

## COUNCIL ASSESSMENT REPORT

### HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSHCC-104 – DA2021/01530
<b>PROPOSAL</b>	Mixed used development, including shop top housing with 352 dwellings, ground floor retail premises, and commercial premises.
<b>ADDRESS</b>	Lot: 2 DP: 1271240 & Lot: 11 DP: 1270693, 854 Hunter Street Newcastle
<b>APPLICANT</b>	Doma Interchange Development Pty Ltd C/o SLR Consulting Australia Pty Ltd
<b>OWNER</b>	Doma Interchange Development Pty Ltd
<b>DA LODGEMENT DATE</b>	DA2021/01530 17 November 2021
<b>APPLICATION TYPE</b>	Development Application
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	<p>Clause 2, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i>: General development with a CIV greater than \$30 million</p> <p>Part 2.4, Clause 2.20 of the State Environmental Planning Policy (Planning Systems) 2021 requires a development that is the subject of a concept development application that any part of the development that is the subject of a separate development application is to be considered as 'Regionally Significant Development.</p>
<b>CIV</b>	\$117,784,486.00 (excluding GST)
<b>CLAUSE 4.6 REQUESTS</b>	Yes
<b>KEY SEPP/LEP</b>	<ul style="list-style-type: none"> <li>State Environmental Planning Policy (Planning Systems) 2021.</li> <li>State Environmental Planning Policy (Resilience and Hazards) 2021 for consideration of development on land within the coastal environment area.</li> <li>Environmental Planning Policy (Resilience and Hazards) 2021 for consideration of whether the land is contaminated, and if contaminated, suitable or the purpose of development.</li> <li>State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development in relation to the advice of an urban design review panel has been satisfied.</li> </ul>

	<ul style="list-style-type: none"> <li>State Environmental Planning Policy (Transport and Infrastructure) 2021 in relation to development likely to affect an electricity transmission or distribution network</li> <li>State Environmental Planning Policy (Transport and Infrastructure) 2021 in relation to traffic generating development.</li> <li>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>Newcastle Local Environmental Plan 2012 (NLEP 2012).</li> </ul>
<b>TOTAL &amp; UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS</b>	One submission
<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	<p><b>Appendix A</b> – Draft Schedule of Conditions</p> <p><b>Appendix B</b> – Plans/Documents to be stamped</p> <p><b>Appendix C</b> – Agency Advice – Ausgrid, Transport for NSW, Sydney Trains</p> <p><b>Appendix D</b> – Apartment Design Guide Table.</p> <p><b>Appendix E</b> – Clause 4.6 Variations</p> <ul style="list-style-type: none"> <li>Statement of Environmental Effects (Nov. 2021) and associated studies and reports as follows;</li> <li>Acid Sulfate Soil Management Plan prepared by Douglas Partners, Project No 81811.06, Doc No R.001, Rev 0, dated 24 July 2018</li> <li>ADG Compliance Checklist by Bates Smart</li> <li>Architectural Drawings prepared by Bates Smart,</li> <li>BASIX Certificate prepared by Gradwell Consulting, Certificate No 1024557M, 27 October 2021</li> <li>BCA Assessment Report and Plans prepared by Steve Watson &amp; Partners, Report 2021/2075 R2.1, 14 October 2021</li> <li>Civil Drawings prepared by Northrop, Job No NL151730-01,</li> <li>Clause 4.6 Variation – Height prepared by SLR Consulting, Ref No 631.20290-R01-v0.1-20211021- Seperation, 27 October 2021</li> <li>Clause 4.6 Variation – Separation prepared by SLR Consulting, Ref No 631.30290-R01-v0.1, 27 October 2021</li> <li>Contamination Letter, prepared by Reditus Consulting Pty Ltd, 22 October 2021</li> <li>Contamination Site Validation Report prepared by ADE Consulting Group, Report No BLC-02-15398/VAL2/v1final, 13 February 2019</li> <li>Cost Summary Report prepared by Property Concept &amp; Management Pty Ltd, 30 September 2021</li> <li>Development Application Design Report prepared by Bates Smart, Jo No S12133,</li> <li>Design Competition Waiver prepared by GA NSW, 16 July 2018</li> <li>Design Review Panel Report, May &amp; November</li> </ul>

	<ul style="list-style-type: none"> <li>• EPA Site Audit Statement, Statement No.0084B_IDG, 25 March 2020</li> <li>• Flood Risk Assessment prepared by BMT, Ref DXW: L.N20149.005, 23 August 2018</li> <li>• Geotechnical Investigation prepared by ADE Consulting Group, Report No BLC-02-1598, 6 March 2019</li> <li>• GHD Site Audit Statement, Ref 0084_IDG, 25 March 2020</li> <li>• Heritage Management Plan prepared by Artefact Heritage, August 2018</li> <li>• Landscape Drawings prepared by Moir Landscape Architecture,</li> <li>• Pedestrian Wind Environment Study prepared by Windtech, Ref No WE353-06F03(rev0)- WE Report (Ground Only),</li> <li>• Plan of Management prepared by Doma Interchange Development Pty Ltd, Ref 631.30290, October 2021</li> <li>• Preliminary Geotechnical Investigation prepared Douglas Partners, Doc No 81811.01.R.003.DftA, 26 May 2016</li> <li>• NatHERS Certificate No 0006713290, 27 October 2021</li> <li>• NBI Conditions of Approval prepared by Transport for NSW, Ref 2TP-FT-398/1.0</li> <li>• Newcastle DCP 2012 Compliance Table prepared by SLR Consulting, Ref No 631.30290-L01-v0.1, 27 October 2021</li> <li>• Noise Assessment prepared by Muller Acoustic Consulting, Doc ID MAC180790-03RP1V1, 22 September 201</li> <li>• Residential Buildings Rail Corridor Setback prepared by Northrop, Jo No NL15170, 30 September 2021</li> <li>• Site Specific Geotechnical Statement prepared by ADE Consulting Group, 16 November 2018</li> <li>• Site Suitability Geotechnical Statement prepared by ADE Consulting Group, 19 July 2019</li> <li>• Social Impact Comment and Crime Prevention Through Environmental Design Assessment prepared by SLR Consulting, Ref No CPTED631.30290-R01-v0.1, October 2021</li> <li>• Statement of Heritage Impact prepared by EJE Heritage, Ref 12603-SOHI-002 Issue C, September 2021</li> <li>• Subsidence Advisory NSW letter, Ref TBA21-03614, 27 September 2021</li> <li>• Survey Plans prepared by Monteath &amp; Powys, Ref No 18/0288, Rev 1, 6 July 2021</li> <li>• Traffic and Transport Assessment prepared by SLR Consulting, Ref No 631.30290-R01-v1.0-Traffic, 26 October 2021</li> <li>• Operational Waste Management Plan prepared by Elephants Foot Recycling Solutions, Report No 100068,</li> <li>• Response Letter from SLR.</li> <li>• Response letter from Bates Smart</li> </ul>
<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)</b>	N/A
<b>RECOMMENDATION</b>	Approval

<b>DRAFT CONDITIONS TO APPLICANT</b>	No
<b>SCHEDULED MEETING DATE</b>	20 June 2022
<b>PLAN VERSION</b>	3 June 2022
<b>PREPARED BY</b>	Holly Hutchens, Senior Development Officer (Planning)
<b>DATE OF REPORT</b>	14 June 2022

## EXECUTIVE SUMMARY

The development application (DA2021/01530) seeks consent for a mixed-use development, including shop top housing with 352 dwellings, ground floor retail premises, and commercial premises.

The land applying to Stage 4 is known as Lot 2 DP 1271240 & Lot 11 DP: 1270693 No. 854-874 Hunter Street, Newcastle West. It is bounded by the Newcastle Transport Interchange to the north, Stewart Avenue to the east, and Hunter Street to the south.

The site that was subject of the approved Concept Development Application DA2018/01109 is currently known as Lots 2 & 3 DP1271240 No.854 Hunter Street Newcastle West, Lot 11 DP1270693 No.874 Hunter Street Newcastle West and Lot 300 DP1255289 No.6 Stewart Avenue Newcastle West. The site has two street frontages, to Hunter Street and to Stewart Avenue.

The demolition of all buildings within the site has been approved, including the heritage building the 'Co-operative Store', and open carpark structure on the northeast portion of the site.

The mixed use/residential building subject to this application is located within the front portion of the site. Cooper Street and Store Lane (Formerly Beresford Lane) are located to the east of the proposed residential building.

A Part 5 approval was granted under State Environmental Planning Policy (infrastructure) 2007 for the demolition of the buildings on the site, remediation works, and the construction of a ground level bus interchange.

A staged concept development application was lodged by Doma Interchange Development Pty Ltd for the subject site which was determined by the then JRPP. The stage concept application included a car park over the NBI (Stage 1), the subject twelve (12) storey commercial / retail building (Stage 3) and a future application (Stage 4) for a shop top housing development.

The Concept DA was approved pursuant to Division 4.4 'Concept Development Applications' of the Environmental Planning and Assessment Act 1979.

Pursuant to Clause 2.3 of the Newcastle Local Environmental Plan 2012 (NLEP2012) the site is zoned B3 Commercial Core, 'Shop top housing', 'Commercial premises' and 'Retail premises' are permissible with consent within land Zoned B3 Commercial Core.

The principle planning controls relevant to the proposal include *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* ('SEPP 65'), the *Newcastle Local Environmental Plan (NLEP 2012)* and the *Newcastle Development Control Plan No 2012* ('NDCP'). The proposal is generally consistent with various provisions of the planning controls as discussed within this report.

There were no concurrence requirements from agencies for the proposal and the application is not integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act').

A number of external government agencies were consulted for their advice. External agency referrals included Transport for NSW (TfNSW) under the provisions of Clause 2.181 and Clause 2.121 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* as a 'development with frontage to a classified road' and 'traffic generating development' and raised no objections.

Referrals to Ausgrid under the provisions of Clause 2.48 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* were also undertaken. Ausgrid have issued their advice.

A number of key prerequisites are required to be satisfied prior to the granting of consent. These are as follows and are considered to have been satisfactorily addressed by the documents submitted.

- Section 2.4 'Regionally significant development' under Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021*.
- Chapter 2, Clause 2.10(1) & (2) of the *State Environmental Planning Policy (Resilience and Hazards) 2021* for consideration of development on land within the coastal environment area.
- Chapter 4, Clause 4.6 of *State Environmental Planning Policy (Resilience and Hazards) 2021* for consideration of whether the land is contaminated, and if contaminated, suitable for the purpose of development.
- Clause 28(2)(a) of *State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development* in relation to the advice of an urban design review panel has been satisfied.
- Subdivision 2, Clause 2.48 of the *State Environmental Planning Policy (Transport and Infrastructure) 2021* in relation to development likely to affect an electricity transmission or distribution network
- Subdivision 2.97 Development adjacent to rail corridors – Section 2.97 applies to development on land that is adjacent to a rail corridor.
- Subdivision 2, Clause 2.181 of the *State Environmental Planning Policy (Transport and Infrastructure) 2021* in relation to development with frontage to classified road
- Subdivision 2, Clause 2.119(2) Impact of road noise or vibration on non-road development
- Subdivision 2, Clause 2.121 of the *State Environmental Planning Policy (Transport and Infrastructure) 2021* in relation to traffic generating development.
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- Clause 2.3 'Zone objectives and Land Use Table' of *Newcastle Local Environmental Plan 2012 (NLEP 2012)*.

The application was placed on public exhibition from 18 November 2021 – 17 December, with one (1) submission being received. The submissions which raised issues relating parking and traffic congestion. These issues are considered further in this report.

The application is referred to the Hunter Regional Planning Panel ('the Panel') as the development is '*Regionally significant development*', pursuant to Section 2.19 (1) and Clause 2 of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021* as the proposal is development for with a CIV over \$30 million.

A briefing was held with the Panel on 7 March 2022 where key issues were discussed, including:

- Additional details in relation to flooding, including building design and evacuation planning.
- Clarification of car parking numbers (surplus) and FSR.
- Additional information required to address matters raised by TfNSW
- Issues raised by Council's Urban Design Review Panel
- Confirmation of waste collection arrangements with a commercial provider
- Amendment to the concept plan needing to be considered prior to the determination of the DA.

The impacts upon the natural and built environment have been discussed in this report in the context of relevant State policy, including the NLEP and NDCP considerations. However, further discussion on several key matters as listed below have been resolved during assessment and where relevant the imposition of conditions in **Appendix A** – Draft Schedule of Conditions have been recommended. These key areas of assessment include context and setting, character, bulk and scale, visual impact and privacy, acoustic privacy and social and economic impacts.

Following assessment of the matters for consideration under Section 4.15(1) of the EP&A Act, the provisions of the relevant State environmental planning policies, in SEPP 65, SEPP Infrastructure, the NLEP 2012 and the NDCP 2012, the proposal can be supported.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the *EP&A Act*, DA2021/01530 is recommended for approval subject to the Draft Schedule of Conditions provided in **Appendix A** of this report.

## **1. THE SITE AND LOCALITY**

---

### **1.1 The Site**

The land applying to the overall Concept Plan and Stage 4 is known as Lot 2 DP 1271240 & Lot 11 DP: 1270693 No. 854 - 874 Hunter Street, Newcastle West. It is bounded by the Newcastle Interchange to the north, Stewart Avenue to the east, and Hunter Street to the south. The street has frontage to Hunter Street is 85m, to the north of the site is the railway line. The demolition of all former buildings within the site have been approved, including the heritage building the 'Co-operative Store', and open carpark structure on the northeast portion of the site.

