development that involves the excavation to a depth of at least 2m below existing ground level on land:

- (a) within or above a rail corridor, or
- (b) within 25m (measured horizontally) of a rail corridor. or
- (c) within 25m (measured horizontally) of the ground directly above an underground rail corridor.

The land subject to the application proposes excavation to a depth of more than 2 metres below the existing ground within 25 metres of the rail corridor. The application was referred to Railcorp NSW for concurrence.

Sydney Trains who now are responsible for rail infrastructure have provided concurrence to the proposed subject to compliance with a number of conditions which have been included in the conditions of the development consent. The requirements of the conditions relating to the setback of the building have been addressed in a previous section of this report.

Clause 87 - Impact of rail noise or vibration on non-rail development

This clause applies to development for any of the following purposes that is on land in or adjacent to a rail corridor and that the consent authority considers is likely to be adversely affected by rail noise or vibration:

- (a) a building for residential use,
- (b) a place of public worship,
- (c) a hospital,
- (d) an educational establishment or child care centre.

The Consent Authority must take into consideration any guidelines that are issued by the Director-General for the purposes of this clause and published in the Gazette.

The development proposed includes residential use the consent authority must be satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

- (a) in any bedroom in the building-35 dB(A) at any time between 10.00 pm and 7.00 am,
- (b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway)-40 dB(A) at any time.

The applicant has included in the development application a Rail and Road Noise Impact Assessment by Muller Acoustic Consulting. The SEE states the following;

The development has been designed with consideration of the impact of rail noise, and is accompanied by a Rail and Road Noise Impact Assessment by Muller Acoustic Consulting.

The Assessment finds that some apartments require upgraded windows to satisfy the acceptable noise criteria. Accordingly, the design incorporates double-glazing to windows.

Council's Senior Environmental Protection Officer has considered the report and advises:

The RSU notes the proposed development is in close proximity to a rail line along with a busy road. A theoretical acoustic assessment was carried out by Muller Acoustic Consulting dated April 2016 to support the proposed development. The RSU notes the acoustic assessment has been assessed against the Development near Rail Corridors and Busy Roads – Interim Guideline for rain noise and vibration.

The acoustic assessment demonstrates that the proposed development falls outside of the buffer for a detailed acoustic assessment, notwithstanding rail noise and vibration was considered in the assessment.

The acoustic assessment demonstrated that provided the glazing recommendations as set out in Section 6 are applied, adverse impacts associated rail and traffic noise would be mitigated and compliance with internal noise level requirements will be achieved. This will be addressed by an appropriate condition of consent.

A condition has been included which requires that the construction of the building must be in accordance with the requirements of the acoustic report.

Clause 101- Development with frontage to classified road

The objectives of this clause is:

- (a) *to ensure that new development does not compromise the effective and ongoing operation and function of classified roads; and*
- (b) *to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*

The proposal is satisfactory having regard to this clause.

Clause 104 - Traffic Generating Development

In regards to clause 104 Traffic Generating Development a residential flat building incorporating 75 or more dwellings adjacent to a classified road is defined as traffic generating development.

The application was referred to Road and Maritime Services in accordance with the requirements of the SEPP. RMS provided a response on 15 August 2016 which indicated that it has reviewed the information provided and raises no objection to or requirements for the proposed development subject to council's consideration of a number of comments. These comments have been addressed in the conditions of development consent.

Regional Environmental Plan

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

Newcastle Local Environmental Plan 2012

Clause 2 Zoning and Land Use Table

The subject land is located in a B4 Mixed Use Zone under the Newcastle Local Environmental Plan 2012.

The proposal is defined as Shop Top Housing with commercial units (business or retail premises) at street level and residential accommodation above. The development is permissible in the subject Zone.

In relation to addressing the objectives of the zone the SEE states the following;

The proposal meets the objectives of the zone as it integrates compatible land uses within the site in a location that is highly accessible by public transport, cycling and walking networks.

It is considered that the proposal is consistent with the zone objectives.

Clause 2.7 Demolition requires development consent

The proposal seeks Consent for the demolition of improvements on the site.

Clause 4.3 Height of Buildings

The clause along with the Building Heights map provides the maximum building height as 60m. The proposed building has a height of 47.6m measured from ground level to the highest point of the building in compliance with the standard.

Clause 4.4 - Floor Space Ratio

This clause along with the FSR map provides the maximum Floor Space Ratio as 6:1.

The subject land has a site area of 1,416m² and the proposed development has a floor area of 6957m² with a FSR of 4.9:1 in compliance with the standard. However Clause 7.10A of the LEP requires a proposal to have a maximum FSR of 3:1 if the land is less than 1,500m² therefore the proposal does not comply with the FSR requirements.

Clause 4.6 Exceptions to development standards

The development application includes a formal submission under clause 4.6 for a variation to the development standard within clause 7.10A of NLEP 2012. The standards relates to the minimum lot size requirement and floor space ratio.

This clause enables consent to be granted to a proposal even though it may contravene a development standard. As noted above, the proposed development does not strictly conform to the lot size and FSR development standard applicable under clause 7.10A which requires a maximum FSR of 3:1 for sites less than 1500m².

