

**COUNCIL ASSESSMENT REPORT**

<b>Panel Reference</b>	2018HCC028
<b>DA Number</b>	DA2018/00622
<b>LGA</b>	Newcastle
<b>Proposed Development</b>	Erection of five-storey mixed use development, comprising 30 affordable rental apartments, three commercial tenancies, site remediation and tree removal
<b>Street Address</b>	430 Hunter Street Newcastle
<b>Applicant</b>	Stimson & Baker Planning
<b>Owner</b>	Hunter Development Corporation
<b>Date of DA lodgement</b>	18 June 2018
<b>Number of Submissions</b>	One letter of support. No objections received.
<b>Recommendation</b>	Approval
<b>Regional Development Criteria</b>	Clause 20 & Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011 - Private Infrastructure and Community Facilities (affordable housing) with a capital investment value of more than \$5 million
<b>List of All Relevant Section 4.15 (1)(a) Matters</b>	<p><b>Environmental planning instruments: s4.15(1)(a)(i)</b></p> <ul style="list-style-type: none"> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>• State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development</li> <li>• State Environmental Planning Policy (Affordable Rental Housing) 2009</li> <li>• State Environmental Planning Policy No. 55 - Remediation of Land</li> <li>• State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</li> <li>• State Environmental Planning Policy (Coastal Management) 2018</li> <li>• Newcastle Local Environmental Plan 2012</li> </ul> <p><b>Development Control Plan: 4.15 (1)(a)(iii)</b></p> <ul style="list-style-type: none"> <li>• Newcastle Development Control Plan 2012</li> <li>• Section 94A Development Contributions Plan 2009</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<p><b>Appendix A</b> - Plans and Elevations</p> <p><b>Appendix B</b> - Schedule of Conditions</p>

<b>Report prepared by</b>	Newcastle City Council
<b>Report date</b>	25 October 2018

**Summary of s4.15 matters****Yes**

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

**Legislative clauses requiring consent authority satisfaction****Yes**

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*

**Clause 4.6 Exceptions to development standards****Not  
Applicable**

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?

**Special Infrastructure Contributions****No**

Does the DA require Special Infrastructure Contributions conditions?

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

**Conditions****Yes**

Have draft conditions been provided to the applicant for comment?

*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**

The development application (DA2018/00622) has been lodged with Council, seeking consent for the erection of a five-storey mixed-use development, comprising:

- 30 affordable housing apartments
- three commercial tenancies
- site remediation
- tree removal

The proposal was placed on public exhibition for a period of 30 days in accordance with the *Environmental Planning and Assessment Act 1979* (EP&A Act), *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) and Section 8 of Newcastle Development Control Plan 2012 (DCP). No objections were received during the notification period. One submission was received in support of the application.

The application is recommended for approval as the proposed development will have a positive social and economic benefit for the local and broader community by providing increased housing choice within the area. The use of the site as affordable rental accommodation is permissible in the zone and is in the public interest.

The proposed development will promote additional employment and residential opportunities and contribute to the revitalisation and diversity of the Newcastle CBD.

In accordance with Section 4.5 of the EP&A Act and Clause 20 of State Environmental Planning Policy (State and Regional Development) 2011, the JRPP is the determining authority for applications involving private infrastructure and community facilities (affordable housing) that have a capital investment value of more than \$5 million. The application submitted to Council nominates the capital investment value of the project as \$7,682,362.

An external referral was made to Ausgrid and no objections were raised.

## 1. INTRODUCTION

This report provides a detailed overview of the development proposal for erection of a five-storey mixed use development, comprising 30 affordable housing apartments; three commercial tenancies, site remediation and tree removal at 430 Hunter Street Newcastle.

The development application is reported to the Hunter and Central Coast Joint Regional Planning Panel in accordance with Section 4.5 of the EP&A Act and Clause 20 of State Environmental Planning Policy (State and Regional Development) 2011, as the development is a type classified as private infrastructure and community facilities (affordable housing) with the value of works being \$7,682,362.

The proposed development is for affordable housing. Evolve Housing will manage all dwellings and their tenants. It is noted that the affordable housing is proposed to be provided in perpetuity.

## 2. BACKGROUND

The site is part of the former Civic Station on the Newcastle rail line. The use of the rail corridor for rail transport has ended and a rezoning of the land has occurred, enabling the development of the land for the proposed purpose.

The provision of affordable housing on the former rail corridor in Newcastle was identified as a key commitment of Hunter Development Corporation (HDC). HDC sought Expressions of Interest from Tier One Community Housing Providers to develop affordable rental housing on a key site in the former rail corridor.

The Expressions of Interest called for providers with suitable experience, financial capacity and commitment for the design, construction and ongoing management of an affordable rental housing development on the subject site. Evolve Housing was chosen as part of that process.

## 3. SITE DESCRIPTION

The subject site is legally described as Lot 2 DP1226145, 430 Hunter Street Newcastle and forms part of the former Civic Station precinct, within the disused Newcastle rail corridor. The site has an area of 1,587m<sup>2</sup> and is shown in Figure 1 below.

The subject site is a section of the former rail corridor, bounded by Merewether Street to the East and the former Civic Station to the West.