The mixed use/residential building subject to this application is located within the front portion of the site. Cooper Street and Store Lane (Formerly Beresford Lane) are located to the east of the proposed residential building.



**Figure 1– The Subject Site (Source – OneMap)**



## **1.2 The Locality**

Figure 1 above shows the location and general extents of the proposal as a whole.

The immediate locality of the site currently features the following developments:

North: The rail corridor containing the Newcastle Transport Interchange which is the terminus for heavy rail and the interchange for the Newcastle Light Rail. Further north is 10 Dangar Street, a former vehicle sales premises and now a construction site for 'Bowline' a mixed-use development.

East: Stewart Avenue, which is a four to six lane road, adjoins the eastern-most boundary of the site. On the eastern side of Stewart Avenue are single-storey and two-storey retail/commercial buildings, while further to the east are a number of more recently developed sites containing multi-storey mixed-use buildings.

South: The southern boundary of the site is Hunter Street. The opposite side of Hunter Street contains the Quest Apartments, located in the State heritage listed former Castlemaine Brewery. The Cambridge Hotel is located diagonally adjacent to the site, which is likely to be the subject of future redevelopment opportunities. The multi-storey commercial building located directly south of the site, completed in 2019, contains numerous commercial office tenancies.

South-east of the site is a small row of commercial buildings that are bordered by Beresford Lane, Cooper Street, Hunter Street and Stewart Avenue. Those buildings do not form part of the Concept Development Application.

West: Further west, along Hunter Street, is a mix of commercial development of various scales and forms, including retail, offices, self-storage, and vehicle sales. It is noted that since the original Concept Development Application was approved, two developments of a similar scale and nature have been proposed (ie yet to be determined) further west of the site including at 'Dairy Farmers Corner'.

## **2. THE PROPOSAL AND BACKGROUND**

---

### **2.1 The Background**

#### Review of Environmental Factors – Newcastle Bus Interchange

A Part 5 approval was granted under State Environmental Planning Policy (infrastructure) 2007 for the demolition of the buildings on the site, remediation works, and the construction of a ground level bus interchange. The Part 5 Review of Environmental Factors was approved by Transport for NSW in November 2017 and subsequent Conditions of Approval were issued by Transport for NSW.

Specifically, the proposal for the approved bus interchange included (as outlined within the REF):

- Removal of existing buildings on the site, including 'The Store' and open multi storey car park;
- A grade bus interchange including bus shelters, bike racks, driver ablutions, drop off and pick up zone, mobility parking, loading zone;
- A drivers facility on the north west corner of the site which includes toilets, kitchenette and seating;
- Access and egress from Hunter Street and Cooper Street, as well as Stewart Avenue via Beresford Lane;
- At grade landscaping;
- Public domain works;
- Operation 24 hours per day, 7 days per week

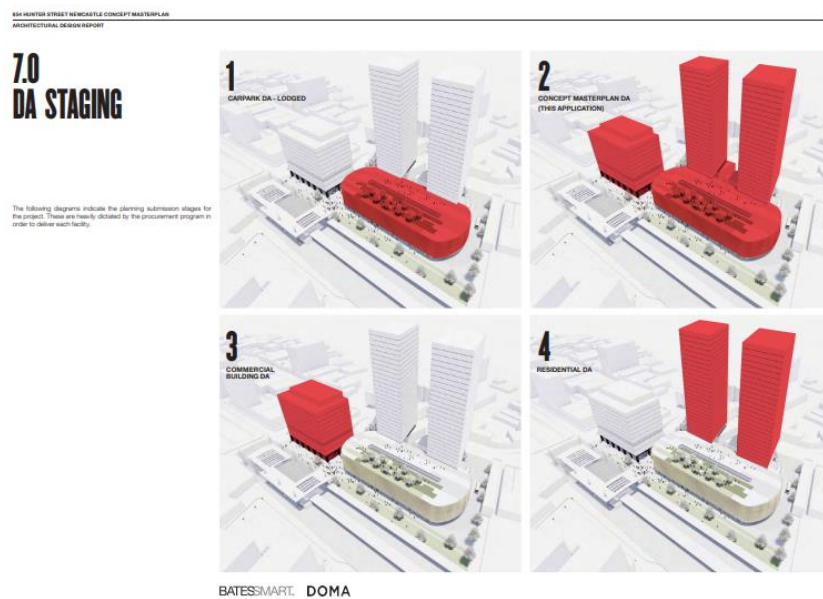
The REF also addressed potential future development on the site, particularly for a mixed-use development incorporating a bus interchange which integrates with the adjacent Newcastle Interchange. A preliminary assessment was undertaken to determine the feasibility of future development over the proposal, which was found to be possible, as well as on other areas of the site.

#### Staged mixed use development of the site:

Figure 3 below pictorially demonstrates the staging of development on the site, as per the approved Concept development application.



**Figure 4: Staging Plan - Approved Concept Master Plan (Source Bates Smart)**



#### Stage 1 - Multi-storey Carpark - DA2018/00897

DA2018/00897 was approved by Council on 7 December 2018. This consent provided for the construction of a multi-storey carpark, located above the NBI. The five-level carpark was proposed to contain 678 spaces, with access provided via a ramp that was to be accessed from the internal access road leading from the signalised intersection with Hunter Street.

#### Modifications to DA2018/01107:

DA2018/00897.01 – Changes to layout, façade, site set out and consent conditions (approved 24 April 2019).

DA2018/00897.02 – Modification to the approved location of the eastern lift, lobby, and staircase (approved 28 June 2019).

#### Stage 2 - Staged Concept Proposal - DA2018/01109

A staged concept development application was lodged by Doma Interchange Development Pty Ltd for the subject site, which was ultimately determined by the then Hunter & Central Coast Joint Regional Planning Panel (JRPP). This application was submitted concurrently with an application (DA2018/01107) for the 12-storey commercial building that now adjoins Stewart Avenue, representing Stage 3 of the concept for development of the site.

Section 4.24(2) of the Act (*Status of staged development applications and consents*) states that "while any consent granted on the determination of a staged development application for a site remains in forces, the determination of any further development application in respect of the site cannot be inconsistent with the consent for the concept proposals for the development of the site".

This requires future development applications for each stage of the development to remain consistent with the approved concept.

### Modification to DA2018/01109:

DA2018/01109.01 – Amended conditions for Floor Space Ratio and carparking.

### Stage 3 – Erection of 12-storey commercial building with ground floor retail and basement car park – DA2018/01107

DA2018/01107 was approved by the JRPP in May 2019. This consent granted approval for a freestanding commercial/retail building over 12 storeys (plus plant level), with the following key features:

- One basement level carpark consisting of 40 spaces, including 2 accessible spaces; 87 bicycle storage spaces; end of trip facilities; plant rooms and storerooms. The basement parking is for building occupants only.
- Landscaping to Stewart Avenue (within public domain/road reserve) and north of the building at a colonnade adjacent to light rail corridor.
- Ground floor:
  - Retail tenancies fronting an outdoor forecourt on the northern side of the building, which will include outdoor seating overlooking a light rail future proof zone
  - Office lobby and foyer
  - Waste storage rooms
  - Loading dock
  - Vehicular access from Beresford Lane
  - Level 1 - 11 Commercial/Office Space
  - Level 12 - Plant Space

### Modifications to DA2018/01107:

DA2018/01107.1 – Modification to conditions of consent A5, B8, B9, C1, C8, C9 C14, C24, C25, C27, C31, & F4.

The modification sought follows a similar request that was made by the applicant prior to the determination of DA2018/01107. An assessment of that request was included in a supplementary assessment report that was provided to the JRPP. At the time, the applicant had sought to apply a car parking rate of approximately 1 space per 100m<sup>2</sup> of gross floor area for the proposed commercial building, based on the site being well connected to public transport.

In the case of the previously mentioned supplementary assessment report, that was provided to the JRPP, the applicant had sought to reduce the total amount of car parking to be provided to the commercial building to 198 car spaces, down from 278 car spaces that were originally required by Condition 21.

The assessment of that request, as described in the supplementary report to the JRPP, concluded that there was sufficient justification to reduce the *Newcastle Development Control Plan 2012* (DCP) parking rate from one space for every 60m<sup>2</sup> to one space for every 75m<sup>2</sup>, equating to a total of 223 car parking spaces for the commercial building.

The determination of the modification application also included the deletion of condition of consent E6, ie removal of a requirement to establish a right of way for which CN concurrence was required to relinquish, vary or modify.

DA2018/01107.2 – Changes to floor plan layout (ground floor and basement), parking (two less spaces), overall height reduced (by 449mm) and changes to consent condition referencing documents.

DA2018/01107.4 – Changes to Developer Contributions payment timing and change to the timing of the approval of the public artwork.

DA2018/01107.5 – Modification to condition of consent C21 – Changes to on-site car parking allocation.

#### Subdivision of the site:

##### Two Lot Subdivision - DA2018/01507

The proposal involved the subdivision of Lot 100 DP1245750 into two allotments. This application led to the creation of Lot 300, being 1784m<sup>2</sup> in area, having frontage to Stewart Avenue and now containing the approved 12-storey commercial building. The balance of the land, being Lot 301, had an area of 1.0246ha and comprised of the land containing the NBI, the multi-storey carpark and the proposed mixed use building adjoining Hunter Street.

##### Three Lot Stratum Subdivision – DA2019/00452

The approved proposal involved the subdivision of Lot 301 DP1255289 into three lots, being Lot 100 (NBI – ground level), Lot 101 (light rail future proof zone) and Lot 102 (mixed use development site and multi-storey carpark, above NBI), which were created in DP1260633.

Note: Lots 100 and 102 were subsequently further subdivided (ie adjusted), for purposes under the *Roads Act 1993*, to become Lot 11 (NBI – ground level) and Lot 12 (mixed use development site and multi-storey carpark, above NBI) DP1270693.

##### Two Lot Stratum Subdivision – DA2020/00706

The approved proposal involved the subdivision of Lot 12 DP1270693 into two lots, separating parts of the multi-storey carpark (levels 1 & 2) from the remainder of the mixed use development site and multi-storey carpark. This effectively delineates parts of the Multi-storey carpark, used in connection with the adjacent 12-storey commercial building, from the remainder of the lot.

Lot 3 DP1271240 includes the parts of the multi-story carpark used in association with the 12-storey commercial building and Lot 2 DP1271240 contains the remainder of the subdivided lot, associated with the mixed-use development on the southern part of the site, as approved via the Concept Development Application DA2018/01109 and the current Stage 4 application DA2021/01530.

#### Pre-Development

Ongoing discussions with key stakeholder's including the Department of Planning & Environment, and Hunter Central Coast Development Corporation regarding the development have occurred since 2018.

A Design Excellence Competition Waiver had been provided in February 2018 by the Government Architect Office (GAO). To ensure the design integrity the GAO requested a design review panel (DRP) be established to provide continual review through design development and delivery.

The proposal undergone four pre-lodgement Urban Design Consultative Panel (UDRP) reviews. During the final pre-lodgement UDRP meeting the applicants advised CN that they would be submitting proposed Stage 4 of the concept development. The UDRP panel were supportive of the proposal in principle subject to design amendments as raised.

A summary of the key issues and how they have been addressed by the proposal is outlined below:

- Built Form and Scale
- Density
- Amenity

The development application was lodged on **17 November 2021**. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

**Table 1: Chronology of the DA**

<b>Date</b>	<b>Event</b>
<b>17 November 2021</b>	DA lodged
<b>18 November 2021</b>	Exhibition of the application began on the 18 November 2021 – 17 December 2021
<b>18 November 2021</b>	DA referred to external agencies
<b>9 December 2021</b>	Applicants' 'Kick-Off' briefing to the Panel
<b>11 February 2022</b>	Request for Additional Information from Council to applicant
<b>7 March 2022</b>	Panel briefing
<b>8 March 2022</b>	Meeting held with the applicant
<b>29 April 2022</b>	Partial information provided
<b>3 May 2022</b>	Completed response documents provided
<b>10 May 2022</b>	Additional SIDRA files provided to TfNSW.
<b>25 May 2022</b>	TfNSW referral completed
<b>26 May 2022</b>	Updated information requested
<b>27 May 2022</b>	Updated information requested
<b>6 June 2022</b>	Meeting with TfNSW
<b>6 June 2022</b>	Updated information provided

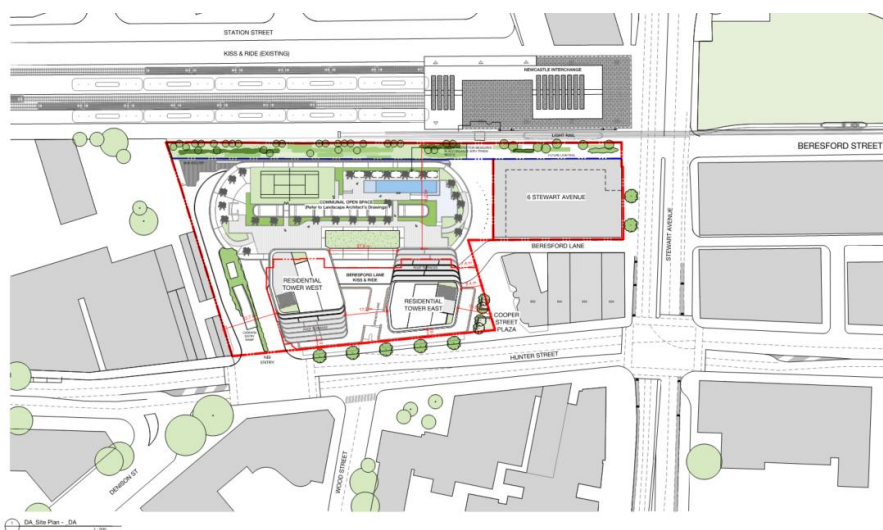
## 2.2 The Proposal

The proposal seeks consent for the construction of a mixed use development, in accordance with the established building envelopes outlined in the Concept Development Application for the site. The proposal involves the construction of two residential towers, with a commercial and retail podium. The ground floor of the building will support retail premise. Above the podium, an extensive area of internal and external communal open space is proposed to service the future residents of the towers. The mixed use buildings are located along the frontage to Hunter Street and will be integrated with the approved carpark structure.