The subject site has an area of 1416m² and proposes a FSR of 4.6:1

In support of the proposed variation, the applicants have lodged a formal request for an exception to the development standard. In assessing the proposal against the provisions of clause 4.6, it is noted that:

1. *Clause 7.10A is not expressly excluded from the operation of this clause; and*
2. *The applicant has prepared a written request seeking Council vary the development standard and demonstrating that:*
3. *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
4. *there are sufficient environmental planning grounds to justify contravening the development standard.*

The following provides an extract of the applicant's request:

There are no objectives expressed within clause 7.10A. However, the intent of the clause is to ensure that building density, bulk and scale makes a positive contribution towards the desired built form in the locality. In this regard, the development has demonstrably achieved high quality design and amenity; a positive contribution to the urban landscape, the streetscape and the environment; and also achieves

compliance with all applicable planning provisions and policies. In particular, the design accords with the design principles of SEPP 65 and achieves all of the specified design objectives within the SEPP 65 Apartment Design Guide. The shortfall of 84 square metres in the site area, to meet the 1500m² requirement has therefore not hindered the attainment of high quality design outcome on the site, and still achieves the intended outcome of clause 7.10A.

The area forms the Hunter Street gateway to the Newcastle City Centre and as such should provide a visually pleasing entrance which establishes the city centre. Due to the areas significance, consistency of the proposed development with the vision for the area the neighbouring sites must be taken into account. It is noted that the height and scale of the building was highly supported by the UDCG, especially as this is the first lot of land within the city centre. It is described as providing a reference that you have arrived in the city centre and that it provides a clear separation from other areas.

The site has only one shared boundary with an adjoining private property, which has a large site area in excess of the 1,500 square metres threshold and as such this adjoining property is subject to a maximum FSR of 6:1. Given that the neighbouring property can easily be developed to 6:1 it would diminish the sense of arrival at the city centre should this site be restricted to a 3:1 FSR.

Allowing for the variation to the subject standard will reduce the scale difference and lead to an improved contrast between the development and any future development on the neighbouring site.

Due to the sites location on a sharp corner lot wedged between a rail corridor and the Pacific Highway while also having only one adjoining property the impact of the variation is considered to be minimal. The development will not encumber any future development on the neighbouring site or their ability to achieve its 6:1 FSR threshold.

As the variation would contribute to the future desired visual form for the gateway if the Newcastle City Centre and would have minimal impact on the future development of the neighbouring site the strict application of the Clause 7.10A FSR restriction is considered to be unreasonable and unnecessary in the case.

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

- a) It adequately addresses the matters required to be demonstrated by clause 4.6(3); and
- b) 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 *B4 Mixed Use* zone in which the development is proposed to be carried out.
- c) The Secretary's concurrence to the exception to the floor space ratio development standard, as required by clause 4.6(4)(b) of the Newcastle LEP 2012, is assumed, as per Department of Planning circular PS 08-003 of 9 May 2008.

Based on the written justification provided by the applicant, and the comments received from the UDCG, it is considered that 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.

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.

Clause 5.5 Development within the coastal zone

The subject development is located within the coastal zone and as such must demonstrate compliance with the matters for consideration in the clause. The applicant states that the proposal is compliant with these objectives in particular not limiting or restricting public access to or along foreshore areas nor impacting any views to foreshore areas.

The development proposes a storm water management system that detains and filters the storm water prior to discharge to Council's drainage system.

Clause 5.6 – Architectural Roof Features

This clause sets out the circumstances whereby a development may include an architectural roof feature that exceeds the height limits set by clause 4.3. The proposed development does not have any such features and does not exceed the maximum height.

Clause 5.9 Preservation of trees or vegetation

This clause requires Consent for tree removal. The proposed development seeks to remove one existing tree from the site and two street trees located on the Hunter street frontage. The application SEE states the following;

due to the proximity of the proposed development and the inability to retain these trees effectively during construction works. The landscape design incorporates suitable replacement trees, as well as substantial on-structure planting.

The tree removals sought are acceptable given the circumstances on the site and the replacement program is set out in the Landscape Design submitted with the development application

Clause 5.10 - Heritage Conservation

This clause applies to the proposal as the subject lot is within the Newcastle City Centre Heritage Conservation Area. A listed heritage item is located on the opposite side of Hunter Street known as;

General heritage item no. 503 - Saint Joseph's Convent and Sacred Heart Church and School at 184 Hunter Street Newcastle West.

The applications SEE states the following;

The proposed development will not affect the significance of the listed heritage buildings, nor detract from their setting or obstruct any view of these items from public places.

As the site is within the general Newcastle Heritage Conservation Area, the specific design controls identified within DCP 2012 apply. It is noted that a Heritage Impact Assessment has not been lodged with the application but the issue has been addressed in some detail in the SEE which is considered to adequately address the requirements of the LEP. Council's internal referral indicates that the proposed development is not likely to impact on the existing heritage items and the heritage conservation area, advising:

It is interpreted that the existing building has little cultural heritage merit and does not meaningfully contribute to the significance of the Conservation Area. Based on the material and evidence available, it is advised that no objections are raised to the demolition of the existing building.