To the north of the site is the Newcastle Regional Museum, which is housed in three heritage-listed buildings, known as '*Honeysuckle Railway Workshops*'. To the south of the subject site, across a narrow laneway, are a number of commercial and mixed use buildings up to a scale of five storeys, typically dating from the later part of the twentieth century.

The subject site is in the civic precinct of Newcastle, being close to many facilities and the light rail line (under construction and nearing completion).



**Figure 1 - Aerial map of subject site and surrounding development (extract from the Statement of Environmental Effects)**

#### **4. PROPOSAL**

The development proposal is for the erection of a five-storey mixed-use development comprising 30 apartments, three commercial tenancies, site remediation and tree removal. The proposed development is to be used for affordable rental accommodation. Evolve Housing will manage all dwellings and their tenants.

A summary of the proposed development is provided below:

##### Ground Floor Level

- Entry lobby to residential tower
- 30m<sup>2</sup> commercial tenancy fronting Merewether Street, to be used as a real estate management office
- Two, 80m<sup>2</sup> commercial tenancies (plans show indicative café layouts)
- Car parking for ten vehicles
- Residential storage
- Garbage room
- Associated plant and servicing spaces
- Pedestrian through site link between Merewether Street and the Civic Public Domain area

##### Level 1

- Four x one-bedroom and four x two-bedroom apartments
- Resident storage room

## Level 2

- Three x one-bedroom, four x two-bedroom and one x three-bedroom apartments

## Level 3

- Three x one-bedroom, four x two-bedroom and one x three-bedroom apartments

## Level 4

- Four x one-bedroom and two x two-bedroom apartments
- Communal room and two outdoor terrace areas

Refer to **Appendix A** for the floor plans and elevations of the proposal.

## **5. PLANNING ASSESSMENT**

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

#### **5.1.1 Section 4.5 – Joint Regional Planning Panels**

Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011, defines Regionally Significant Development, including private infrastructure and community facilities over \$5 million, as follows:

- (a) *air transport facilities, electricity generating works, port facilities, rail infrastructure facilities, road infrastructure facilities, sewerage systems, telecommunications facilities, waste or resource management facilities, water supply systems, or wharf or boating facilities,*
- (b) *affordable housing, child care centres, community facilities, correctional centres, educational establishments, group homes, health services facilities or places of public worship.*

The capital investment value for this proposal is \$7,682,362 and is therefore referred to the Hunter and Central Coast Joint Regional Planning Panel for determination.

#### **5.1.2 Section 4.15(1) Evaluation**

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, as detailed hereunder.

##### **5.1.2.1 The 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 of the SEPP declares development included in

Schedule 7 to be regionally significant development. This includes applications for affordable housing over \$5 million.

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

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

The provisions of the SEPP apply to the current development proposal. The applicant submitted a BASIX Certificate which lists the commitments to achieve appropriate building sustainability. A condition is included in the recommended conditions of development consent to require that such commitments be fulfilled.

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

This policy requires consideration to be given to previous uses on the site and whether the site needs to be remediated for future uses. Clause 7 of SEPP 55 requires that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

The site has been identified as being contaminated due to its previous use as a heavy rail corridor. The site has also been subject to a contamination investigation as part of the wider assessment of the rail corridor. Hunter Development Corporation (ie the Crown) are remediating the rail corridor and have agreed to provide site audit statements to Council at the completion of remedial works.

A Remedial Action Plan has also been provided with this application which identifies contamination of soil within the track area proposed to be infilled. This remediation involves the excavation of affected soil and replacement with clean material following validation.

A condition is recommended to require compliance the Remedial Action Plan and a validation report and Site Audit Statement be submitted prior to issue of an Occupation Certificate.

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

This policy applies to the development of new residential flat buildings and aims to improve the quality of residential flat development. The SEPP requires the consent authority to take into consideration the advice of a Design Review Panel (ie Council's Urban Design Consultative Group (UDCG)) and the design quality of the development when evaluated in accordance with the design quality principles and the Apartment Design Guide (ADG). An assessment of the development under the design principles is provided below.

Design Quality Principles	Assessment
Principle 1: Context and Neighbourhood Character	<p>This proposal is located within the Newcastle Urban Renewal precinct and has been identified as an opportunity to make a significant contribution to the revitalisation of the City Centre. Previously used as a railway corridor, adjacent to the former Civic Station, the site now presents a mixed use development opportunity.</p> <p>The design response for the proposed affordable housing development is inspired by the scale and materiality of the neighbouring heritage building, incorporating face brickwork, exposed concrete and saw-tooth balcony profiles reminiscent of the original roof forms.</p> <p>The design response has been sensitively considered as a modern interpretation inspired by the past.</p> <p>The developed design is considered to relate well to its heritage context.</p>
Principle 2: Built Form and Scale	<p>The height and massing of the building were considered appropriate in the context of the nearby heritage buildings. The proposed facade expression and massing to the east, north and west were also appropriate.</p> <p>The design of the southern façade, including the balconies and separation distances, remained a concern of the UDCG with the proposal.</p> <p>The non-compliance with the separation control was considered supportable given the multiple mitigating factors that are proposed.</p>
Principle 3: Density	<p>The proposed density is informed by the Newcastle Local Environmental Plan 2012. With a proposed FSR of 1.8:1, the development does not exceed the maximum FSR of 3:1. Thirty affordable apartments are proposed within the site, with an anticipated building population of 50 people. The site has excellent access to employment lands, public transport and social infrastructure. The proposed development is a medium density development suitable to its local context and amenities.</p>
Principle 4: Sustainability	<p>The development addresses sustainability in environmental, social, and economic aspects. Apartments are designed for cross ventilation and natural light. Socially and economically, the multiple uses on site create local employment and promote a healthy, convenient lifestyle for Newcastle residents.</p>
Principle 5: Landscape	<p>The landscape scheme has been designed for both the public and private spaces in the proposal, with unique characters and experiences for each type.</p>