**Figure 3: The proposal Stage 4 residential towers (Source Bates Smart).**



**Figure 4: Proposed Site Plan (Source Bates Smart)**




**Table 2: Development Data**

<b>Control</b>	<b>Proposal</b>
Site Area	12,050 m <sup>2</sup>
Stage 4 GFA	Residential: 38176 m <sup>2</sup> Commercial: 2095 m <sup>2</sup> Retail: 510 m <sup>2</sup>  Total: 40,781 m <sup>2</sup>
Total Supported GFA Under Concept Plan	58,938 m <sup>2</sup>
Approved Total FSR	4.89:1
Proposed FSR	4.88:1
Clause 4.6 Requests	Yes
No of Apartments	West Tower: 181 Apartments East Tower: 171 Apartments  Total Mixture of Apartments: <ul style="list-style-type: none"> <li>• 8 x 4 bedrooms;</li> <li>• 96 x 3 bedrooms;</li> <li>• 182 x 2 bedrooms;</li> <li>• 66 x 1 bedrooms</li> </ul> Total Number of Apartments: 352
Max Height	Residential East Tower - 106.78 m (Lift overrun) and 105.45m (roofline)  Residential West Tower - 100.58 m (Lift overrun) 99.23m (roofline)
Landscaped Area	<u>Area Location</u>  Podium Level Recreational Area:

	<ul style="list-style-type: none"> <li>○ Deck walkway and lounge: 315 m<sup>2</sup></li> <li>○ Pool circulation: 45 m<sup>2</sup></li> <li>○ Lawn: 210 m<sup>2</sup></li> <li>○ Play Area: 125 m<sup>2</sup></li> <li>○ Pool Deck: 345 m<sup>2</sup></li> <li>○ Pool: 140 m<sup>2</sup></li> <li>○ Tennis Court: 610 m<sup>2</sup></li> <li>○ Community Garden / BBQ area: 80 m<sup>2</sup></li> <li>○ Outdoor Dinning Terrace: 405 m<sup>2</sup></li> </ul> <p>Total Open Space: 2,275 m<sup>2</sup></p> <p>Ground Floor Public Domain Area:</p> <ul style="list-style-type: none"> <li>○ Turf area: 60 m<sup>2</sup></li> <li>○ Brewery Lane: 145 m<sup>2</sup></li> <li>○ Cooper Street Plaza: 225 m<sup>2</sup></li> <li>○ Hunter Street Footpath: 290 m<sup>2</sup></li> </ul> <p>Total Open Space: 720 m<sup>2</sup></p>
Car Parking Spaces	Parking accommodation is to be provided in the multi level carpark for a maximum of 735 vehicles comprising 35 commercial, 440 residential and 36 residential visitor spaces
Setbacks	<p><b>North Boundary:</b></p> <p><u>At 25m (Level 05)</u> At Level 05, both towers are setback a minimum 48.3m from the north boundary. This complies with the minimum separation distance for buildings from side and rear boundaries at this height (9m for habitable rooms).</p> <p><u>Over 25m (Level 06 to Level 30)</u> At Level 06 and above, both towers are setback a minimum 48.3m from the north boundary. This complies with the minimum separation distance for buildings from side and rear boundaries at this height (12m for habitable rooms).</p> <p><b>East (Side Boundary):</b> 7.4m - 13.5m</p> <p><b>South (Hunter Street):</b> 3m</p> <p><b>West (Side Boundary):</b></p> <p><u>Up to 25m (Level 05)</u></p>



	<p>At Level 05, 'residential tower west' is setback a minimum 22.7m from the west boundary. This complies with the minimum separation distance for buildings from side and rear boundaries at this height (9m for habitable rooms).</p> <p><u>Over 25m (Level 06 to Level 30)</u></p> <p>At Level 06 and above, 'residential tower west' is setback a minimum 22.7m from the west boundary. This complies with the minimum separation distance for buildings from side and rear boundaries at this height (12m for habitable rooms).</p> 
--	--

### 3. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
  - (i) *any environmental planning instrument, and*
  - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
  - (iii) *any development control plan, and*
  - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*

- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (b) *that apply to the land to which the development application relates, the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

### **3.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations**

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

### **3.2 Section 4.24 (2): Compliance with Concept Approval**

Section 4.24(2) of the Act requires that,

#### *4.24 Status of concept development applications and consents (cf previous s 83D)*

*(1) The provisions of or made under this or any other Act relating to development applications and development consents apply, except as otherwise provided by or under this or any other Act, to a concept development application and a development consent granted on the determination of any such application.*

*(2) While any consent granted on the determination of a concept development application for a site remains in force, the determination of any further development application in respect of the site cannot be inconsistent with the consent for the concept proposals for the development of the site.*

*(3) Subsection (2) does not prevent the modification in accordance with this Act of a consent granted on the determination of a concept development application.*

**Note—**

*See section 4.53(2) which prevents a reduction in the 5-year period of a development consent.*

The proposal constitutes Stage 4 of concept approval DA2018/01109. As such, the proposal must be consistent with the requirements of this consent.

The assessment below relates to the concept plan as proposed to be modified (see concurrent modification application MA2021/00450).

### 3.3 Section 4.46 Integrated development

The original development application was considered integrated development pursuant to Section 4.46 of the EP&A Act, as approval was required from WaterNSW under the Water Management Act 2000, with regard to aquifer interference (dewatering). Subsequently general terms of approval were issued and included as a part of the consent for Stage 3.

The application was again referred to WaterNSW and a response was received on the 2021. WaterNSW responded that they no longer issue General Terms of Approval for dewatering as this approval is triggered under the Water Act 1912 and integrated development only applies to the Water Management Act 2000 as per Section 4.46 of the EP&A Act 1979. The development is no longer considered integrated development.

#### 3.4.1 Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Newcastle Local Environmental Plan 2012;*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

**Table 1: Summary of Applicable Environmental Planning Instruments**

EPI	Matters for Consideration	Comply (Y/N)
BASIX SEPP	No compliance issues identified subject to imposition of conditions on any consent granted.	Y
SEPP 65	<ul style="list-style-type: none"><li>• <b>Clause 30(2)</b> - Design Quality Principles - The proposal is consistent/contrary to the design quality principles and the proposal is consistent to the ADG requirements for car parking, and communal open space.</li></ul>	Y
State Environmental Planning Policy (Planning Systems) 2021	<p>Chapter 2: State and Regional Development</p> <ul style="list-style-type: none"><li>• Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6 as it comprises General development with a CIV greater than \$30 million.</li><li>• Clause 2.20 of the State Environmental Planning Policy (Planning Systems) 2021 requires a development that is the subject of a concept development application that any part of the development that is the subject of a separate</li></ul>	Y

	development application is to be considered as 'Regionally Significant Development.	
SEPP (Resilience & Hazards)	<p>Chapter 2: Coastal Management</p> <ul style="list-style-type: none"> <li>Section 2.10(1) &amp; (2) - Development on land within the coastal environment area</li> </ul> <p>Chapter 4: Remediation of Land</p> <ul style="list-style-type: none"> <li>Section 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions.</li> </ul>	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p><b>Chapter 2: Infrastructure</b></p> <p><b>Division 5 Electricity transmission or distribution</b></p> <p>Subdivision 2 Development likely to affect an electricity transmission or distribution network.</p> <ul style="list-style-type: none"> <li><b>Section 2.48</b> (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions.</li> </ul> <p><b>Division 15 Railways</b></p> <p>Subdivision 2 Development in or adjacent to rail corridors and interim rail corridors—notification and other requirements.</p> <ul style="list-style-type: none"> <li>2.97 Development adjacent to rail corridors – Section 2.97 applies to development on land that is adjacent to a rail corridor.</li> </ul> <p><b>Division 17 Roads and traffic</b></p> <p>Subdivision 2 Development in or adjacent to road corridors and road reservations.</p> <ul style="list-style-type: none"> <li>Section 2.118(2) - Development with frontage to classified road</li> <li>Section 2.119(2) Impact of road noise or vibration on non-road development</li> <li>Section 2.121(4) - Traffic-generating development</li> </ul>	Y
Proposed Instruments	No compliance issues identified.	Yes
LEP	<ul style="list-style-type: none"> <li>Clause 2.3 – Permissibility and zone objectives</li> </ul>	Yes

Consideration of the relevant SEPPs is outlined below:

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

State Environmental Planning Policy – Building Sustainability Index BASIX– 2004 ('BASIX SEPP') applies to the proposal. The objectives of this Policy are to ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.

The application is accompanied by BASIX Certificate No.1024557M prepared by Gradwell Consulting dated 27 October 2021 committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the BASIX SEPP. The proposal is consistent with the BASIX SEPP subject to the recommended conditions of consent.

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

SEPP 65 aims to improve the design quality of residential flat buildings across NSW by providing an assessment framework, including the Apartment Design Guideline (ADG), for assessing 'good design'. To support these aims the SEPP introduces nine design quality principles. These principles do not generate design solutions but provide a guide to achieving good design and the means of evaluating the merits of proposed solutions.

Table 4.

**Table 4: Consideration of Design Quality Principles**

Design Quality Principles	UDRP Comments	Officers Comments
Principle 1: Context and Neighbourhood Character	<p><b>25 November 2021</b></p> <p><i>Whilst the Statement of Heritage Impact has a good introduction – it only briefly touches on the First Nations use of the site. The Panel recommends that the Applicant further consider Connecting with Country, with a view to an engagement informing an appropriate recognition, possibly by way of a public artwork.</i></p> <p><i>Much made about the current history of the site – but it is necessary to address how the project has meaningfully implemented Connection with Country.</i></p>	<p>The applicant has indicated that connection to country will be further addressed during the public art process, details of which are required prior to issue of the construction certificate.</p> <p>The west end precinct has been typically characterised by a mixture of light industrial and commercial buildings. However, it is noted that the area is transitioning, with the construction of high-density mixed-use developments within the immediate vicinity. The site is zoned B3 Commercial Core and the planning controls envisage high density mixed use development, the proposal as amended is therefore consistent with the concept</p>

		<p>plan and desired future character of the area.</p> <p>The concept development application comprised of varied building typologies, circular carpark building, tall slender, tapered apartment buildings, and a separate medium scale commercial building.</p> <p>These typologies remain consistent with the concept plan for the whole of the site.</p>
Principle 2: Built Form and Scale	<p><b>25 November 2021</b></p> <p><i>The Panel noted that the design presented was generally responsive to the previous advice from the UDRP. The previous recommendations have been addressed, in the main with a more than satisfactory response. The developed design is considered to be of a high standard.</i></p> <p><i>The revision to the initial design's layout, which opens up the space between the towers at its northern end, and which reduces the linear lengths of the wall planes, is considered successful in producing a more attractive, less bulky urban form, and a better spatial relationship between the towers. Solar access to the dwellings is also improved by this move. As presented previously to the Panel, a minor variation to the recommended minimum ADG building separation (of 24m) between the towers, occurs at their very southern ends, but apartments and their balconies have been configured to avoid direct overlooking between dwellings, and this spatial arrangement was again supported.</i></p> <p><i>The subject site is located within the Newcastle City Centre and the proposal will result in two buildings of 45 metres or higher above ground level, as such the provisions of Clause 7.4 apply, requiring a separation of 24m. As proposed in the original Stage 2 concept proposal, the adjoining commercial building also slightly exceeds 45m and therefore this clause applies to both buildings. The separation between the eastern tower and the commercial building facing Stewart Avenue is 19.6m, but the buildings are offset, and the resulting relationship between them is considered to be quite satisfactory, with no significant adverse impacts.</i></p>	<p>The height and location of the staged 4 mixed use building is not inconsistent with the built form approved under the concept development application building envelopes.</p> <p>Whilst there is a slight increase in the overall height, it is considered that the changes results in a more favourable tapered building form, which adds visual interest and reduces the apparent bulk.</p>

	<p><i>The façade composition has been progressed with a moderate projection at each level of the floor slab and with vertical blades inserted between the slabs. A slightly greater projection of the floor slab occurs at four floor intervals, which provides a larger scaled pattern to the façade. The vertical blades are arranged to respond to aspect (solid blades assisting with some shading and privacy where required).</i></p> <p><i>Although the building exterior appears to be fully glazed, areas of insulated solid wall are provided where appropriate, with colour-backed glass and spandrel for bedrooms and areas where more privacy and less light are needed. The Panel noted that a means of cleaning the glazing should be identified, as the buildings are too tall to permit cleaning by abseil.</i></p> <p><i>The Applicant advised that balconies are to be provided with clear glass to their balustrades, which will expose items stored or placed on balconies. Body Corporate regulations will need to address the appearance of items placed on balconies, as these items will be visible from the street and from other buildings in the area. One of the reasons for the Panel's preference not to have entirely glazed balustrades, is to allow a sense of security and to provide some privacy to people using the outdoor space. In accepting the decision to provide clear glass balustrades, the Panel recommended providing at least a low upstand at the base of the balustrade.</i></p> <p><i>In respect to vehicles accessing the car park, it was noted that the current arrangement and signage is somewhat confusing at the vehicle entrances off Hunter Street. It would be easy for a driver turning in to select the wrong roadway. It was acknowledged that the car park use once the development is completed will revert to residents and regular commercial space users, and thus the general public will not frequently make use of the car park entry. It was none the less recommended that clearer signage be provided for drivers. The Applicant indicated that there is also proposed to be some traffic signalling modification that will assist in reducing this risk.</i></p> <p><i>The Panel noted and commended the pedestrian friendly and permeable ground plan – creating a landscaped plaza space at Coopers Lane which will lead pedestrians into the laneways. Also commended was the brickwork façade of the podium element, and the treatment of the treatment of the through site link that</i></p>	
--	---	--