In respect of the replacement development, it is considered that the proposal is an unusual response having regards the surrounding built environment. The proposal is of a form, scale and massing generally compatible with the aspirational intent of Council strategic landuse planning direction and from an urban design perspective, it will sit reasonably comfortably within this section of the Hunter streetscape. It is also considered that the proposed palette of materials, colours and textures are complimentary with the tones and hues evident of the area.

Overall it is considered that the proposed development will not diminish the cultural significance of the surrounding Heritage Conservation Area or impact on any heritage listed sites within close proximity.

No objections are raised to the proposed demolition of the existing building provided that the works are undertaken strictly in accordance with the details as set out in the DA plans, SoEE and the recommendations of the SoHI.

It is considered that the proposal is acceptable having regard to heritage considerations.

Clause 6.1 - Acid Sulfate Soils

This clause sets objectives for identified development to ensure that it does not expose acid sulfate soils creating possible environmental damage. The site is identified as having potential acid sulfate soils class 4.

In regards to class 4 land development consent is required for work more than 2m below the natural ground surface and for works by which the water table is likely to be lowered more than 2m below the natural ground surface.

The applicant states an Acid Sulfate Soils Management Plan shall be prepared for the site and implemented during demolition and excavation works. This will be required by a condition of development consent.

Part 7 - Newcastle City Centre Locality Specific Provisions

The development standards in Part 7 of Newcastle LEP 2012 apply to land within the Newcastle City Centre. The proposal is located in the western precinct of the Newcastle City Centre.

Clause 7.1 The objectives are as follows:

- (a) *to promote the economic revitalisation of Newcastle City Centre,*
- (b) *to strengthen the regional position of Newcastle City Centre as a multi-functional and innovative centre that encourages employment and economic growth,*
- (c) *to protect and enhance the positive characteristics, vitality, identity, diversity and sustainability of Newcastle City Centre, and the quality of life of its local population,*
- (d) *to promote the employment, residential, recreational and tourism opportunities in Newcastle City Centre,*
- (e) *to facilitate the development of building design excellence appropriate to a regional city,*

- (f) *to encourage responsible management, development and conservation of natural and man-made resources and to ensure that Newcastle City Centre achieves sustainable social, economic and environmental outcomes,*
- (g) *to protect and enhance the environmentally sensitive areas and natural and cultural heritage of Newcastle City Centre for the benefit of present and future generations,*
- (h) *to help create a mixed use place, with activity during the day and throughout the evening, so Newcastle City Centre is safe, attractive, inclusive and efficient for its local population and visitors a like.*

The proposal meets the objectives of the clause in that:

- The proposed development for shop top housing will promote the economic revitalisation of Newcastle City Centre and encourages employment and economic growth.
- The residential accommodation within the proposed development will enhance the vitality, identity, diversity and sustainability of Newcastle City Centre, and the quality of life of its local population.
- The proposal will promote the employment, residential, recreational and tourism opportunities in Newcastle City Centre.
- The design of the development is of a high standard appropriate to a regional city and will achieve sustainable social, economic and environmental outcomes.
- The proposal will not impact on any environmentally sensitive areas and natural and cultural heritage items.
- The proposed development will help create a mixed use place, with activity during the day as a result of the commercial units at ground floor level and the additional residential accommodation.

Clause 7.4 – Building Separation

This clause requires buildings to be erected to maintain a minimum distance from any other building of 24m at a height of 45m or more above ground level. A plan has been submitted Michael Carr Architect Drawing No: A3-05 which indicates that there are no buildings within 24m from any other existing building.

The subject building is compliant as it proposes a height of 47.6metres and there are no buildings within 24m.

Clause 7.5 – Design Excellence

The clause states that Consent cannot be granted for the erection of a building within the City Centre without consideration of whether the proposal demonstrates design excellence.

The Development Control Plan lists the issues to be addressed by a proposal in this regard and they include;

- Heritage,
- Streetscape constraints,
- Location of any towers in terms of separation, setbacks and urban form,
- Bulk, massing and scale
- Street frontage heights,
- Environmental impacts
- The principles of ecologically sustainable development,
- The impact proposed improvements to, the public domain.

The proposal exhibits a high standard of design and materials that are suited to the locality.

The proposed development adequately addresses the public domain with suitable landscaping, improvements to public infrastructure and consideration of access points to maintain public connectivity.

The application was referred to the Newcastle Urban Design Consultative Group and the design is deemed acceptable.

In relation to the development the submitted SEE states the following;

- *The impact of the proposed development on heritage is negligible*
- *The proposed building does not impede development of the neighboring site.*
- *The building has a distinct base middle and top and is well balanced.*
- *The street wall height is consistent with the desired built form for the location;*
- *The design is sustainable and does not present any adverse shadowing, wind or reflectivity concerns.*
- *The design incorporates ecologically sustainable building design elements including apartment orientation for natural light, ventilation and aspect; active transport options; building materials with good thermal mass; native and hardy vegetation selection; soar screening and planting on the building.*
- *The design incorporates suitable facilities to encourage active transport use.*
- *The design proposes improvements to the public domain including tree and garden planting and pavement improvements; and contributes to an active and vibrant street front.*

Approval cannot be granted to certain development under this Plan without an architectural design competition being held in relation to the proposal. The applicable criteria relating to this application is the height limit of 48m.