	<p>The footpaths along the northern and southern edges of the site are to be upgraded with new paving, lighting and planting to improve the pedestrian experience.</p> <p>With the proposed renewal of the existing railway station to the west, a new park space will be provided as an extension to the existing Newcastle Museum Park, providing a high level of amenity to residents.</p> <p>At level 4 there is a residential communal garden that incorporates a seating pavilion, garden pergola rooms and common lawn areas, all framed by planting with elevated district views.</p> <p>The plant palette responds to the existing domestic and native species used in and around the site and is sympathetic to Newcastle's coastal climatic conditions.</p>
Principle 6: Amenity	<p>The proposed development is designed to be accessible and provides comfort both internally and externally for residents.</p> <p>The residential floor plates are designed to receive ample daylight and allow cross ventilation. The entry lobby space is well defined on the ground floor for ease of access. The public open space and roof terraces offer recreational areas for different users. The apartments and private balconies are well-sized and proportioned to offer comfortable living spaces.</p> <p>Storage is provided, both inside the apartments and in the basement.</p> <p>Privacy conflict between the south facing apartments and the adjoining property across the laneway has been addressed through appropriate screening, balcony positions and setbacks.</p>
Principle 7: Safety	<p>The public spaces in the development address safety by using passive community surveillance and visual transparency, while the private spaces have clearly defined entry/exit points.</p> <p>The public open space is visible through the pedestrian links, and both the eastern and western ends are activated by ground floor retail tenancies.</p> <p>The vehicle entry/exit point has security access and car parking access is separate from services vehicle access. All access points are to be well lit.</p>

Principle 8: Housing Diversity and Social Interaction	The apartment floor plates offer a flexible arrangement of one-bedroom, two-bedroom and three-bedroom apartments. Three of the two-bedroom apartments are intended to be Specialist Disability Accommodation. The apartment mix, size and layout meet ADG requirements. The shared amenities include a landscaped terrace, which provides a space for social interaction among residents. The other uses on site also provide different types of communal spaces for a range of people.
Principle 9: Aesthetics	<p>The facades are composed of face brickwork, reflecting the industrial scale and character of the precinct's heritage.</p> <p>Saw-tooth balcony profiles along the north and south elevations capture views while maintaining privacy with high quality slatted screen elements. These distinctive forms relate to the saw tooth roofs of the heritage buildings, located immediately to the north, and the old industrial buildings that occupy the local surroundings.</p> <p>The design uses a warm material palette of face brickwork and mid grey and neutral-coloured glass. Window openings are expressed as projected boxes to provide depth and articulation.</p>

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

The ADG provides benchmarks and guidelines for the design and assessment of a residential apartment development.

A SEPP 65 Apartment Design Guide compliance table was submitted by the applicant in support of the application and comments in response to the relevant key criteria within the ADG have been provided below. The proposal is considered adequate having regard to the principles of SEPP 65, the comments received from the UDCG and the design criteria in the ADG.

<b>Apartment Design Guide</b>			
<i>Objective</i>	<i>Design Criteria</i>	<i>Proposal</i>	<i>Compliance</i>
Building separation	<p><i>Separation distances for buildings are (side and rear setbacks):</i></p> <p><i>Up to 4 storeys / up to 12m:</i></p> <ul style="list-style-type: none"> <li><i>6m between habitable rooms / balconies</i></li> </ul>	<p>The development complies with the setbacks stated in the Newcastle DCP 2012, which prescribes building separation specific to this site.</p> <p>Compliant      ADG      side</p>	On merit

	<ul style="list-style-type: none"> <li><i>3m between habitable and non-habitable rooms</i></li> </ul> <p><i>5 to 8 storeys / approx. 25m:</i></p> <ul style="list-style-type: none"> <li><i>9m between habitable rooms / balconies</i></li> <li><i>6m between habitable and non-habitable rooms</i></li> </ul>	<p>setbacks are not possible due the constrained nature of the site.</p> <p>Proposed vertical slatted screens and the orientation of projecting balconies adequately deal with visual privacy concerns.</p>	
Communal open space	<p><i>Communal open space has a minimum area equal to 25% of the site</i></p> <p><i>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (mid winter)</i></p>	<p>The total area of communal open space is 706m<sup>2</sup> (540m<sup>2</sup> public open space + 166m<sup>2</sup> rooftop terraces) being 44% of the site area.</p> <p>Furthermore, there is a significant open park space located to the immediate west of the site with direct access for all residents.</p> <p>The rooftop communal terrace spaces will receive a minimum of 50% direct sunlight for 4 hours between 9am and 3pm on 21 June.</p>	Complies
Deep soil zones	<p><i>Deep soil zones are to meet the following minimum requirements:</i></p> <p><i>Site area greater than 1500m<sup>2</sup> minimum dimensions 6m Deep soil zone 7% of site area</i></p>	<p>Due to the existing site contamination, caused by its historical use as a railway corridor and as an industrial precinct, it is necessary to cap and cover the entire site. Significant deep soil zones are not possible due to this constraint.</p> <p>However, significant new planting and other landscaping elements are proposed in the adjacent Civic Railway Station site as a part of the wider site remediation being undertaken by Hunter Development Corporation. This will provide a high degree of amenity for the residents.</p>	On merit