	<i>provides access to the commercial and residential lobby spaces.</i>	
Principle 3: Density	<p><b>25 November 2021</b></p> <p><i>The FSR of the proposal remains consistent with the approved concept master plan and is compliant with the control.</i></p> <p><i>There are moderate height exceedances for the proposal, the greater of which is as a result of the desire, supported by the Panel, to relocate some space from the top of the western tower to the east. No increase in FSR resulted from this, but it provided a more satisfactory urban design outcome, thanks to the variation created between the towers appearance. No adverse impacts arise from the height exceedances, which have previously been supported.</i></p>	<p>The density of the proposal remains relatively consistent with the floor space distribution approved under the concept development application.</p> <p>Whilst there are some minor amendments to car parking, commercial GFA, and the omission of the basement level, the proposed changes do not result in an exceedance to the prescribed FSR for the site.</p>
Principle 4: Sustainability	<p><i>The main sustainability and amenity issue that the Panel sought further advice upon from the proponent, relates to the extent of glazing across the building facades, and likely solar heat loads resulting. The architects advised that the protruding floor slabs and strategically located vertical blades assist usefully in providing some shade on the façade. None the less, the Panel retains reservations in respect to the solar loads upon the residential buildings, and the extent of exposed glass. It was noted that the requirements of BASIX, being a multi-factored system, currently set a low bar in respect to thermal performance. It is crucial that glazing and window and door frames be of a standard that adequately ameliorates the extent of glazing, and that provides good levels of thermal comfort to the residences - without excessive need for air conditioning and the resultant energy demands. Frames should be thermally broken, and high performance glazing provided. In addition, careful consideration of appropriate indoor window shading and glare reduction should provide residents with a selection of appropriate window coverings that can reduce glare and provide some further internal insulation. The Panel was of the view that more extensive areas of solid, insulated external wall treatment in strategic locations would assist, without necessarily incurring any significant loss of panoramic views.</i></p> <p><i>Long term maintenance has to be considered – particularly with all the screens proposed in front of the glazing – which will exist in a salty, corrosive environment. It is important to ensure that the materials are able to withstand the corrosive environment, and have a long functional life.</i></p> <p><i>Solar PV generation panels – further consideration and refinement of these should be</i></p>	<p>The applicants have noted that the area of solid, insulated walls has increased by approximately 13% on the west tower and 19% on the east tower.</p> <p>The development will include high performance double glazed units attributed to thermal and acoustic comfort levels.</p> <p>The proposal includes a BASIX certificate which requires sustainable development features to be installed into the development inclusive of water efficient fixtures and energy saving devices.</p>

	<i>given to integrating solar panels with shade structures/ pergolas within the recreation area.</i>	
Principle 5: Landscape	<p><i>Public space is a key to the success of this proposal. The plaza area created at ground level at the eastern end of the podium, adjacent to Coopers Lane, is a positive inclusion with an attractive deep-soil landscape approach.</i></p> <p><i>The communal open space located on the roof of the car park and Interchange provides a very large recreational and relaxation area, with an attractive aspect, that is likely to be very well utilised by residents. Because of structural constraints and the column spacing below, the location options for larger trees and deep planter beds has been constrained. The planter beds away from columns are quite shallow in their soil volumes, and will need more regular watering. It is likely soil will need to be changed more frequently than if volumes could have been more generous. Access is available for this task.</i></p> <p><i>The soil volumes need to be nominated in the documentation for the Development Application – to ensure the executed landscape work achieves the (constrained) soil volumes nominated. None the less, the area will be a very attractive one, which offers a high standard of communal space for residents.</i></p> <p><i>Communal areas are also provided at the roof level of the two residential towers. These would benefit from a provision of some shade in the form of pergolas or limited areas that are roofed.</i></p>	<p>The applicants have provided detailed landscape plans which details the soil depths proposed for the recreational area located above the car parking structure.</p> <p>The updated plans identify the communal rooftop levels, with permeable pergola structures, climber plans have been included which will provide for shade.</p> <p>The proposal provides for landscaping which is consistent with the objectives of the Newcastle DCP and provides on-structure planting to create an appropriate landscape setting.</p>
Principle 6: Amenity	<p><i>Exposure of Private Open Spaces to the wind condition:</i></p> <p><i>In response to earlier Panel comments, balconies have been moved inboard from the corners of the tower floor plates – this left the corners free for internal living spaces which, in many locations, allow panoramic views.</i></p> <p><i>Access to common spaces on the Level 05 landscaped communal area:</i></p> <p><i>The lift lobby from the car park should be glazed and accessible from both sides, which would also enable it to open it up and provide visual connection between the residential lobby and the communal open space.</i></p> <p><i>Cross Ventilation:</i></p> <p><i>Some disappointment was noted that the minimum cross ventilation requirements of the ADG are not being achieved in terms of the</i></p>	<p>The lift lobby has been designed to provide suitable visual connection between the residential lobby and the communal open space area.</p> <p>Analysis of the submitted architectural floor plans (drawings DA.03.05 and DA.03.06, prepared by Bates Smart), found 29 out of the 62 apartments proposed on the first nine storeys of the proposal (Level 00 to Level 08), or 47%, provide for natural cross ventilated.</p> <p>The Panel expressed disappointment regarding the development not achieving the minimum cross ventilation requirements as detailed</p>

	<p><i>proportion of apartments achieving cross ventilation.</i></p> <ul style="list-style-type: none"> <li><i>the Applicant acknowledged that they could replan the lower-level single aspect 1B apartments and adjacent 2 bedroom apartments to become 3 bedroom apartments and this would achieve the natural ventilation requirements of the ADG. However these apartments are likely to be the more affordable in the market, and on balance this was considered to have been a better outcome, particularly given that the site conditions are conducive to breezes.</i></li> <li><i>All apartments will be provided with mechanical ventilation via a central plant system – which is strongly supported by the Panel. The volume of air extracted per hour in single aspect apartments should be set at a rate that assists in inducing cross ventilation in single aspect apartments. Centralised HVAC also means that no AC no compressor units will be placed on balconies.</i></li> </ul> <p><i>Extent of glazing – thermal loads and management of glare:</i></p> <p><i>As raised under the Sustainability heading, the Panel expressed concerns in respect to solar loads on glass, and the resulting thermal comfort considerations.</i></p> <p><i>A related issue is that, there will need to be an integrated approach between fenestration design and window treatments for glare management and privacy. The Panel recommends incorporating internal window coverings in the fit-out – in particular considering the curved corners – to avoid visual clutter from future tenants installing differing window treatments, which would detract from the architectural expression.</i></p>	<p>within the ADG. In response the applicant acknowledged that the lower-level single aspect 1-bedroom apartments and adjacent 2-bedroom apartments could be replanned to become dual aspect 3-bedroom apartments, and this would achieve the natural ventilation requirements.</p> <p>However, the UDRP acknowledged that these lower-level single aspect apartments would likely be more affordable in the market and on balance this was considered to have a better outcome particularly given that the site conditions are conducive to breezes.</p> <p>For the single aspect apartments, the layout and design have maximised natural ventilation; apartment depths have been minimised and frontages extended to increase ventilation and airflow.</p> <p>All habitable rooms are naturally ventilated via adjustable windows with suitable effective operable areas. The non-compliance can be accepted on a balanced view.</p> <p>Generally, the proposal as amended is satisfactory, optimising internal amenity through appropriate room dimensions and shapes, adequate access to sunlight and natural ventilation. The development provides acceptable visual and acoustic privacy, storage, indoor and outdoor space, outlook, layout, and services areas.</p>
Principle 7: Safety	<p><i>The Panel raised a question in respect to the ongoing management of the 'kiss and ride' area. Would it be a problem with drivers parking in the area for longer than needed for pick up and drop</i></p>	<p>The proposal is considered to provide appropriate safety for occupants and the public for the following reasons:</p>

	<p><i>off? The Applicant noted that the area was already operating satisfactorily, and the completion of the development was not anticipated to change this.</i></p>	<ul style="list-style-type: none"> <li>- The proposal provides additional passive surveillance to the surrounding street network and interchange area.</li> <li>- The central open space area is appropriately demarcated clearly indicating the communal space area.</li> <li>- The entry lobbies will provide appropriate access.</li> </ul>
<p><b>Principle 8: Housing Diversity and Social Interaction</b></p>	<p><i>Liveable Housing Design – 20% silver living is proposed however, the Panel recommend incorporating apartments which are constructed as platinum level. The Panel noted and supported the Applicant’s intended strategy that encourages the upfront offer in marketing for variations to the apartments in respect to accessibility. Silver Level is considered more broadly as a minimal provision.</i></p> <p><i>The subject site provides immediate access to all the benefits of the West End services, activities, entertainment, eating, and transport. New housing supply needs to accommodate more apartments that cater for far more flexible, equitable, high amenity housing in great locations.</i></p> <p><i>Platinum Level Liveable Housing Design is a constructed outcome that increases housing choices.</i></p> <p><i>It is not a fully accessible housing type and so appeals to a wider market, it has minimal additional construction costs because it is built as the original construction where efficiencies are maximised. Cost of construction can increase tenfold where post-construction adaption is relied upon. Research has found the conversion of adaptable apartment types (AS4299), therefore rarely occurs because of the significant post-adaptive construction costs and overall disruption to residents. Liveable Housing Platinum Level has the advantage of being less onerous than fully accessible housing, while providing significantly more flexibility for future residents.</i></p> <p><i>Well located housing should be maximising opportunities for housing choice in apartment</i></p>	<p>The proposal provides additional housing accommodation, in proximity to public transport.</p> <p>The generous communal space will offer suitable areas for social interaction.</p> <p>The development provides 70 apartments (20%) which satisfy all requirements for Silver Liveable Housing. These apartments provide for appropriate access for residents who are elderly or who have a disability.</p> <p>As noted by the Panel, the applicant will work with the any purchaser who may require a higher level of accessibility.</p> <p>No affordable housing is proposed with the development. The proposed development result in a slight increase in GFA, however remains compliant with the NLEP prescribed FSR.</p>



	<i>typologies. The Panel recommends converting a minimum of 10% of Silver Level apartments to Platinum Level which will be better aligned with Newcastle's demographics identified in its LSPS and Housing Strategy.</i>	
Principle 9: Aesthetics	<p><i>The Panel noted the urban response and overall aesthetic approach to the development was well-considered. The solidity of the base of the building anchors the development at street level and is a legible, modern reference to the former historic Store building on the site.</i></p> <p><i>The extent of glass utilised on the facades of the residential towers has been successfully offset visually, by the expressed slabs and vertical blades. The variation of the towers' heights and the reversed setbacks of upper floors, as well as a subtle variation between the treatment of the expressed blades and floor slabs, were also successful in terms of introducing variation between the two tower elements while maintaining strong similarities. The more prominent banding every fourth floor, with a finer treatment to the intermediate floors is also successful in providing a larger grain that assists in views to the buildings from a greater distance.</i></p> <p><i>Recommendations in respect to aesthetics generally go to ensuring that elements such as a site signage strategy are fully integrated in the architectural design— for the commercial components and also for the residential. Building identification, way finding, and commercial signage should all be located.</i></p>	<p><i>The proposed development is appropriate in terms of the composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the resultant building.</i></p> <p><i>The proposed building is considered aesthetically to respond to the environment and context, contributing in an appropriate manner to the desired future character of the area.</i></p>

### Planners comments

The UDRP noted that ongoing support is given for the relatively minor amendments that have occurred to the Concept Master Plan that was approved as part of Stage 2. The UDRP have inferred that the amendments have been proposed in response to their recommendations and include moderate height increases of the residential towers (without any significant Floor Space Ratio increase) and the opening up of the northern end of the space between them.

The UDRP have noted that the separation between the eastern tower and the commercial building facing Stewart Avenue is reduced, but the buildings are offset, and the resulting relationship between them is considered satisfactory.

The UDRP are in support of the modifications that are proposed to the Concept Master Plan during design development and have noted no issues of concern in respect the proposed application.

The UDRP are firmly supportive of the proposal and is of the view the completed development will make a very supportive contribution to the area. The UDRP have confirmed that the proposal is considered to demonstrate Excellent Design Quality.

In summary, the development, as modified, provides a positive contribution to the locality in terms of its design quality, the internal and external amenity it provides, and is a suitable mix of commercial, retail, and residential uses.

### **Apartment Design Guide (ADG).**

A SEPP 65 Design Verification Statement (dated 8 June 2022 prepared by Bates Smart) was submitted in support of the current amended proposal pursuant to Clause 50(1A) of the *Environmental Planning and Assessment Regulation 2000* ('EP&A Reg2000'). This statement confirms that a qualified designer, which means a person registered as an architect in accordance with the Architects Act 1921 as defined by Clause 3 of the EP&A Reg 2021, **directed** the design of the architectural drawings, and provides an explanation that verifies how the related development documentation achieves design quality principals and objectives of the ADG.