The proposed development has a height of 47.6m and so does not exceed 48m building height and as such a design competition is not required.

Clause 7.10A Floor space ratio for certain other development

This clause requires a proposal to have a maximum FSR of 3:1, if the land is less than 1,500m². The subject land is 1,416m² and as such this clause applies.

The clause also allows for a maximum FSR of 6:1 under the LEP if the site is greater than 1500m².

The proposed development has a FSR of 4.6:1 which does not comply with the requirements of Clause 7.10A of the LEP, as the site has an area less than the minimum requirement of 1,500m². However the applicant is seeking a departure from the standard in Clause 7.10A under in accordance with Clause 4.6 of the LEP.

The Development Application includes a written exception to the development standard. This has been addressed under the heading Clause 4.6 above.

a) ii) 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

The proposal is acceptable having regard to this draft SEPP.

a)iii) Section 79C(1)(a)(ii) any development control plan (and section 94 plan)

Newcastle Development Control Plan 2012 (NDCP 2012)

The following areas of the DCP 2012 have been identified as applying the to the proposal;

3.0 - Land Use Specific Provisions

3.05 – Residential Flat Buildings

This section requires compliance with SEPP 65 and Apartment Design Guide. The application includes detailed reports on both SEPP 65 and ADG demonstrating compliance with the principles.

3.10 - Commercial Uses

This section outlines the objectives of active street frontages and reference to the Newcastle Urban Design Consultative Group. The application was referred to the UDCG and the design was deemed satisfactory. Review of the proposed plans indicates that three commercial/retail units are included at ground level to Hunter Street in line with the objectives of the clause. This allows for easy pedestrian access along the street and to and from the building. It is also noted that a Safer by Design report submitted outlines compliance with design guidelines. Referral to the NSW Police Crime Prevention Officer was not required.

4.0 - Risk Minimisation Provisions

4.01 - Flood Management

Council's Engineers have considered the proposal in relation to flooding and advise:

The site is subject to flooding. A Flood certificate has been obtained from Council - FL2016/00081.

The 1% AEP level is noted as 2.80m AHD and PMF Level is noted as 5.90m AHD. The site is not a flood storage area and the risk to life is noted to be L2 which is low risk. The recommended floor level is 3.30m AHD.

The proposed basement carpark entry has been designed to be set at 5.90m AHD which is at the PMF level. The ground floor and retail areas including lift and stair areas have also been set at 5.90m AHD.

The proposed building level on the ground floor at the lowest point is at the driveway entry location. The driveway access is from the southern end of the property from Hunter St frontage. The driveway entry level at the street has been set at 5.50m AHD which is above the recommended level of 3.30m AHD. The remaining retail areas have been set at 5.90 AHD and 6.30m AHD.

The basement parking may be subject to PMF flooding and generally points of floodwater entry along the building façade will need to be protected to PMF level to mitigate the risks for inundation of flood waters. It is therefore recommended that the building façade be designed to allow any openings to the basement parking to be set above 5.90m AHD.

The development complies with Council guidelines and is acceptable and conditions are recommended.

The proposal is considered to be acceptable in relation to flooding.

4.03 – Mine Subsidence

The subject land is located within a mine subsidence district and as such this section is applicable. The applicant has included in the development application a letter from the Mine Subsidence Board (MSB) advising they have no requirements. Further, the plans have been stamped by the MSB.

4.04 – Safety and Security

This section requires a development to be designed to address Crime Prevention and Safety through a set of designed controls. It is noted that a Crime Risk Assessment report has been included with the Development Application which details how the design of the proposal complied with the DCP clause 4.04.01. Referral to the NSW Police Crime Prevention Officer was not required.

4.05 – Social Impact

The objectives of this section requires a proposal to address how the proposal achieves socially sustainable development and to ensure that consultation is undertaken with the community and relevant stakeholders. Reference is made to the requirements of the “*Social Impact Assessment Policy for Development Applications, 1999*” *The City of Newcastle*.

The SEE states the following regarding this control;

The proposed development will have a positive impact within the community as it will provide additional, well-designed and varied housing opportunities within the Newcastle City Centre locality. The proposed apartments have been designed in accordance with the Crime Prevention Through Environmental Design (CPTED) standards, and afford a mix of apartment types and sizes, including adaptable and accessible apartments, from 35m² studio size to 157m² four-bedroom size. The design of the development optimizes amenity for the future occupants, is a highly accessible site for alternate modes of transport; and is compatible with the desired future character of the West End precinct.

A Crime Prevention Through Environmental Design (CPTED) Assessment has been prepared. It is considered that the proposed development will positively contribute to the diversity of the West End precinct and will not result in any negative social impacts on the community.

Assessment of the proposal indicates the application has satisfactorily addressed the criteria of the DCP and the “*Social Impact Assessment Policy for Development Applications, 1999*” *The City of Newcastle*.