Solar access	<i>Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of two hours direct sunlight between 9am and 3pm at mid-winter.</i>	25 out of 30 apartments receive a minimum of two hours direct sunlight between 9am and 3pm at mid-winter.	Complies
Natural ventilation	<i>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.</i>	18 out of 30 apartments achieve the required cross ventilation.	Complies
Ceiling heights	<i>Measured from finished floor level to finished ceiling level, minimum ceiling heights are: 2.7m for habitable rooms 2.4m for non-habitable rooms</i>	All habitable rooms in the proposal achieve 2.7m ceiling heights, and non-habitable rooms achieve 2.4m ceiling height.	Complies
Apartment size	<i>Apartments are required to have the following minimum internal areas:</i>  <i>1-Bedroom / minimum 50m<sup>2</sup> internal area</i> <i>2-bedroom / minimum 70m<sup>2</sup> internal area</i>  <i>3-Bedroom / minimum 90m<sup>2</sup> internal area</i>	All apartments meet or exceed the requirements of this standard.	Complies
Primary balconies	<i>All apartments are required to have primary balconies as follows:</i>  <i>Studio apartments:</i> <i>Minimum area 4m<sup>2</sup>,</i> <i>Minimum depth 1m</i>  <i>1 bedroom apartments:</i> <i>Minimum area 8m<sup>2</sup>,</i> <i>Minimum depth 2m</i>  <i>2 bedroom apartments:</i> <i>Minimum area 10m<sup>2</sup>,</i> <i>Minimum depth 2m</i>  <i>3+ bedroom apartments:</i> <i>Minimum area 12m<sup>2</sup>,</i> <i>Minimum depth 2.4m</i>	All apartments have balconies that meet or exceed the minimum areas and depths specified by the ADG. Balconies and private open spaces are located adjacent to and with direct access from the primary living space of apartments.  All balconies incorporate vertical slatted privacy screening which allows for natural ventilation and direct solar access.  Balconies have been arranged in a 'zig-zag' pattern to provide an appropriate contextual	Complies

		response in relation to the adjacent heritage buildings.	
Common circulation	<i>The maximum number of apartments off a circulation core to a single level is eight.</i>	The maximum number of apartments off a circulation core is seven.  There are 30 apartments in total sharing a single lift.	Complies
Storage	<i>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: Dwelling type Storage size volume 1 bedroom apartments 6m<sup>3</sup> 2 bedroom apartments 8m<sup>3</sup> 3 bedroom apartments 10m<sup>3</sup> At least 50% of the required storage is to be located within the apartment</i>	Half of the required storage per unit is located within each apartment, while the other half is located both on the ground floor and Level 01 in dedicated storage areas with lift access.	Complies

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)

The Vegetation SEPP is one of a suite of Land Management and Biodiversity Conservation reforms that commenced on 25 August 2017.

The Vegetation SEPP works together with the *Biodiversity Conservation Act 2016* and the Local Land Services Amendment Act 2016 to create a framework for the regulation of clearing of native vegetation in NSW. Part 3 of the Vegetation SEPP contains provisions similar to those contained in the former (now repealed) cl.5.9 of Newcastle Local Environmental Plan 2012 and provides that Council's Development Control Plan can make declarations with regards to certain matters. The Vegetation SEPP further provides that Council may issue a permit for tree removal.

The proposal has been considered in accordance with the Newcastle Development Control Plan 2012, as detailed in this report, and is considered to be satisfactory.

State Environmental Planning Policy (Affordable Rental Housing) 2009

Part 2 Division 1 - In-fill affordable housing

An assessment of the proposed development against the relevant SEPP criteria is provided as follows:

*Clause 10 Development to which Division applies*

- (1) *This Division applies to development for the purposes of dual occupancies, multi dwelling housing or residential flat buildings if:*

- (a) *the development concerned is permitted with consent under another environmental planning instrument, and*
  - (b) *the development is on land that does not contain a heritage item that is identified in an environmental planning instrument, or an interim heritage order or on the State Heritage Register under the Heritage Act 1977.*
- (2) *Despite subclause (1), this Division does not apply to development on land in the Sydney region unless all or part of the development is within an accessible area.*
- (3) *Despite subclause (1), this Division does not apply to development on land that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use, or within a land use zone that is equivalent to any of those zones.*

The development is located on a site that satisfies subclause (3), being a B4 Mixed Use zone within the Newcastle LGA. It is noted that residential flat buildings and commercial premises are permissible in the zone.