The ADG provides greater detail on how residential development proposals can meet the design quality principles set out in SEPP 65 through good design and planning practice.

Each topic area within the ADG is structured to provide; (1) **objectives** that describe the desired design outcomes; (2) **design criteria** that provide the measurable requirements for how an objective can be achieved; and (3) **design guidance** that provides advise on how the objectives and design criteria can be achieved through appropriate design responses, or in cases where design criteria cannot be met.

Whilst the ADG document is a guide which under Section 28(2) the consent authority must take into consideration when determining a development application for consent to which SPP 65 applies, the provisions of Clause 6A under SEPP 65 establish that the objectives, design criteria and design guidance set out in Parts 3 and 4 of the ADG will prevail over any inconsistent DCP control for the following topic area;

- a) visual privacy,
- b) solar and daylight access,
- c) common circulation and spaces,
- d) apartment size and layout,
- e) ceiling heights,
- f) private open space and balconies,
- g) natural ventilation,
- h) storage.

Assessment of the current amended proposal has been undertaken having consideration for the ADG. The residential apartment component of the development application is considered to demonstrate good design and planning practice.

Table 5 below, addresses compliance with the objective and design criteria of the relative topic areas in accordance with Clause 6A of SEPP 65. Where a topic area is not specified a design criteria, or where it is not possible for the development to satisfy the design criteria, the compliance comments in the following table will have regard to the design guidance relevant to that topic area.

**Table 5: Compliance with required topic areas of ADG**

<b>3D Communal and public open space</b>		
<b>Objective 3D-1</b>		
An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping		
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
1. Communal open space has a minimum area equal to 25% of the site.	<b><u>Concept Proposal</u></b> The total site area equals 12050sqm 25% of the total site area equals 3012.5sqm The proposed development includes three areas of communal open space; <ul style="list-style-type: none"> <li>• Level 4 recreational deck = 4021sqm</li> <li>• Level 28 residential tower west rooftop communal terrace = 223sqm</li> <li>• Level 30 residential tower east rooftop communal terrace = 114sqm</li> </ul> The total communal open space provided is 4358sqm or 36% of the total site area.	Complies
	<b><u>Stage 4</u></b> The Stage 4 site area equals 8743sqm 25% of the total site area equals 2185.75sqm The proposed development includes three areas of communal open space; <ul style="list-style-type: none"> <li>• Level 4 recreational deck = 4021sqm</li> <li>• Level 28 residential tower west rooftop communal terrace = 223sqm</li> <li>• Level 30 residential tower east rooftop communal terrace = 114sqm</li> </ul> The total communal open space provided is 4358sqm or 49% of the Stage 4 site area.	Complies
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
2. 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 9 am and 3 pm on 21 June (mid winter).	<b><u>Concept Proposal</u></b> The Level 4 recreational deck, which is the principle useable part of the communal open space, is orientated north and achieves a minimum of 2hrs sunlight between 9am and 3pm in mid-winter to over 50% of the area.	Complies
	<b><u>Stage 4</u></b> The Level 4 recreational deck, which is principle useable part of the communal open space, is part of Stage 4. As such, Stage 4 meets the minimum requirements for solar access to the communal open space.	



### 3E Deep soil zones

#### Objective 3E-1

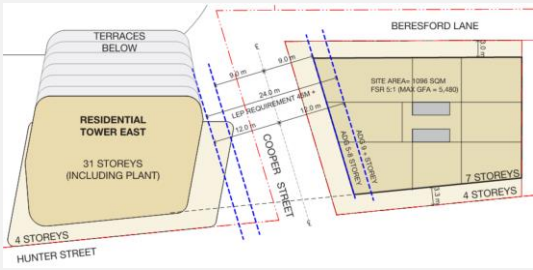
Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.

Design Criteria:	Comment:	Compliance:						
<p>1. Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>greater than 1500m<sup>2</sup></td><td>6m</td><td>7%</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	greater than 1500m <sup>2</sup>	6m	7%	<p>Large areas of deep soil with a minimum dimension of 6m are not provided (approximately 55sqm of deep soil area is located at Ground level within the 'Copper Street Plaza', however these areas do not achieve the 6m minimum dimension).</p> <p>The design guidance provided for this objective acknowledges that achieving the design criteria is not possible on some sites including where;</p> <ul style="list-style-type: none"> <li>The location and building typology have limited or no space for deep soil at ground level (e.g central business district, constrained sites, high density areas, or in centres); and or</li> <li>There is 100% site coverage or non-residential uses at ground floor level.</li> </ul> <p>Achieving the design criteria is no possible due to the location and constraints of the subject sites (high density area and the site being part of a transportation precinct), and the extensive site coverage with non-residential development at ground. The proposal instead complies with the design guidance for this objective by integrating acceptable stormwater management and alternative forms of planting such as planting on structures (Level 4 recreation deck, Level 28 residential tower west rooftop communal terrace, and Level 30 residential tower east rooftop communal terrace tower. This is considered acceptable.</p>	<p>Satisfactory (Merit based assessment)</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)						
greater than 1500m <sup>2</sup>	6m	7%						

#### Objective 3F-1

Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.

Design Criteria:	Comment:	Compliance:						
<p>1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms &amp; balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>up to 12m</td><td>6m</td><td>3m</td></tr> </tbody> </table>	Building height	Habitable rooms & balconies	Non-habitable rooms	up to 12m	6m	3m	<p>The site is irregular in shape, with two street frontages; Hunter Street (south boundary), Cooper Street (part east boundary), and Stewart Avenue (part east boundary).</p> <p>As such, the site has the rear boundary (north), and one 'side boundary' (west) – for which the minimum separation distances are applicable and are discussed below.</p> <p>Notwithstanding that the minimum separation distances of this part do not technically apply to Cooper Street frontage (east boundary), the 'Development Application Design Report'</p>	
Building height	Habitable rooms & balconies	Non-habitable rooms						
up to 12m	6m	3m						

(4 storeys)			(dated October 2021, prepared by Bates Smart) considers the building separation between the proposal (in particular the 'residential tower east') and potential future development to the east of Cooper Street at No. 850 Hunter Street. The diagrams on page 47 of the ' <i>Development Application Design Report</i> ' demonstrates that the proposed development achieves the minimum separation distances described in this part of the ADG for all levels when measured from the centreline of Cooper Street. As such, equitable and ADG compliant building separation between the proposed development and a potential future development on the neighbouring site for the purposes of residential apartments, can be realized in the future (see extract of page 47 of the ' <i>Development Application Design Report</i> ', below).
up to 25m (5-8 storeys)	9m	4.5m	
over 25m (9+ storeys)	12m	6m	
<p><b>Note:</b> Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2). Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>			<p>Extract of page 47 of the '<i>Development Application Design Report</i>'</p> <p><b>Note:</b> Level 00(Ground), Level 01, Level 02, Level 03, and Level 04 of the proposal do not contain residential apartments. As such the minimum separation distances from buildings to the side and rear boundaries described in this part of the ADG are not applicable at these levels.</p>
			<p><b>Separation distances to west boundary</b></p> <p><u>Up to 25m (Level 05)</u></p> <p>At Level 05, 'residential tower west' is setback a minimum 22.7m from the west boundary (see '<i>SITE PLAN</i>', drawing DA.01.01, revision 1, dated 03 June 2022, prepared by Bates Smart). This complies with the minimum separation distance for buildings from side and rear boundaries at this height (9m for habitable rooms).</p> <p><u>Over 25m (Level 06 to Level 30)</u></p> <p>At Level 06 and above, 'residential tower west' is setback a minimum 22.7m from the west boundary (see '<i>SITE PLAN</i>', drawing DA.01.01, revision 1, dated 03 June 2022, prepared by Bates Smart). This complies with the minimum separation distance for buildings from side and</p>
			<p>Complies</p> <p>Complies</p>

	rear boundaries at this height (12m for habitable rooms).	
	<p><b>Separation distances to north boundary</b></p> <p><u>Up to 25m (Level 05)</u></p> <p>At Level 05, both towers are setback a minimum 48.3m from the north boundary (see '<i>SITE PLAN</i>', drawing DA.01.01, revision 1, dated 03 June 2022, prepared by Bates Smart). This complies with the minimum separation distance for buildings from side and rear boundaries at this height (9m for habitable rooms).</p> <p><u>Over 25m (Level 06 to Level 30)</u></p> <p>At Level 06 and above, both towers are setback a minimum 48.3m from the north boundary (see '<i>SITE PLAN</i>', drawing DA.01.01, revision 1, dated 03 June 2022, prepared by Bates Smart). This complies with the minimum separation distance for buildings from side and rear boundaries at this height (12m for habitable rooms).</p>	<p>Complies</p> <p>Complies</p>
	<p><b>Separation distance between the proposed towers</b></p> <p><u>Up to 25m (Level 05)</u></p> <p>At Level 05, a minimum 17.2m separation distance is provided between the two tower volumes, with a maximum separation of 27.9m. Whilst the minimum does not comply with the 18m minimum distance for building on the same site at this height (9m for habitable rooms + 9m for habitable rooms), the variation is minor (800mm) and generally the minimum separation is achieved.</p> <p>Where the minor variation occurs, the apartments and their balconies have been configured to avoid direct overlooking between dwellings.</p> <p><u>Over 25m (Level 06 to Level 30)</u></p> <p>At Level 06 and above, a minimum 17.2m separation distance is provided between the two tower volumes, with a maximum separation of 27.9m (see '<i>TYPICAL LOW RISE PLAN</i>', drawing DA.03.06, revision 5, dated 13 April 2022, prepared by Bates Smart).</p> <p>Whilst the minimum does not comply with the 24m minimum distance for building on the same site at this height (12m for habitable rooms + 12m for habitable rooms), On average the separation complies with the controls and maximises views and solar access for</p>	<p>Satisfactory (Merit based assessment)</p> <p>Satisfactory (Merit based assessment)</p>

	<p>apartments. Apartments have been orientated to minimise overlooking.</p> <p>Where the minor variation occurs, the apartments and their balconies have been configured to avoid direct overlooking between dwellings.</p> <p>The spatial relationship between the towers, and the resulting non-compliance with building separation distances of the ADG, was supported by CN's UDRP. The UDRP 25 November 2021 advice stated;</p> <p><i>"The revision to the initial design's layout, which opens up the space between the towers at its northern end, and which reduces the linear lengths of the wall planes, is considered successful in producing a more attractive, less bulky urban form, and a better spatial relationship between the towers. Solar access to the dwellings is also improved by this move."</i></p> <p>The non-compliance is able to be accepted on a balanced view having regard for both visual privacy, bulk and scale, and access to light and air.</p>	
<b>A4 Solar and daylight access</b>		
<b>Objective 4A-1</b> To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space		
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.	<b>Solar access to apartment living rooms</b>  The living rooms of 246 out of the 352 total apartments proposed, or 70%, will achieve a minimum of 2hrs sunlight during 9am and 3pm at mid-winter. (For details refer to 'Addendum - RFI Response', pages 5 to 11, dated 3 June 2022, prepared by Bates Smart)	Complies
	<b>Solar access to apartment private open space</b>  The private open space (balconies) of 223 out of the 352 total apartments proposed, or 63%, will achieve a minimum of 2hrs sunlight during 9am and 3pm at mid-winter. The design guidance provided for this objective acknowledges that achieving the design criteria is not possible on some sites. In response to CN's request for information during the assessment process, detailed solar access floor plans and 3D views were submitted showing solar and daylight access to all	Satisfactory (Merit based assessment)

	<p>apartments living rooms and private open spaces mid-winter between 9am and 3pm.</p> <p>(For details refer to 'Addendum - RFI Response', pages 5 to 11, dated 3 June 2022, prepared by Bates Smart).</p> <p>The design has sought to balance both wind comfort and solar access. The written justification for the proposed variation provided in the submitted ADG Compliance table prepared by Bates Smart, explains:</p> <p><i>"In order to provide better amenity, the balconies have been located off the corners of the building where they can be protected from the high wind conditions present in the locality."</i></p> <p>(For details refer to 'Addendum – ADG Compliance: Design Statement SEPP65 Design Verification, pages 7, dated 8 June 2022, prepared by Bates Smart)</p> <p>The design drawings and written justification have suitably demonstrated how; (1) the site constraints and orientation (high wind conditions) preclude meeting the design criteria and, (2) greater residential amenity can be achieved by prioritising wind comfort whilst having regard to optimizing the number of apartments receiving sunlight to habitable rooms, and primary windows.</p> <p>As such, the proposal complies with the design guidance for this objective.</p>	
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter.	N/A	N/A
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	<p>30 out of the 352 apartments proposed, or 12%, will receive no direct sunlight between 9am and 3pm at mid-winter.</p> <p>(For details refer to 'Addendum - RFI Response', pages 5 to 11, dated 3 June 2022, prepared by Bates Smart).</p>	Complies
<b>4B Natural ventilation</b>		
<b>Objective 4B-3</b> The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.		
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
1. At least 60% of apartments are naturally cross ventilated in the	Analysis of the submitted architectural floor plans (drawings DA.03.05 and DA.03.06,	Satisfactory