5.0 - Environmental Provisions

5.01 Soil Management

This clause is applicable to the proposal is it involves site excavation (disturbance) between 250m² and 2,500m².

In relation to the excavation the site falls 4m from the south west to the east. Excavation for

the basement of the building will result in a depth of 3.5m below natural ground level in the west to nil at the natural ground level, in the north- eastern corner of the site. The proposed development involves the demolition of the existing commercial building on the site and all existing improvements made to the site.

The applicant has included in the development application the following reports that address the DCP:

- Storm water Management Plan,
- Erosion & Sediment Control Plan,
- Waste Management Plan

No objection was raised by the NCC staff following the appropriate referrals.

It is considered that the proposal adequately addresses the DCP in managing the disturbance of the site subject to conditions of consent.

5.02 – Land Contamination

Reference is made to the assessment comments made in relation to SEPP55. The proposal is considered to be acceptable in relation to contamination.

5.03 – Tree Management

This section deals with the preservation of trees and vegetation in relation to development proposals and requires Consent for tree removal. The proposed development seeks to remove one existing tree from the site and two street trees located on the Hunter street frontage. The application SEE states the following;

due to the proximity of the proposed development and the inability to retain these trees effectively during construction works. The landscape design incorporates suitable replacement trees, as well as substantial on-structure planting.

The tree removals sought are acceptable given the circumstances on the site and the replacement program is set out in the Landscape Design submitted with the development application.

5.04 - Aboriginal Heritage

An assessment in accordance with the Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (DECCW, 2010) has indicated that an Aboriginal Heritage Impact Permit (AHIP) is not required for this proposed development. Reference to the Aboriginal Heritage Information Management System confirmed there are no sites of Aboriginal significance recorded on the site.

The proposal is acceptable having regard to this section.

5.05 – Heritage Items

This clause relates to land listed as a Heritage Item under the Newcastle LEP. The subject land is not a listed heritage item but Section 5.07 is applicable as the subject land is located within the Newcastle City Centre Heritage Conservation Area. Further to this a listed heritage item is located on Hunter Street on the opposite side of the street as follows; General heritage item no. 503, being Saint Joseph's Convent and Sacred Heart Church and

School, at 184 Hunter Street Newcastle West.

While a Heritage Impact Statement has not been included in the application, the SEE has satisfactorily addressed the DCP requirements.

5.06 - Archaeological Management

The site is not listed as an 'Archaeological site' in accordance with the LEP.

5.07 – Heritage Conservation Areas

The subject land is located within the Newcastle Heritage Conservation area. While a Heritage Impact Statement has not been included in the application, the SEE has satisfactorily addressed the DCP requirements.

6.0 - Locality Specific Provisions

6.01.03 - Newcastle City Centre

The subject development is the entry point to Newcastle West and City Centre. The proposed development comprises of low scale commercial buildings. The Newcastle LEP acknowledges this area's potential and encourages new development.

The proposal meets the desired future character and form as set out by this section of the DCP in particular the development will address the existing streetscape and address the Principles for the West End Precinct in that:

- The existing streetscape adjoining the site will be enhanced with improved landscaping and pavements.
- The design of the development has recognised the Principles for the West End Precinct by addressing the rail corridor and safety by design elements in that the building offers good casual surveillance and visual connectivity.

6.01 - General Controls

A1 - Street Wall Heights

The DCP requires a street wall height of 16m and above this height is required to be setback 6m. The proposal does not comply with these requirements in that it has a street wall height of 14m and above this height the development is set back 6m.

While this is a departure from the DCP, the assessment has afforded significant weight to the UDCG comments, which did not object to this variation.

A2 - Building Setbacks

The DCP relates to side and rear setbacks for commercial buildings. The commercial area at ground floor level will comply with the requirements of the DCP. The setback requirements for the development are outlined in the Apartment Design Code and are addressed under this section of the assessment report.

A3 - Building Separation

This control applies to development sites that accommodate more than one building. The proposal is for one individual building and the applicant has included in the application a

detailed SEPP 65 and Apartment Design Guideline Report. The compliance with the provisions of SEPP 65 and the ADG are addressed in a previous section of this report.

A4 – Building Depth and Bulk

This control endeavors to ensure new buildings have good internal amenity. The proposal has an average depth of less than 18m however the overall depth of the building exceeds 18 at the south eastern end which as a depth of approximately 21m at the widest point. Due to the tapered shape of the building the area that exceeds 18m in depth is limited to a small section of the building and does not result in any significant additional bulk or affect the apartment design.

A5 – Building Exteriors

The applicant has included a materials sample board and report with the development application. The proposal has been referred to the UDCG who initially raised objection to the materials proposed, however this has been addressed and is now considered to be satisfactory.

A6 – Heritage Buildings

This item has been discussed previously in the report, and is considered to be satisfactory.

A7 – Awnings

The development proposes a continuous street awning to ensure pedestrian amenity in accordance with the requirements of this section.

A8 – Design of Parking Structures

The majority of the proposed car parking is located above ground level. The application was referred to the UDCG and no objections have been raised by the UDCG in relation to the visual impacts of the car park. Newcastle City Council's Engineers have raised no objection to the parking design.