#### *Clause 13 Floor space ratios*

- (1) *This clause applies to development to which this Division applies if the percentage of the gross floor area of the development that is to be used for the purposes of affordable housing is at least 20 per cent.*
- (2) *The maximum floor space ratio for the development to which this clause applies is the existing maximum floor space ratio for any form of residential accommodation permitted on the land on which the development is to occur, plus:*
- (b) *if the existing maximum floor space ratio is greater than 2.5:1:*
    - (i) *20 per cent of the existing maximum floor space ratio—if the percentage of the gross floor area of the development that is used for affordable housing is 50 per cent or higher, or*
    - (ii) *Z per cent of the existing maximum floor space ratio—if the percentage of the gross floor area of the development that is used for affordable housing is less than 50 percent, where:*  
*AH is the percentage of the gross floor area of the development that is used for affordable housing.*  

$$Z = AH \div 2.5$$
- (3) *In this clause, gross floor area does not include any car parking (including any area used for car parking).*

The maximum Floor Space Ratio under the Newcastle Local Environmental Plan 2012 is 3:1. Given that the development is to be used for the purposes of affordable housing, a FSR bonus of 0.3:1 is available under the SEPP. The application does not propose to utilise that bonus, proposing a compliant FSR of 1.8:1.

## Clause 14 – Standards that cannot be used to refuse consent

The assessment of this development application should have regard for the criteria for certain matters that cannot be used to refuse consent. These include site area, landscaped area, deep soil zones, solar access, parking and dwelling size. An assessment of this application against these standards has been provided below:

Development Standard	Compliance	Comment
<b>Site area</b> (1)(b) if the site area on which it is proposed to carry out the development is at least 450m <sup>2</sup>	Yes	The proposal is considered satisfactory in relation to the minimum lot size.
<b>Landscaped area</b> (c) (i) in the case of a development application made by a social housing provider—at least 35 square metres of landscaped area per dwelling is provided, or	On merit	<p>As a direct result of the site contamination and the requirements of the Remediation Action Plan, there are no opportunities for deep soil zones to be provided on the site. Notwithstanding, the proposed extensive public open space works adjoining the site, proposed by Hunter Development Corporation, are noted and will significantly contribute to the amenity of the residents of this development.</p> <p>This issue is considered to not be a sufficient reason for refusal of the application, as the development will have access to quality open space.</p>
<b>Deep soil zones</b> (1)(d) if, in relation to that part of the site area (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed: (i) there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15 % of the site area (the deep soil zone), and (ii) each area forming part of the deep soil zone has a minimum dimension of 3 metres, and (iii) if practicable, at least two- thirds of the deep soil zone	On merit	As noted above, this is considered to not be a sufficient reason for refusal of the application.

is located at the rear of the site area,		
<b>Solar access</b> (1)(e) if living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hrs direct sunlight between 9am and 3pm in mid-winter	Yes	The required numbers of apartments within the proposed development receive at least 3 hours of direct sunlight at midwinter.
<b>Parking</b> (2)(a) if (ii) in the case of a development application made by a social housing provider for development on land in an accessible area—at least 0.4 parking spaces are provided for each dwelling containing 1 bedroom, at least 0.5 parking spaces are provided for each dwelling containing 2 bedrooms and at least 1 parking space is provided for each dwelling containing 3 or more bedrooms	On merit	<p>It is proposed to provide minimal on-site parking with ten car spaces provided along with motorbike and bicycle storage.</p> <p>The shortfall in parking is considered appropriate given the site location, in the CBD and with good access to public transport.</p> <p>This issue is considered to not be a sufficient reason for refusal of the application, as the development will have access to multiple transport options.</p>
<b>Dwelling size</b> (2)(b) if each dwelling has a gross floor area of at least: (i) 35 square metres in the case of a bedsitter or studio, or (ii) 50 square metres in the case of a dwelling having 1 bedroom, or (iii) 70 square metres in the case of a dwelling having 2 bedrooms, or (iv) 95 square metres in the case of a dwelling having 3 or more bedrooms	Yes	The proposal is considered satisfactory in relation to the minimum dwelling sizes.

*Clause 16 Continued application of SEPP 65 and Clause 16A Character of local area*

An assessment of the proposal against SEPP 65 has been considered earlier in this report. This clause specifies that a consent authority must not consent to development without considering the compatibility of the design of the building with the character of the surrounding area.

The proposed development was reviewed by the Council's Urban Design Consultative Group and Council's Heritage Advisor, who commented positively in



relation to the mix of materials and finishes, considering them to blend well with the heritage item to the north of the site. The applicant's architect has also submitted a statement to describe how the design of the buildings achieves compliance with this Clause.

*Clause 17 Must be used for affordable housing for 10 years*

*In order to utilise the bonus floor space provisions of the ARHSEPP, the following must be satisfied:*

- (1) *A consent authority must not consent to development to which this Division applies unless conditions are imposed by the consent authority to the effect that:*
  - (a) *for 10 years from the date of the issue of the occupation certificate:*
    - (i) *the dwellings proposed to be used for the purposes of affordable housing will be used for the purposes of affordable housing, and*
    - (ii) *all accommodation that is used for affordable housing will be managed by a registered community housing provider, and*
  - (b) *a restriction will be registered, before the date of the issue of the occupation certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919, that will ensure that the requirements of paragraph (a) are met*

It is a requirement of the Hunter Development Corporation Expression of Interest process for Evolve to use the site for affordable housing in perpetuity.