<p>first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</p>	<p>prepared by Bates Smart), found 29 out of the 62 apartments proposed on the first nine storeys of the proposal (Level 00 to Level 08), or 47%, are natural cross ventilated.</p> <p>The written justification for the proposed variation provided in 'Addendum - RFI Response', page 28, dated 3 June 2022, prepared by Bates Smart) explained:</p> <p><i>"The building form has been designed to provide comfort for residents with chamfered corners and balconies moved inboard to protect them from wind. It is considered that the design of the building and amenity of the majority of the apartments would be compromised by the re-design required to achieve the relatively small number of additional apartments required for compliance."</i></p> <p>Furthermore, it is noted that the development proposal was referred to CN's UDRP during the assessment process. The UDRP did note some disappointment that minimum cross ventilation requirements of the ADG are not being achieved. In response the applicant acknowledged that the lower-level single aspect 1 bedroom apartments and adjacent 2 bedroom apartments could be replanned to become dual aspect 3 bedroom apartments and this would achieve the natural ventilation requirements. However, the UDRP acknowledged that these lower-level single aspect apartments are likely to be more affordable in the market and on balance this was considered to have a better outcome particularly given that the site conditions are conducive to breezes.</p> <p>For the single aspect apartments, the layout and design maximises natural ventilation; apartment depths have been minimised and frontages maximised to increase ventilation and airflow.</p> <p>All habitable rooms are naturally ventilated via adjustable windows with suitable effective operable areas.</p> <p>The non-compliance is able to be accepted on a balanced view.</p>	<p>(Merit based assessment)</p>
<p><b>Design Criteria:</b></p> <p>2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</p>	<p><b>Comment:</b></p> <p>N/A</p>	<p><b>Compliance:</b></p> <p>N/A</p>

4C Ceiling heights												
Objective 4C-1												
Ceiling height achieves sufficient natural ventilation and daylight access.												
Design Criteria:	Comment:	Compliance:										
<div>1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</div> <table><tr><th colspan="2">Minimum ceiling height for apartment and mixed use buildings</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table> <div>These minimums do not preclude higher ceilings if desired.</div>	Minimum ceiling height for apartment and mixed use buildings		Habitable rooms	2.7m	Non-habitable	2.4m	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	<div><b>Mixed use</b></div> <div>Level 00 (Ground) and Level 01 have increased floor-to-floor heights of 4.5m and 3.7m respectively. As such, a minimum ceiling height from finished floor level to finished ceiling level of 3.3m can be achieved for both the ground and first floors.</div> <div><b>Apartments</b></div> <div>All storeys containing apartments (Level 05 to Level 30) have a floor-to-floor height of at least 3.1m. As such, a minimum ceiling height from finished floor level to finished ceiling level of 2.7m to habitable rooms and 2.4m to non-habitable rooms can be achieved for all apartments.</div> <div>No two storey apartments or attic spaces are proposed.</div>	<div>Complies</div> <div>Complies</div>		
Minimum ceiling height for apartment and mixed use buildings												
Habitable rooms	2.7m											
Non-habitable	2.4m											
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use											
4D Apartment size and layout												
Objective 4D-1												
The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.												
Design Criteria:	Comment:	Compliance:										
<div>1. Apartments are required to have the following minimum internal areas:</div> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50m<sup>2</sup></td></tr><tr><td>2 bedroom</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedroom</td><td>90m<sup>2</sup></td></tr></table> <div>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</div> <div>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</div>	Apartment type	Minimum internal area	studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	<div>All apartments proposed are provided the minimum internal areas required.</div> <div>(For details refer to typical apartment types, drawings DA.13.02 to DA.13.13, and DA.13.50 to DA.13.60, Revision 1, dated 3 June 2022, prepared by Bates Smart).</div>	<div>Complies</div>
Apartment type	Minimum internal area											
studio	35m <sup>2</sup>											
1 bedroom	50m <sup>2</sup>											
2 bedroom	70m <sup>2</sup>											
3 bedroom	90m <sup>2</sup>											



Design Criteria:	Comment:	Compliance:
2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	All habitable rooms within the apartments are provided with a window within an external wall.	Complies
<b>Objective 4D-2</b> Environmental performance of the apartment is maximised.		
Design Criteria:	Comment:	Compliance:
1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	N/A (all apartments are provided a combined living/ dining/ kitchen area)	N/A
Design Criteria:	Comment:	Compliance:
2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	330 out of the 352 apartments proposed have a maximum habitable room depth of less than 8m from a window for open plan living, dining and kitchen area, measured from glass line to furthest kitchen bench.  Details of the non-complying apartments are listed below;  <u>APARTMENT TYPE 'E6.05' – 22 x 2 BEDROOM</u>  Type 'E6.05' apartments have a useable room depth of approximately 8.2m from the furthest kitchen cabinetry and benchtop to the balcony window.  It is considered that a 0.2m exceedance is nominal and will have minimal impact on the environment performance of the apartments  The non-compliances proposed are minimal and can be accepted on a balance view.  (For details refer to 'East Tower Apartment Type 2', drawing DA.13.51, Revision 1, dated 3 June 2022, prepared by Bates Smart).	Satisfactory (Merit based assessment)
<b>Objective 4D-3</b> Apartment layouts are designed to accommodate a variety of household activities and needs.		
Design Criteria:	Comment:	Compliance:
1. Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space)	All master bedrooms have a minimum area of 10m <sup>2</sup> and all other bedrooms have a minimum area of 9m <sup>2</sup> (excluding wardrobe space).	Complies
Design Criteria:	Comment:	Compliance:
2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	328 out of the 352 apartments proposed have bedrooms which achieve the 3m minimum	Satisfactory

	<p>dimension (measured excluding wardrobe space).</p> <p>Details of the non-complying apartments are listed below;</p> <p><u>APARTMENT TYPE 'W5.05' – 1 x 2 BEDROOM</u></p> <p>Generally, the second bedroom of apartment type 'W5.05' has a minimum dimension of 3m or greater. However, a small portion of the second bedroom has a dimension of less than 3m due to the irregular alignment of one of the bedroom walls.</p> <p>(For details refer to 'West Tower Apartment Types 2', drawing DA.13.02, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p><u>APARTMENT TYPE 'W6.09' – 19 x 2 BEDROOM</u></p> <p>The master bedroom of apartment type 'W6.09' has a minimum dimension of 2.9m.</p> <p>(For details refer to 'West Tower Apartment Types 6', drawing DA.13.06, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p><u>APARTMENT TYPE 'W24.01' – 1 x 2 BEDROOM</u></p> <p>Generally, the second bedroom of apartment type 'W24.01' has a minimum dimension of 3m or greater. However, a small portion of the second bedroom has a dimension of less than 3m due to the irregular alignment of one of the bedroom walls.</p> <p>(For details refer to 'West Tower Apartment Types 9', drawing DA.13.09, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p><u>APARTMENT TYPE 'W24.02' – 1 x 4 BEDROOM</u></p> <p>Generally, the fourth bedrooms of apartment type 'W24.02' has a minimum dimension of 3m or greater. However, a small portion of the second bedroom has a dimension of less than 3m due to the irregular alignment of one of the bedroom walls.</p> <p>(For details refer to 'West Tower Apartment Types 9', drawing DA.13.09, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p><u>APARTMENT TYPE 'W25.02' – 1 x 4 BEDROOM</u></p>	(Merit based assessment)
--	---	--------------------------

	<p>Generally, the fourth bedrooms of apartment type 'W25.02' has a minimum dimension of 3m or greater. However, a small portion of the second bedroom has a dimension of less than 3m due to the irregular alignment of one of the bedroom walls.</p> <p>(For details refer to 'West Tower Apartment Types 10', drawing DA.13.10, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p><u>APARTMENT TYPE 'E27.02' – 1 x 1 BEDROOM</u></p> <p>Generally, the master bedrooms of apartment type 'W27.02' has a minimum dimension of 3m or greater. However, a small portion of the second bedroom has a dimension of less than 3m due to the irregular alignment of one of the bedroom walls.</p> <p>(For details refer to 'East Tower Apartment Types 7', drawing DA.13.56, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p>The non-compliances proposed are minimal and can be accepted on a balance view regarding both minimum dimensions and areas. Furthermore, the design drawings have suitably demonstrated the apartment bedrooms are well designed by showing the useability and functionality of the space with realistically scaled furniture layouts and circulation spaces, despite the minor non-compliance.</p>	
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>
<p>3. Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> <li>• 3.6m for studio and 1 bedroom apartments.</li> <li>• 4m for 2 and 3 bedroom apartments.</li> </ul>	<p>280 out of the 352 total apartments proposed have either living rooms or combined living/ dining rooms which achieve the minimum dimensions required for the number of bedrooms provided.</p> <p>Details of the non-complying apartments are listed below;</p> <p><u>APARTMENT TYPE 'W5.01' – 1 x 3 BEDROOM</u></p> <p>Generally, the combined living/dining room of apartment type 'W5.01' has a minimum dimension of 4m or greater. However, a small portion of the combined living/dining room has a dimension of less than 4m due to the irregular alignment of the external walls (curved/ tapered geometry of the built form).</p> <p>(For details refer to 'West Tower Apartment Types 1', drawing DA.13.01, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p>	<p>Satisfactory (Merit based assessment)</p>

	<p><u>APARTMENT TYPE 'W6.01' – 17 x 3 BEDROOM</u></p> <p>Generally, the combined living/dining room of apartment type 'W6.01' has a minimum dimension of 4m or greater. However, a small portion of the combined living/dining room has a dimension of less than 4m due to the irregular alignment of the external walls (curved/ tapered geometry of the built form).</p> <p>(For details refer to '<i>West Tower Apartment Types 3</i>', drawing DA.13.03, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p><u>APARTMENT TYPE 'W6.08' – 21 x 3 BEDROOM</u></p> <p>Generally, the combined living/dining room of apartment type 'W6.08' has a minimum dimension of 4m or greater. However, a small portion of the combined living/dining room has a dimension of less than 4m due to the irregular alignment of the external walls (curved/ tapered geometry of the built form).</p> <p>(For details refer to '<i>West Tower Apartment Types 6</i>', drawing DA.13.06, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p><u>APARTMENT TYPE 'W23.03' – 1 x 2 BEDROOM</u></p> <p>The combined living/dining room of apartment type 'W23.03' has a minimum dimension of 3.9m.</p> <p>(For details refer to '<i>West Tower Apartment Types 8</i>', drawing DA.13.08, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p><u>APARTMENT TYPE 'E6.02' – 10 x 2 BEDROOM</u></p> <p>Generally, the combined living/dining room of apartment type 'E6.02' has a minimum dimension of 4m or greater. However, a small portion of the combined living/dining room has a dimension of less than 4m due to the irregular alignment of the external walls (curved/ tapered geometry of the built form).</p> <p>(For details refer to '<i>East Tower Apartment Types 1</i>', drawing DA.13.50, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p><u>APARTMENT TYPE 'E6.06' – 22 x 2 BEDROOM</u></p>	
--	---	--

	<p>Generally, the combined living/dining room of apartment type 'E6.06' has a minimum dimension of 4m or greater. However, a small portion of the combined living/dining room has a dimension of less than 4m due to the irregular alignment of the external walls (curved/ tapered geometry of the built form).</p> <p>(For details refer to 'East Tower Apartment Types 3, drawing DA.13.52, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p>The non-compliances proposed are minimal and can be accepted on a balance view regarding both minimum dimensions and areas. Furthermore, the design drawings have suitably demonstrated the apartments are well designed by showing the useability and functionality of the space with realistically scaled furniture layouts and circulation spaces, despite the minor non-compliance.</p>																
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>															
4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	N/A	N/A															
<b>4E Private open space and balconies</b>																	
<b>Objective 4E-1</b> Apartments provide appropriately sized private open space and balconies to enhance residential amenity.																	
<b>Design Criteria:</b>	<b>Comment:</b>	<b>Compliance:</b>															
1. All apartments are required to have primary balconies as follows: <table border="1"> <thead> <tr> <th>Dwelling type</th><th>Min. area</th><th>Min. depth</th></tr> </thead> <tbody> <tr> <td>Studio</td><td>4m<sup>2</sup></td><td>-</td></tr> <tr> <td>1 bedroom</td><td>8m<sup>2</sup></td><td>2m</td></tr> <tr> <td>2 bedroom</td><td>10m<sup>2</sup></td><td>2m</td></tr> <tr> <td>3+ bedroom</td><td>12m<sup>2</sup></td><td>2.4m</td></tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	Dwelling type	Min. area	Min. depth	Studio	4m <sup>2</sup>	-	1 bedroom	8m <sup>2</sup>	2m	2 bedroom	10m <sup>2</sup>	2m	3+ bedroom	12m <sup>2</sup>	2.4m	<p><b>Primary balconies depth</b></p> <p>All apartments have primary balconies that achieve the minimum depths required.</p> <p><b>Primary balconies area</b></p> <p>312 out of the 352 total apartments have primary balconies that achieve the minimum area required.</p> <p>Details of the non-complying apartments are listed below;</p> <p><u>APARTMENT TYPE 'W6.03' – 17 x 2 BEDROOM</u></p> <p>The balcony of apartment type 'W6.03' has an area of 9m<sup>2</sup>, which does not achieve the minimum required for 2 bedroom apartments (10m<sup>2</sup>)</p> <p>(For details refer to 'West Tower Apartment Types 3', drawing DA.13.03, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p>	<p>Complies</p> <p>Satisfactory (Merit based assessment)</p>
Dwelling type	Min. area	Min. depth															
Studio	4m <sup>2</sup>	-															
1 bedroom	8m <sup>2</sup>	2m															
2 bedroom	10m <sup>2</sup>	2m															
3+ bedroom	12m <sup>2</sup>	2.4m															