The design incorporates a green wall at the external walls of the car parking levels of the building above ground level however, the original proposal incorporated a decorative screen. The provision of a green wall is consistent with the requirements of the DCP and it is considered that the green wall will provide a satisfactory screen provided that the vegetation grows. A condition of approval will require an automatic watering system that utilises rainwater from the site and regular maintenance.

B1 – Access Network

This control endeavors to ensure pedestrians and residents have the ability to access transport options and that the development does not inhibit access.

Access to public transport is within close proximity to the development site and access is available to link with the existing inner city cycle network. The design of the building incorporates end of trip facilities for the staff of the proposed commercial units.

B2 – Views and Vistas

The proposed development will not impact on the views and sight lines identified in the DCP, and does not impact on any views from any other development in the locality.

B3 – Active Street Frontages

The proposal includes commercial units at ground level and the design encourages activities to the street frontage. The active frontage is approximately 41m of the frontage of approx. 70m which is 58% therefore less than the 70% required. The variation to the percentage of active street frontage is considered acceptable in the circumstances, particularly noting the unusual shape of the allotment.

B4 – Addressing the Street

The proposal includes commercial units at ground level and the design encourages activities to the street frontage. The proposal generally complies with the acceptable solutions in this section of the DCP.

B5 – Public Art Work

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. It is considered that to satisfy the requirements of the DCP, a condition of consent is recommended requiring the allocation of 1% of the capital cost of the development towards public art is appropriate in this instance.

B6 – Sun Access to Public Spaces

This control is not applicable as there are no significant public places affected.

7.01 - Building Design Criteria

The proposal is 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.

It is considered that the proposal is 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

The parking requirements are addressed in a previous section of this report under the section relating to SEPP 65 as the provisions of the SEPP relating to car parking prevail over the requirements of the DCP.

In relation to traffic, Council's Engineers have provided the following comments:

Vehicular access, driveway design and crossing location.

The site currently has vehicular access to Hunter Street via three separate accesses and the proposed development seeks to provide a new single combined entry / exit access to the site from Hunter Street at the eastern end of the site at the approximate location of an existing access. No objection is raised to the proposal which is seen

as having a positive impact on the road network through the removal of a number of redundant driveway accesses.

Seca Solution has assessed the access as satisfactory for the number of car parks supplied and in accordance with Australian Standard and Newcastle Council requirements.

The proposed driveway access is not within a prohibited location and suitable pedestrian and vehicle sight lines are available. It is noted that the location of the roller door is only setback approximately 2.5 metres inside the boundary. This means any car waiting for the door to open will be required to queue across the pedestrian footpath and therefore will block pedestrian access across the driveway. Council has recently consistently required the roller doors to be setback at least 6 metres ensure queued cars do not impede pedestrian flows unless access is off a rear laneway where there are minimal traffic and pedestrian volumes.

Based on the above, it is recommended that the proposed roller door at the access to the car park is setback 6 metres into the site. A condition is recommended to allow for the plans to be amended at construction certificate stage to design the roller door to be set back 6m.

Traffic Generation

The submitted traffic report has identified a peak traffic generation of 48 vtpm for the development due to the proximity of the site to the Wickham Transport Interchange.

It is believed that this approximation maybe a bit low based on existing developments, although is acknowledged that it could be possible once the Wickham Interchange is constructed. Such types of residential developments are generally suited to the area as it is within close proximity to public transportation, the CBD and recreational areas. The development will not adversely impact on the local road network once this is distributed over the possible routes to and from the development.

Parking Demand

Seca Solution has identified that the Council DCP parking requirement for the development is 89 car parking spaces. A total of 93 car parking spaces have been provided. Out of the 93 parking spaces, 3 spaces have been nominated to be designated disabled spaces. The design of the disabled parking spaces appear to be compliant with Australian Standards. The development has also provided for 7 motorbike parking and 88 secured bicycle parking spaces. The proposed development therefore is compliant with the DCP.

A major issue Council has had in respect to the construction of apartments in Newcastle is the provision of parking for construction employees. As generally parking cannot be provided on-site construction employees are utilising the existing on-street car parking in the area which adversely impacts on the availability of parking for residents their visitors and CBD workers. Therefore Council now requires construction employees to be shuttled in to the site from remote parking areas unless on-site car parking can be provided during construction.

The construction traffic management plan condition is recommended and the employee parking issue will need to be addressed in this plan.

Garbage Services

The waste collection proposal involving kerbside collection from ground level waste enclosures is typical for this type of development though should be carried out during non-peak traffic periods. It is noted that Council may not be able to service such developments. There has been no information provided to confirm if the applicants have consulted Council Garbage Services to service the development.

It is noted that the number of bins at the edge of the roadway will not be practical due to the fact that there is on-street parking in the front of the property, and placing the bins on the roadway is not supported as Hunter Street is a busy road way. Based on the above, it is recommended that the applicants provide private pick-up of the garbage. A Condition for private pick up is recommended.