*Newcastle Local Environmental Plan 2012 (NLEP 2012)*

*Clause 1.3 - Land to which Plan applies*

NLEP 2012 applies to land identified upon the '*Land Application Map*'. The subject development occurs within this area.

*Clause 2.3 - Land Use Table - Zoning*

The site is zoned B4 Mixed Use under NLEP 2012 and the proposed development is permissible in the zone. The proposed development is consistent with the objectives of the zone in that:

- The proposal represents a permissible use in the zone and is therefore considered to be suitable in the context of the locality.

- The site is well located to main bus routes and the light rail line, providing excellent transport options for residents and minimising reliance on private vehicle ownership.
- The proposed use of the building will not negatively impact on the viability of the Newcastle CBD.

#### *Clause 4.3 - Height of Buildings*

The Height of Buildings Map has a maximum height limit for the site of 18m. The proposed development has a maximum height of 17.3m (top of lift overrun) which complies with this requirement.

#### *Clause 4.4 - Floor Space Ratio*

The maximum floor space ratio for the site is 3:1. The proposed development has a floor space ratio of 1.8:1 which complies with this requirement.

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

The subject site is within the NSW Coastal Zone.

The proposed development will not impact on access to the foreshore and will not impact on the amenity of the foreshore through overshadowing or loss of views from a public place. The development will not have a negative impact on existing ecosystems or biodiversity in the area.

An adequate stormwater management system has been proposed as part of the development to minimise any impacts from water disposal.

#### *Clause 5.10 - Heritage Conservation*

The site is located immediately to the south of the 'Civic Railway Workshops Group' (a heritage item of State heritage significance in NLEP 2012 and listed on the State Heritage Register) and is located within the Newcastle City Centre Heritage Conservation Area. A Heritage Impact Assessment has been undertaken in respect of the proposed built form and its relationship with the heritage item to the north. The report concludes as follows:

*"This assessment has determined that the proposed works will result in only minor physical and visual impacts to fabric and/or items of established heritage significance. Ultimately, the proposed works will improve the overall visual cohesiveness of the streetscape and useability of the immediate area."*

The proposal has been assessed by Council's Heritage Advisor and is acceptable.

It is considered that the proposed development will have minimal impact on the heritage significance of the neighbouring heritage item or the Heritage Conservation Area.

#### *Clause 6.1 - Acid Sulfate Soils*

The site and all surrounding properties are identified as Class 4 Acid Sulfate Soils. The proposed construction works are unlikely to lower the water table and thereby not trigger the need for an acid sulfate soils management plan.

As such, the application is considered acceptable with regards to clause 6.1 of NLEP 2012.

#### *Clause 6.2 - Earthworks*

The proposed earthworks will not detrimentally impact on environmental functions, neighbouring uses or features of the surrounding area. Conditions are recommended to be placed on the consent to address sedimentation and erosion control.

#### *Clause 7.5 - Newcastle City Centre Design excellence*

The project has been considered by Council's Urban Design Consultative Group (UDCG) on a number of occasions. The UDCG are supportive of the proposed development.

The development meets the design excellence criteria and exhibits a high standard of architectural quality. The development will enhance the quality and amenity of the public domain through street activation, while not adversely impacting on any identified view corridors.

The design of the development has appropriately addressed cultural heritage issues and resolved streetscape constraints and circulation requirements. The proposed building's bulk, mass and articulation sit comfortably within the streetscape. The proposal is acceptable having regard to environmental impacts and the principles of ecologically sustainable development.

The proposal does not generate a requirement to undertake an architectural design competition as the height of the proposed building is not greater than 48m, and the site is not identified as a key site within the Newcastle City Centre.

#### **5.1.2.2 Any draft environmental planning instrument that is or has been placed on public exhibition**

##### *State Environmental Planning Policy (Coastal Management) 2018*

State Environmental Planning Policy (Coastal Management) 2018 was made on 23 March 2018 and supersedes previous policies including SEPP71, SEPP14 and the coastal zone clause in Newcastle Local Environmental Plan 2012. As this application was lodged prior to the commencement of this policy, in accordance with the savings provisions, this SEPP does not apply to the proposal. Accordingly, for the purposes of this assessment, this SEPP is considered to be a draft Environmental Planning Instrument, and is considered below.

The aim of this policy is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the *Coastal Management Act 2016*.

The SEPP requires that development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to '*cause increased risk of coastal hazards on that land or other land*'. The proposed development is not likely to increase the risk of coastal hazards on the land or the surrounding land.

The proposed development has suitably addressed the relevant matters of consideration and development controls for development within the coastal zone as required under the Coastal Management SEPP.

### **5.1.2.3 Any development control plan (and section 94 plan)**

#### Newcastle Development Control Plan 2012 (DCP)

The main planning requirements of relevance in the DCP are discussed below.

#### *3.10 - Commercial Uses*

The development meets the aims and objectives of this section of the DCP as it encourages commercial development that will have a positive contribution to the surrounding locality.

#### *3.11 - Community Services*

This section of the DCP applies to various land uses. The proposal is acceptable having regard to the character and location of surrounding buildings, views, access and existing vegetation and topography. Minimal adverse impact on surrounding land uses is anticipated.