	<p><u>APARTMENT TYPE 'W6.07' – 22 x 2 BEDROOM</u></p> <p>The balcony of apartment type 'W6.07' has an area of 9m<sup>2</sup>, which does not achieve the minimum required for 2 bedroom apartments (10m<sup>2</sup>)</p> <p>(For details refer to 'West Tower Apartment Types 5', drawing DA.13.05, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p><u>APARTMENT TYPE 'E5.07' – 1 x 2 BEDROOM</u></p> <p>The balcony of apartment type 'W6.07' has an area of 8m<sup>2</sup>, which does not achieve the minimum required for 2 bedroom apartments (10m<sup>2</sup>)</p> <p>(For details refer to 'East Tower Apartment Types 1', drawing DA.13.50, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p>The design guidance provided for this objective acknowledges that balcony use may be limited in some proposals, and in these situations other amenity benefits for occupants should be provided in the apartment or in the development or both.</p> <p>The design drawings have suitably demonstrated how; (1) the site constraints (consistently high wind conditions present in the locality, and close proximity to road, rail and other noise sources) may limit balcony use and, (2) the proposal has been designed having regard to optimizing residential amenity for occupants (greater than minimum internal areas for apartments, and increased communal open space).</p> <p>The non-compliances proposed are minimal (ranging from 1m<sup>2</sup> to 2m<sup>2</sup>) and can be accepted on a balance view regarding both minimum balcony depths and areas.</p>	
<p><b>Design Criteria:</b></p> <p>2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3m.</p>	<p>N/A</p> <p>(No apartments proposed on Ground Level. Whilst apartments are located on Level 05 where the communal landscaped podium is located, the design and location of the apartments is not what is considered a 'podium or similar structure').</p>	N/A
<b>4F Common circulation and spaces</b>		
<p><b>Objective 4F-1</b></p> <p>Common circulation spaces achieve good amenity and properly service the number of apartments.</p>		

Design Criteria:	Comment:	Compliance:
1. The maximum number of apartments off a circulation core on a single level is eight.	<p>The maximum number of apartments off a circulation core on a single level in either tower is nine.</p> <p>The design guidance provided for this objective acknowledges that achieving the design criteria is not possible on some sites by stipulating that where design criteria 1 is not achieved, no more than 12 apartments should be provided off a circulation core on a single level.</p> <p>As such, the proposal complies with the design guidance for this objective.</p>	Satisfactory (Merit based assessment)
Design Criteria:	Comment:	Compliance:
2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	<p>Each tower contains three lifts servicing the residential apartments. Meaning, on average a single lift will service 57 and 60 apartments in the east and west towers respectively.</p> <p>An analysis of the east and west tower lift performance has been prepared in support of the variation (see '<i>Transportation Services Concept Report</i>' (revision B, dated 31 May 2022, prepared by S4B Studio).</p> <p>The report examines the design basis of the lift services for the current amended proposal. The justification for the proposed variation is based on the view that the lift related requirements of the ADG are very general and cannot be adequately applied to different types of residential buildings. The design approach for the vertical transportation provision within the proposed development is based on international and local benchmarks as well as S4B's internal good practice guidelines.</p> <p>The vertical traffic analysis found the lifts proposed of the east and west towers will have an average waiting time of 45 and 41 second respectively, which will '<i>provide a good level of service</i>'. The analysis is based on a lift speed of 2.5m/s.</p> <p>A condition has been included in the recommended Draft Schedule of Conditions (refer to <b>Attachment A</b>) in accordance with the minimum assumptions made within the '<i>Transportation Services Concept Report</i>'.</p>	Satisfactory (Merit based assessment)

4G Storage										
Objective 4G-1										
Adequate, well designed storage is provided in each apartment.										
Design Criteria:	Comment:	Compliance:								
<div>1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</div> <table><tr><th>Dwelling type</th><th>Storage size volume</th></tr><tr><td>1 bedroom</td><td>6m<sup>3</sup></td></tr><tr><td>2 bedroom</td><td>8m<sup>3</sup></td></tr><tr><td>3+ bedroom</td><td>10m<sup>3</sup></td></tr></table>	Dwelling type	Storage size volume	1 bedroom	6m <sup>3</sup>	2 bedroom	8m <sup>3</sup>	3+ bedroom	10m <sup>3</sup>	<div><b>Storage located within the apartments</b></div> <div>All apartments are provided with storage located, and access from, within the apartment equal to at least 50% of the storage volume required in accordance with the number of bedrooms.</div> <div>(For details refer to typical apartment types, drawings DA.13.02 to DA.13.13, and DA.13.50 to DA.13.60, Revision 1, dated 3 June 2022, prepared by Bates Smart).</div>	Complies
Dwelling type	Storage size volume									
1 bedroom	6m <sup>3</sup>									
2 bedroom	8m <sup>3</sup>									
3+ bedroom	10m <sup>3</sup>									
<div>At least 50% of the required storage is to be located within the apartment.</div>	<div><b>Storage located external to the apartments</b></div> <div>In addition to the storage volume located within apartments, all apartments are provided with secure storage cages located, and access from, common areas equal to at least 50% of the storage volume required in accordance with the number of bedrooms.</div> <div>The storage cages are located across Level 02, Level 04, and Level 05 Mezzanine and are separated into storage for the 'east' and 'west' towers.</div> <div>(For details refer to drawing DA.03.02, DA.03.04, and DA.03.05.M, dated 13 April 2022, prepared by Bates Smart).</div> <div>A condition has been included in the recommended Draft Schedule of Conditions (refer to <b>Attachment A</b>) to ensure each is allocated a storage cage of adequate size to meet the total minimum storage volume described under this part of the ADG.</div>	Complies								

## State Environmental Planning Policy (Planning Systems) 2021 ('Planning Systems SEPP')

### Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 2 of Schedule 6 of the Planning Systems SEPP as the proposal is general development with a CIV greater than \$30 million.

Clause 2.20 of the State Environmental Planning Policy (Planning Systems) 2021 requires a development that is the subject of a concept development application that any part of the development that is the subject of a separate development application is to be considered as 'Regionally Significant Development

Accordingly, the Hunter Central Coast Regional Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.



## **State Environmental Planning Policy (Resilience and Hazards) 2021**

### Chapter 2: Coastal Management

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

*The subject land is located in a Coastal environment area. Part 2.2 of the Policy indicates the development controls applicable to development on land in each of the above areas, as well as development in the coastal zone generally. Clause 2.12 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'.*

*As the subject development is located within a well-established dense urban setting, there are no likely impacts to this environment, especially with regards to the biophysical environment and coastal processes and maintaining public access to the foreshore.*

### Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021* ('the Resilience and Hazards SEPP') have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is 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 to be carried out. In order to consider this, a Remediation Action Plan has been prepared for the site.

The subject site has undergone extensive investigation identifying a long history of commercial landuse and potential contaminant sources at the site and on adjacent land. Subsurface investigations identified widespread fill materials across the site with minor soil and groundwater impacts. The nature and extent of contamination identified was such that it was considered some remediation and/or management of impacted soils may be required as part of the development.

It is understood that as part of the Review of Environmental Factors (REF) for the Newcastle Bus Interchange (NBI), initial site investigations did identify some evidence of contamination and the need for specific management and further investigation following the completion of demolition of site structures to adequately characterize the potential for contamination (Douglas Partners, 2016). Any necessary management and remediation work associated with the potential for contamination at the site was to be undertaken as part of the Part 5 Approval for the NBI. The recommended mitigation measures for the REF works were to be adopted for the ground and sub-surface construction to address contamination impacts.

It was determined that the site could be made suitable for the proposed development subject to localised remediation of the identified contamination in accordance with a site-specific Remediation Action Plan (RAP). The demolition of the site structures would allow for additional investigation in order to confirm remediation requirements.

A summary of the approval requirements in place for the current proposal, and the relationship with the NBI and the Masterplan for the remainder of the site development, were the SEE prepared by KDC dated September 2018 (lodged with DA 2018/01107 – the commercial

development to the east of the current proposal but within the same site). Having regard to these arrangements, the SEE for the retail and commercial development makes the following comments with regard to contamination management:

*'Any necessary management and remediation work associated with the potential for contamination at the site is to be undertaken as part of the Part 5 Approval for the NBI. The recommended mitigation measures for the REF works will be adopted for the ground and sub-surface construction works as a precautionary approach to minimize potential contamination impacts'.*

The measures then listed include:

*'Site remediation and management would be conducted in accordance with a site-specific RAP detailing remediation strategies, procedures, and validation criteria for onsite remediation'.*

Given the separation of the approvals, the coordination of the multiple stages has been taken into consideration. The retail and commercial development SOE indicates evidence of contamination and the need for specific management and further investigation following the completion of demolition of site structures is required to adequately characterise the potential for contamination (Douglas Partners, 2016) (S5.8.3).

Reference to NBI REF (Section 13.4.1) confirms that contamination remediation works will be required, and site remediation and management should be conducted *"in accordance with a site-specific remediation action plan (RAP) detailing remediation strategies, procedures and validation criteria for onsite remediation."*

The NBI Condition of approval No33 provides that detailed investigation into contamination is to be undertaken prior to construction commencing and that specific requirements for further investigation, remediation or management of any contamination shall be included within the Construction Environmental Management Plan CEMP (with the preparation and implementation of a CEMP addressed by other conditions).

In accordance with the above requirements the applicant has submitted a Validation Report prepared by ADE Consulting dated February 2020 along with a Site Audit Report and Site Audit Statement prepared by Ian Gregson (Accredited NSW Site Auditor) of GHD dated March 2020.

The Validation Report sought to achieve the areas subject to remediation within the Site do not pose an unacceptable risk to human health and the environment in its current state, verify that all necessary remediation works have been carried out successfully and determine if the land within Lot 200 (the proposal site) is suitable for the proposed land use.

The site was validated with no further exceedance present following remediation activities. The soil material exceeding the adopted Site Assessment Criteria (SAC) was removed off-site to a licenced waste facility. Furthermore, the identified asbestos containing soil was also removed off-site and an Asbestos Clearance Inspection report was provided to the client outlining the results of the visual inspection. Finally, the identified USTs and associated soils were also removed off-site to a licenced waste facility.

Based on the findings of the validation investigation works, the Site is considered suitable for the proposed commercial / residential development with regard to ACM and USTs validation. No further excavation and/or management of the Site following development will be required in regard to ACM, Acid Sulfate Soils and UST validation as per the proposed development plans provided to ADE.

This is confirmed as the applicant has submitted a Type A1 Site Audit Statement prepared by Ian Gregson (Accredited NSW Site Auditor) of GHD dated 25 March 2020 certifying the site is suitable for the intended use of commercial offices situated on level 1 to 3 with two high rise residential buildings situated above the commercial levels.

This will effectively mitigate the potential health and ecological risks associated with these materials for future use of the site. The proposal is considered to be consistent with Chapter 4 Remediation of Land of the Resilience and Hazards SEPP, subject to imposition of relevant conditions of consent in relation to remediation works during construction on any consent granted.

### **State Environmental Planning Policy (Transport and Infrastructure) 2021**

#### **Division 5 - Subdivision 2 Development likely to affect an electricity transmission or distribution network**

Subdivision 2, Clause 2.48 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 in relation to development likely to affect an electricity transmission or distribution network.

Ausgrid have provided a letter of advice on 6 December 2021 relating to matters and information that will be required prior to the issue of a Construction certificate.

#### **Division 15 Railways - Subdivision 2 Development in or adjacent to rail corridors and interim rail corridors—notification and other requirements**

Clause 2.97 Development adjacent to rail corridors applies to this development.

The application was referred to Sydney Trains given the proximity of proposed building and works proposed on the podium level to the existing heavy and light rail corridors. Sydney Trains in its letter (letter dated 22/12/2021) provided concurrence and conditions relating to a range of matters including acoustic and electrolysis assessment, and provision of a geotechnical report. Refer to schedule 2 of the draft conditions of consent.

#### **Division 17 Roads and traffic**

##### **Development with frontage to a classified road**

The site has a frontage to a classified road. Under Sub-clause 2.118(2) of the policy, the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:

- '(a) where practicable, vehicular access to the land is provided by a road other than the classified road, and

- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:
  - (i) the design of the vehicular access to the land, or
  - (ii) the emission of smoke or dust from the development, or
  - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.'

The above matters have been considered.

#### Section 2.119(2) Impact of road noise or vibration on non-road development

##### Traffic-generating development

Clause 2.121 requires development specified in Column 1 of the Table to Schedule 3 (Traffic generating development to be referred to TfNSW).

Transport for NSW have provided the following email correspondence dated 7 June 2022

*"Further to our letter dated 25 May 2022 and discussion on 6 June 2022, Transport for NSW (TfNSW) raises no objection to or requirements for the proposed development as it is considered there will be no significant impact on the nearby classified (State) road network and intersection of Stewart Avenue/Hunter Street Newcastle West intersection".*

The provisions of the Infrastructure SEPP can be met via appropriate conditions of development consent.