Loading Services

The DA has proposed for a Loading Zone on the Hunter Street frontage via an indented loading bay for light van and SUV vehicles. Such loading zone proposals will need to be designed to Council requirements and endorsed by Newcastle City Traffic Committee. As such, the proposed loading zone will need to be separately assessed.

Notwithstanding the proposed loading zone on the street, Council Traffic DCP requires new developments to provide adequate loading amenities within the site to service the development. Furthermore, emergency services such as ambulances may need to access the site as well.

There are two parking spaces on the Ground Floor (spaces P1-CP1 and P1-CP2). These parking spaces seem to be longer than the standard parking spaces and can be utilised as the Loading and Delivery area for the retail as well as for any loading/unloading for the units, any maintenance vehicles and for emergency services.

It is therefore recommended that car spaces P1-CP1 and P1-CP2 be used for the purpose of Loading and Delivery and for Emergency Services and a condition is provided for signposting the spaces for the recommended use.

Public Domain

The development is located at a prominent section on the northern side of Hunter St..

The DA has indicated changes to the Public Domain area via introduction of landscaped garden areas and street trees. There are driveways which have been made redundant and there is potential of further streetscape improvement.

Footpath and streetscape upgrade will be required to be done along Hunter Street frontage to provide amenity to new residents and retail users. Changes may be required to the on-street parking as redundant driveway will allow for more parking. Street lighting upgrades may be required to ensure that the development meets new street lighting guidelines and standards.

Additional pedestrian movement is expected along the frontage of the property. It is recommended that the applicants install surveillance cameras to allow for security and surveillance. A condition is recommended to installation of surveillance devices within the frontage of the building.

The proposal is considered to be acceptable in relation to traffic, parking and access.

7.05 - Energy Efficiency

The 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

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

Lindsay Dynan Consulting Engineers have been engaged by the applicants to undertake the stormwater assessment for the development. A stormwater management strategy has been provided with the Development Application and progressive responses to Council comments have been addressed. The stormwater management strategy and proposed stormwater design has been carried out to current Council DCP, Technical Specifications and industry standards.

Stormwater Design and Detention

The concept stormwater design have allowed for an on-site detention system and sand filter system. A 27m³ OSD (which includes an allowance of 5.6m³ for water harvesting for landscape) is provided under building which will detain stormwater before discharging to the existing drainage system to the rear of the property.

The sand filter has an area of approx. 8.8m² which will be the primary means for stormwater treatment.

The required OSD storage and treatment method is generally in accordance with Council requirements and is therefore acceptable.

Drainage Connection

Stormwater design allows the discharge from the OSD to be connected to the existing drainage at the rear of the property along the laneway. The proposed concept is acceptable.

Stormwater Reuse

It is noted that the concept stormwater plan and the stormwater checklist have not indicated for any stormwater reuse within the site. The revised Stormwater plans have indicated that there is not adequate roof area to provide a sustainable reuse of Stormwater. Based on the revised plans and noting that there are minimum chances of Stormwater reuse within toilets and for washing for the units, reuse is only proposed for landscape areas on the site.

Based on the above, the proposed Stormwater plans are acceptable. Conditions are recommended.

Maintenance & Monitoring and Safety

The proposed stormwater structures will require regular monitoring and maintenance to ensure the system is functional. A detailed monitoring and maintenance plan will need to be provided with the CC submission.

Conclusion

The principles of WSUD and the requirements of the DCP have been applied to the development. The submitted stormwater strategy and supporting documents have demonstrated that the development will not impact of the downstream ecology, is sustainable and can be maintained in the long term.

Council Drainage Infrastructure

Council and Hunter Water records indicate that there is an existing pipe which runs across the north western corner of the site. The pipe is noted as 1050mm diameter which connects to a Hunter Water pipe which is along the eastern property boundary (along the rail line). It is noted that the stormwater pipe has not been surveyed by Council to date and there are no CCTV footage or survey levels available for the drainage infrastructure.

The revised stormwater plans have indicated the possible location of the Council stormwater pipe on the property and have provided estimated invert level of the pipe. The pipe seems to be passing very close to the existing tree on the west of the property.

Options such as building over the stormwater pipe has been considered, however Council's Asset team is not supporting the proposal to build over the pipe due to the Council Stormwater and Water Efficiency Technical manual policy clearly indicating that building over drainage pipes are not supported. As a result, a small section of the ground floor retail space has been reduced in size to allow the building and the basement of the building to be set away from the pipe.

It is also noted that the Council pipe does not have drainage easement over the pipe. As this is a new development, it is recommended that a new 3.0m wide (minimum width) drainage easement be created over the pipe to ensure that the drainage infrastructure is protected and Council has rights to access the infrastructure for future maintenance.

The proposed building may also be within the zone of influence and therefore necessary precautions and investigations will need to be done to ensure that the integrity of the pipe is maintained and any damages during and after the building construction can be monitored.

Conditions are recommended for the drainage pipe to be investigated and drainage easement to be created over the pipe.

Groundwater Management

The proposed development will highly likely affect the groundwater table as there is a proposed basement. General terms of approval will need to be attained from Dept. of Primary Industries (MPI - previously known as NSW Office of Water) and in addition, a separate approval may be required to be attained from MPI (Groundwater Licence) prior to any extraction of any groundwater.