#### *4.10 - Flood Management*

The proposal has been assessed by Council's Senior Development Officer (Engineering), who provided the following comments:

*"Council have provided the applicant with flood information from their current flood model data. The predicted peak local catchment 1% Annual Exceedance Probability (AEP) flood level for the site is 2.4m AHD with an estimated peak Probable Maximum Flood (PMF) of 2.9m AHD. The proposed new building has a proposed ground floor level of 2.9m AHD which provides a flood freeboard of 500mm as required by Council."*

The proposal satisfies Council's requirements for flood management and is acceptable, subject to conditions.

#### *4.03 - Mine Subsidence*

The site is located within a proclaimed Mine Subsidence District. Approval from Subsidence Advisory NSW was granted on 18 June 2018.

#### *4.04 - Safety and Security*

The development is consistent with the principles of Crime Prevention through Environmental Design as appropriate measures are in place with regard to allowing for casual surveillance, access control, territorial reinforcement and space management.

#### *4.05 - Social Impact*

It is considered unlikely that a residential development of this nature would result in increased anti-social behaviour. The development provides for increased housing choice within the area, which is considered a positive social outcome.

#### *5.01 - Soil Management*

A Sediment and Erosion Management Plan has been submitted with the application to minimise sediments being removed from the site during the construction period. A condition has been recommended to require that such measures be in place for the entire construction period.

#### *5.02 - Land Contamination*

Contamination management is considered acceptable, as previously discussed under SEPP 55 Land Contamination.

#### *5.03 - Tree Management*

Three trees are proposed to be removed from the site. A further three trees on the neighbouring museum site will be impacted by the required capping of the site, including the pedestrian through-site link. It is noted that Hunter Development Corporation propose to plant approximately 30 new trees as part of the landscape works for the new adjacent public domain and this is considered to adequately meet any compensatory tree requirements across both sites.

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

As previously stated under clause 5.10 of NLEP 2012, the proposal is considered acceptable, as it will have minimal impact on the heritage significance of the neighbouring heritage listed site and the heritage conservation area.

#### *6.01 - Newcastle City Centre - Civic Link*

The proposed development satisfies this element of the DCP by:

- Providing a pedestrian link from Merewether Street through to the public domain works around the former Civic Railway Station, as proposed by HDC.
- Providing a street address to Merewether Street from the former rail corridor.
- Improving open space and connectivity through the precinct.
- Creating a built form that is sympathetic to the historical nature of nearby and adjoining buildings.
- Facilitating the expansion of the former Civic Station to the north and the proposed embellished public domain.

#### *7.01 - Building Design Criteria*

The proposal is acceptable in terms of character, streetscape, visual appearance, material, height, bulk and scale. The overall impacts in terms of views and outlook are also considered acceptable.

It is concluded that the proposal is acceptable having regard to the requirements of the DCP. It is noted that the proposal has been assessed by Council's Urban Design Consultative Group and is acceptable having regard to the provisions of SEPP 65 and the Apartment Design Guide, which generally prevail in terms of the design criteria.

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

Private open space is provided for residents in the form of balconies for each dwelling (approximately 16m<sup>2</sup> for each balcony – two balconies being provided to the three-bedroom apartments). Additionally, roof top terrace space is provided for the use of residents and a communal room is located adjacent to the larger of the two outdoor terraces.

The proposed development will deliver a publicly accessible pedestrian walkway that will link Merewether Street to the proposed Civic Station open space area that is separately being developed by the Hunter Development Corporation.

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

### *7.03 - Traffic, Parking & Access and 7.04 Movement Networks*

The proposal has been assessed by Council's Senior Development Officer (Engineering) and is acceptable subject to conditions, as recommended. In reaching this recommendation Council's Senior Development Officer (Engineering) provided the following comments:

#### Parking

*"A variation to the number of parking spaces under both the Affordable Housing SEPP and the Newcastle DCP is proposed and, in that regard, a merit-based justification is provided for in the submitted Traffic and Parking Assessment Report.*

*The development proposes a total of 10 car spaces, representing a deficiency of 8 car spaces. Upon review it is considered that this deficiency can be supported based upon the location of the development within the CBD with increased public transport options available and supporting pedestrian and cycleway networks.*

*The developer has also offset this parking deficiency through the provision of 3 motorbike and 14 bicycle spaces. On this basis it is concluded that the parking provision is acceptable, subject to these spaces being allocated as 7 resident car spaces and 3 commercial vehicle spaces."*

### Traffic Generation

*"Additional traffic generated by this development will have a minimal impact on the performance of the local road network and nearby intersections. Appropriate signage is proposed to be erected by the developer within the site requiring all vehicles exiting the site to turn left in the interests of traffic safety."*

### Public Transport

*"The site is well serviced by public transport with both bus stops and future light rail station within the nominal 400m convenient and accessible walking distance from the site. These services provide excellent alternatives to private car ownership and travel."*

### Public Domain

*"Conditions are recommended requiring reconstruction of the footway paving to provide a normal profile grading of 2.5% from property boundary to kerb and realignment / reconstruction of existing kerb & gutter along the frontages of the site. These works will enhance pedestrian amenity and safety acknowledging the increased pedestrian activity generated by this development."*

### Waste and servicing

*"The application proposes that the site be serviced from Merewether Street. However, a vehicle parked kerbside servicing the development would obstruct through traffic and therefore an appropriate condition has been recommended for this application requiring the construction of an indented loading/service bay."*

### 7.05 - Energy efficiency

The applicant has submitted a BASIX report and has met the requirements for water and energy efficiency and thermal comfort.