The discharge of the groundwater may highly likely be done to Council drainage system. If this is the case, then the applicants will need to attain a separate approval from Council for the proposed discharge of any groundwater. An Environmental Engineer or consultant will need to determine the method to treat the groundwater

prior to discharge to Council drainage system. In this regards, the applicants will need to provide Council evidence that MPI have approved the groundwater licence.

Conditions are recommended to ensure that the process for groundwater discharge and approval from MPI is attained.

Asset Protection During Bulk Excavation

It is noted that the proposal involves the construction of a new basement. There are existing road infrastructure, State Rail infrastructure and other private property and common use assets surrounding the site. This infrastructure will need to be protected during excavation and building works. Temporary ground anchors and other protection structures will be required.

Conditions are therefore recommended to ensure that adjoining buildings and infrastructure is protected.

The proposal is satisfactory in relation to stormwater management, subject to recommended conditions.

7.08 - Waste Management

The DCP requires that a Site Waste Minimisation and Management Plan (SWMMP) be submitted with the development application. A SWMMP has been submitted in accordance with the requirements of the DCP which demonstrates compliance with this section of the DCP.

Waste storage facilities are provided at ground floor level of the building and a condition of consent has been included to address the collection of the waste from the site.

7.10 - Street Awnings & Balconies

The DCP requires the provision of an awning, which has been provided as part of the application. The relevant conditions requiring approval for the awning in the road reserve are recommended.

8.00 - Public Participation

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

Newcastle Section 94A Development Contribution Plan

The application attracts Section 94A Contributions pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979 and the Newcastle Section 94A Development Contributions Plan. A contribution of 2% of the cost of development would be payable to Council as determined in accordance with clause 25(j) of the Environmental Planning and Assessment Regulation 2000.

No planning agreements are relevant to the proposal.

a) IV) 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. In addition, compliance with AS 2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

Hunter Regional Plan

The Hunter Regional Plan provides an overarching framework to guide land use plans, development proposals and infrastructure funding decisions. The NSW Government's vision for the Hunter is to be the leading regional economy in Australia with a vibrant new metropolitan city at its heart.

To achieve this vision the Government has set four goals for the region:

- The leading regional economy in Australia
- A biodiversity-rich natural environment
- Thriving communities
- Greater housing choice and jobs

The proposal is consistent with the aim of providing greater housing choice in existing communities, close to jobs and services and well supported by public transport and walking and cycling options.

Lower Hunter Regional Strategy

The primary purpose of the Lower Hunter Regional Strategy is to ensure that adequate land is available and appropriately located to accommodate the projected housing and employment needs of the Region's population over the next 25 years. The proposal is considered to achieve higher residential density in the city centre, in close proximity to existing services and infrastructure.

a) v) Section 79C(1)(a)(v) Coastal management plan

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

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

• Impact on the Natural Environment

There is not likely to be any impact on the natural environment as a result of the proposed development as the land is currently developed.

• Impact on the Built Environment

Impact on the built environment would be limited to visual impact, pedestrian access, parking and vehicle access, noise and vibration and contamination which have been assessed in this report which indicates that the likely impacts are acceptable.

• Social and Economic Impacts

The proposed development offers the potential to generate additional local employment opportunities during construction. The proposed development will provide a range of housing choice including studio apartments, 1, 2, 3 and 4 bedroom apartments.

The social and economic impacts are considered to be positive.

e) the suitability of the site for development

The proposed development and use is permissible with consent, in the B4 Mixed use zone. The use is consistent with the objectives of the zone and the development will replace existing development on the land.

There are no constraints to the land that would prevent the development of the site.

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

No submission were received in respect of this application.

e) the public interest

The proposed development facilitates additional commercial development at ground floor level, and residential accommodation above providing housing choice.

The proposed development does not raise any significant general public interest issues beyond matters already addressed in this report.

7. Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under Section 79c(1) of the *Environmental Planning and Assessment Act 1979 (as amended)* and is considered to be acceptable subject to compliance with the recommended conditions.

8. Recommendation

- A. THAT the Hunter and Central Coast JRPP support the Clause 4.6 variation to Clause 7.10A (Floor Space Ratio) of Newcastle Local Environmental Plan 2012; and
- B. THAT the Hunter and Central Coast JRPP, as the consent authority, approve development consent to DA2016/00528 (2016HCC035) for the demolition of existing buildings, erection of 13 storey mixed use development including 76 residential units, 3 ground level commercial units, 5 floors of parking and associated site works at 990 Hunter Street Newcastle West, pursuant to Section 80 of the EP&A Act subject to the conditions in Appendix A.

Appendix A - Recommended Conditions of Consent

Appendix B - Architectural Plans

Appendix C - Landscape Plans

Appendix D - Civil Plans

Appendix E - Applicant's SEPP65 Statement

Appendix F - Urban Design Consultative Group Minutes

Appendix - G - State Government Agency Responses

Appendix H - Applicant's Clause 4.6 Variation Request

Appendix I - Construction Management Plan

Appendix A - Recommended Conditions of Consent

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Appendix I - Construction Management Plan