### 7.06 - Stormwater & 7.07 Water Efficiency

The proposed development has been assessed by Council's Senior Development Officer (Engineering) and is acceptable subject to conditions, as recommended. In reaching this recommendation Council's Senior Development Officer (Engineering) provided the following comments:

*"The Stormwater Plan provided shows site runoff drained to below ground absorption trenches with a combined capacity of 39m<sup>3</sup>. Excess stormwater flows from the absorption trench will be drained to the Merewether Street drainage system."*

*Council's Stormwater Technical Manual provides guidance on the location and design of absorption trenches. The proposal does not comply with the guidelines being located very close to the boundaries (1m offsets) with potential impacts on existing neighbouring building foundations. They are also not recommended in driveway locations as they need regular maintenance which would be very costly if the driveway needs to be removed to access them for maintenance or replacement."*

*A redesign of the site drainage system is required to comply with Council's current DCP (section 7.06 Stormwater) and the Technical Manual for Stormwater Management. A condition is proposed requiring compliance with the DCP."*

The proposal can comply with Council's policies relating to stormwater management. Appropriate conditions have been recommended to require that the development meets the specified standards.

#### *8.00 - Public Participation*

The application was notified for a period of 30 days and no objections were received. One letter of support was received.

#### Newcastle Section 94A Development Contributions Plan

The City of Newcastle Section 94A Development Contributions Plan 2009 applies to all new development with an estimated cost of more than \$250,000 on land within the Newcastle City Centre. With respect to the Newcastle City Centre, the purpose of the Plan is to provide funding towards public domain projects and special city projects in the Civic Improvement Plan.

Section 7 of the Plan identifies types of development that are exempt from the levy. The Plan states (emphasis added):

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

- *where the proposed cost of carrying out the development is \$250,000 or less*
- *for the purpose of disabled access*
- ***for the sole purpose of affordable housing***
- *for the purpose of reducing the consumption of mains-supplied potable water, or reducing the energy consumption of a building*
- *for the sole purpose of the adaptive reuse of an item of environmental heritage*

The Ministerial Direction relating to exemptions for affordable housing has recently been changed and has moved from a Ministerial Direction to being included in s25J of the EP&A Regulations. The Regulations now state that the cost of any development that is provided as affordable housing is not to be included in any estimate or determination of the proposed cost of carrying out development.

The wording change relating to the removal of the word "sole" and replaced with the words "any development" would suggest the entire development, not just the affordable housing component. On this basis the development would not require a s7.12 levy (former section 94A levy) to be imposed.

#### **5.1.2.4 Planning agreements**

No planning agreements are relevant to the proposal.



#### **5.1.2.5    *The regulations (and other plans and policies)***

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and *Regulation 2000*.

#### **5.1.2.6    *The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality***

There are no significant external impacts associated with the proposal. The application has demonstrated that there will be no significant adverse traffic impacts and it is considered that the development does not cause any significant overshadowing, privacy impacts or view loss for adjacent properties.

It is considered that the proposed development will have positive social impacts, in providing affordable housing to residents within a well serviced area, to meet the demands of a growing population, whilst providing a greater range of housing choice within Newcastle City Centre.

The character, bulk and scale of the proposed development has been discussed in this report, in the context of the SEPP 65 guidelines, NLEP 2012 and DCP controls. The proposed development is designed with a high level of architectural merit that is complementary to the heritage building to the north. The visual impact of the proposal is expected to be positive given the proposed materials and finishes, as well as the substantial setbacks arising from the proposed pedestrian through-site link.

The proposal is acceptable in this regard.

#### **5.1.2.7    *The suitability of the site for the development***

The site is in the Newcastle City Centre, which is well serviced by public transport and community facilities. The proposal will likely have positive economic benefits in the locality as the increased number of residents supports the demand for local services and facilities.

The proposal has been assessed by Council's Senior Environmental Protection Officer and is acceptable in relation to contamination and acoustic amenity for future residents.

The proposal includes sufficient measures to address potential crime and safety issues.

The site is not subject to any other known risk or hazard that would render it unsuitable for the proposed development.

#### **5.1.2.8    *Any submissions made in accordance with this act or the regulations***

The application was publicly notified and advertised and no objections were received.

#### **5.1.2.9    *The public interest***

The proposed development does not raise any significant general public interest issues beyond matters already addressed in this report. Overall, the proposed development will have an acceptable impact on the surrounding natural and built environment and has many positive social and economic impacts. Approval of the application is in the public interest.

## **6. CONCLUSION**

The proposal is acceptable against the relevant heads of consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*.

## **7. RECOMMENDATION**

That the Hunter and Central Coast JRPP, grant development consent to DA2018/00622 for the erection of a mixed use development comprising 30 affordable rental apartments, three commercial tenancies, site remediation and tree removal at 430 Hunter Street Newcastle pursuant to Section 4.16 of the EP&A Act subject to the conditions in **Appendix B**.