##### Newcastle Local Environmental Plan 2012

The relevant local environmental plan applying to the site is the *Newcastle Local Environmental Plan 2012* ('the LEP'). Clause 1.2 aims of the NLEP include:

Clause 1.2(2) The particular aims of this Plan are as follows:

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) to respect, protect and complement the natural and cultural heritage, the identity and image, and the sense of place of the City of Newcastle,*
- (b) to conserve and manage the natural and built resources of the City of Newcastle for present and future generations, and to apply the principles of ecologically sustainable development in the City of Newcastle,*
- (c) to contribute to the economic well being of the community in a socially and environmentally responsible manner and to strengthen the regional position of the*

*Newcastle city centre as a multi-functional and innovative centre that encourages employment and economic growth,*

- (d) to facilitate a diverse and compatible mix of land uses in and adjacent to the urban centres of the City of Newcastle, to support increased patronage of public transport and help reduce travel demand and private motor vehicle dependency,*
- (e) to encourage a diversity of housing types in locations that improve access to employment opportunities, public transport, community facilities and services, retail and commercial services,*
- (f) to facilitate the development of building design excellence appropriate to a regional city.*

The proposal is consistent with these aims as the proposal is providing for diversity of housing opportunity placed within the immediate and local community setting which will enhance the amenity of the site, its residents, and the surrounding mixed use residential and commercial context. The design of the development is considered to have achieved design excellence under the provisions of SEPP 65 and the ADG.

The City of Newcastle's Urban Design Review Panel considers the design outcome for the site to be appropriate in the context of the surrounding environment, taking advantage of the central city location and transport infrastructure, utilising the NBI building footprint assisting with minimising visual impact on site and when viewed from surrounding properties and particular vantage points. The proposal has also demonstrated it can deliver a sustainable development outcome.

#### *Zoning and Permissibility (Part 2)*

The site is located within the B3 Commercial Core Zone pursuant to Clause 2.2 of the LEP

**Figure 4: Land Use Map B3 Commercial Core**



According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the definition of Shop top housing, commercial premise, retail premises which are permissible use with consent in the Land Use Table in Clause 2.3.

The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

*'Zone B3 Commercial Core*

*1 Objectives of zone*

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- To encourage appropriate employment opportunities in accessible locations.*
- To maximise public transport patronage and encourage walking and cycling.*
- To provide for commercial floor space within a mixed use development.*
- To strengthen the role of the Newcastle City Centre as the regional business, retail and cultural centre of the Hunter region.*
- To provide for the retention and creation of view corridors'.*

The proposal provides for commercial on the ground floor and all residential dwellings are located on the upper floor levels. The proposed residential component therefore complies with the definition of shop top housing. The proposed mixed-use development will provide additional housing in an accessible and central area. Additionally, the site will provide for further employment opportunities within an area that is in close proximity to public transport and services.

*General Controls and Development Standards (Part 2, 4, 5 and 6)*

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered below.

Clause 4.3 - Height of buildings

In assessing the Concept Development Application consideration was given to a variation to Clause 4.3 'Height of Buildings'. The original Concept Development Application was approved with a building height of 99m for Stage 4, (mixed use) towers exceeding the prescribed height limit of 90m by 9m or 10%.

The modification application to the Concept Development Application proposed a further increase to the proposed maximum building height, being RL130.0 to RL109.88 to the top of the lift overrun, this will result in a maximum height of 106.78m from the existing ground level.

The total amended height represents a 18.6% variation from the prescribed height limit permitted under the NLEP 2012, and an increase of 16.78m above the prescribed height limit and 7.78m or 7.86% above the original Concept Development Application approved height.

Having regard to the objectives of clause 4.3 and the relevant zone objectives contained within the NLEP 2012, the scale of the development will continue to contribute towards the desired character in presenting a mixed use-development that provides both high density residential living and further opportunities for commercial and retail development in close proximity to public transport.

As demonstrated within the shadow diagrams, the additional height will not result in unreasonable shadowing to adjoining development to the public domain, allowing for continued amenity and solar access to these areas. The development will continue to make a positive contribution and will not result in excessive height or scale.

For these reasons, the proposal as modified by the Concept Development Application remains consistent with the objectives of Clause 4.3.

A Clause 4.6 Variation to Development Standard Statement prepared by SLR accompanies the application and is discussed further in a later section of the report.

#### Clause 4.4 -Floor Space Ratio

Clause 4.4 specifies a maximum FSR of for the site of 8:1. However, the application is impacted by clause 7.10 which affects the FSR within the site as 'Area A'. Clause 7.10 reduces the FSR for the site to 5:1 for a development that is not a commercial building.

The FSR for the proposed development has been assessed holistically as part of the concept DA. Overall the site area is 12,056 and the concept plan proposed a GFA across the site of 57,681, this equates to an FSR of 4.89:1 and therefore complies with Clause FSR requirements.

#### Clause 4.6 – Exceptions to development standards

Clause 4.6 of the NLEP 2012 allows the consent authority to provide an appropriate degree of flexibility in applying certain development standards, where flexibility would achieve better outcomes. An assessment of the Clause 4.6 Variations has been undertaken and the variations to 'Height of buildings' and 'Building separation' as listed below are supported on the following basis:

##### Clause 4.6(1) – Objectives of clause 4.6

"(1) *The objectives of this clause are as follows—*

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

##### Clause 4.6(2) - Operation of clause 4.6

"(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause".*

The operation of clause 4.3 is not limited by terms of Claus 4.6(8) of this LEP, or otherwise by any other instrument.

The proposal does not comply with Clause 4.3 'Height of buildings' development standard, as outlined in the table below, and as such the applicant has submitted a request to vary the height standard under Clause 4.6 of the NLEP 2012.



**Table 6: Proposed Building Height**

NLEP Height	Proposed	Variation to NLEP (M)	Variation to NLEP (%)
<b>East Tower</b>			
90 metres	106.78 m (Lift overrun)	16.78m	18.6%
	105.45 m (roofline)	15.45m	17.2%
<b>West Tower</b>			
90 metres	100.58 m (Lift overrun)	10.58m	11.7%
	99.23 m (Roofline)	9.23m	10.2%

**Clause 4.6(3) – The Applicants written request**

Clause 4.6(3) requires that the applicant provide a written request seeking to justify contravention of the development standard. The request must demonstrate that:

- "(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (a) that there are sufficient environmental planning grounds to justify contravening the development standard'.

The applicant has provided the following environmental planning grounds to justify the non-compliance with the development standard (relevant extracts provided). The full request is included at Appendix E.

*The proposed height variation does not result in any unacceptable environmental impacts and provides additional benefits to the streetscape and public domain that would not be able to be realised if the development complied strictly with the 90m height control.*

*An intensive design excellence process has ensued to arrive at the form and massing for the site; which is optimised to create a superior outcome for the public domain and for its appropriateness in context.*

*The approach to the site regarding height has been carefully considered to ensure the outcome adheres to the design objectives for the development while also incorporating comments from the UDRP and the DRP. To achieve the best outcome, the proposal includes the redistribution of area for the taller residential towers from longer floor plates to smaller footprints. The development has created variation between the two buildings through a tapered tower form facing opposite directions, creating a dynamic built form of varying scales between the buildings.*

These urban design benefits are able to be achieved by providing taller towers and redistributing the GFA loss resulting from the tapered tower form. Whilst the towers exceed the 90m height control, the consistent 3m setback above 16m street wall height is maintained. The proposed height exceedance will therefore have minimal impact when viewed from street level, yet still achieve separation between podium and tower forms.

**Figure 7 (Withing 4.6)** illustrates the rationale for the previously approved Concept Plan and demonstrates that a strictly compliant DCP and LEP scheme in comparison to the proposed scheme. Full compliance with the prescribed controls would have resulted in a design of three 90m towers, with upper level setbacks and street wall heights that were not considered to be appropriate for the context. The decision to distribute the building mass to more slender residential towers was considered a better design outcome for the site, with a shorter more appropriate commercial building. The slender tower forms act as markers for the major transport interchange and result in built form that allows for daylight access to key public domain areas as well as maximising key views and outlooks for future residential occupants.

**Figure 7 Strictly Compliant Building Mass (Source: Bates Smart)**



The proposed outcome of the non-compliance allows for an enhanced design, resulting in an elegant composition of volumes. The design outcome allows for increased amenity to apartments, through a tapered built form which increases the of the terrace area for upper-level apartments. The height increase allows additional building features and a higher standard of design, which is desirable due to the dominance of the towers being the tallest element in the skyline. As previously noted, the Concept Plan Approval contemplates the potential for a height exceedance over the 90m control to facilitate design excellence and to allow differential height between the buildings. The proposed design has incorporated comments from DRP and the UDRP, resulting in a tapered built form and a height differential between the two towers.

### Unreasonable and Unnecessary

An assessment against the relevant case law established in the NSW Land Environment Court has been undertaken below. These cases establish tests to assist in determining whether a variation under Clause 4.6 of the LEP is acceptable and whether compliance with the standard is unreasonable or unnecessary.

### Wehbe v Pittwater Council

Case law in the NSW Land & Environment Court has considered circumstances in which an exception to a development standard may be well founded. In the case of *Wehbe v Pittwater Council* [2007] NSWLEC 827 the presiding Chief Judge outlined the following five (5) circumstances:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

**Table 7: Assessment of the proposed B3 Commercial Core Zone Objectives**

<b>Height of Building Objectives</b>	<b>Proposal</b>
<b>(1) The objectives of this clause are as follows—</b>	
(a) to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,	The prescribed height for the site has been nominated as part of a series of heights decreasing from the subject site, down to Wickham and the harbour. The non-compliance will not have a significant impact on the appearance of development stepping down towards the Newcastle harbour.
(b) to allow reasonable daylight access to all developments and the public domain.	<p>The site is located within an emerging commercial centre. The proposal for taller buildings results in smaller building footprints and wider gaps between buildings and as such allows greater sky exposure and daylight to the public domain, including the interchange area.</p> <p>The applicants have provided shadow diagrams demonstrating that the overshadowing resulting from the non-compliance is negligible.</p>

2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.

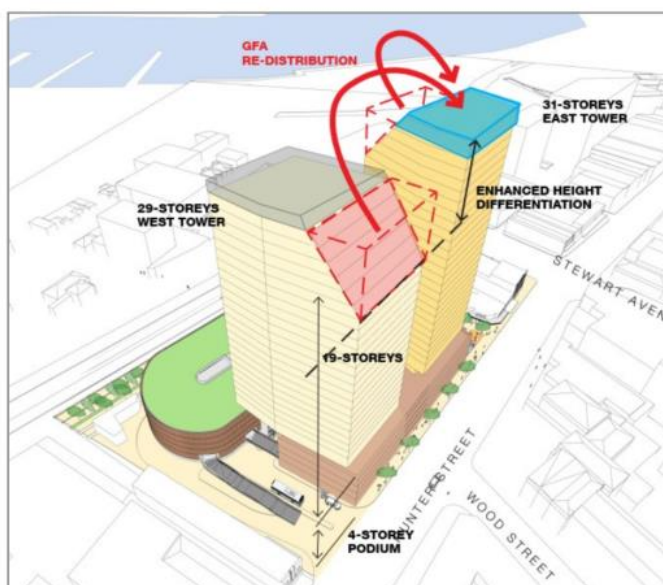
The applicant does not challenge that the underlying objectives are not relevant.

3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

If compliance was required, the same density of development could be provided in a series of 90m buildings. However, it is considered that such an outcome would have a worse visual impact (contrary to Objective b) as it would be monotonous and there would be less gaps between the buildings. Further, applying a consistent height with less building breaks, would likely result in less sky exposure (contrary to Objective b) and present as a large massing and built form (contrary to objective a).

As demonstrated by figure 5 the re-distribution of GFA to provide a more tapered form facilitates a more dynamic built form, with reduced visual and solar impacts.

**Figure 5: Concept Master Plan Adjustment (Source: Bates Smart).**



4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

The applicant does not contend that the height standard has been abandoned.

5. The zoning of particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary.

The applicant does not challenge that the zoning is inappropriate or that the standard is unreasonable or unnecessary.

#### Clause 4.6(4) - Consent Authority Assessment of Proposed Variation

Clause 4.6 (4) outlines that development consent must not be granted for development that contravenes a development standard unless—

- (a) *the consent authority is satisfied that—*
  - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

(b) the concurrence of the Planning Secretary has been obtained".

The matters of clause 4.6(4)a)i) have been dealt with in the preceding section. Clause 4.6(4)b) have been assessed as follows:

### Public Interest

As outlined above, the proposal is consistent with the objectives of the height standard. The proposal is consistent with the objectives of the zone as set out in the table below:

**Table 8: Assessment of the proposed B3 Commercial Core Zone Objectives**

Zone B3 Commercial Core Objectives	Proposal
<i>To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.</i>	The proposal includes uses (residential, retail, commercial) which are considered compatible.
<i>To encourage appropriate employment opportunities in accessible locations.</i>	The proposal integrates appropriate uses along Hunter Street and Stewart Avenue. The proposal will benefit from being in close proximity to the Newcastle Light Rail Interchange and Bus Interchange. The proposal is located in the City Centre and includes commercial space which will promote further opportunities for employment.
<i>To maximise public transport patronage and encourage walking and cycling.</i>	The proposal is located above the NBI and adjoins the Newcastle Light Rail Interchange. The proposal provides car parking, bicycle parking and includes a green travel plan. As such the proposal is considered to maximise use of public transport, walking, and cycling.
<i>To provide for commercial floor space within a mixed use development.</i>	The proposal includes commercial floor space within a mix use development.
<i>To strengthen the role of the Newcastle City Centre as the regional business, retail and cultural centre of the Hunter region.</i>	The proposal is located within the West End Precinct of the Newcastle City Centre. The area is undergoing a period of transition from smaller scale commercial buildings and light industrial to high-density mixed-use development. The development will further strengthen the role of the City Centre and will appear as a centre point for the West End Precinct.
<i>To provide for the retention and creation of view corridors.</i>	The proposal seeks to capitalise on opportunities for views toward the harbour to the north-east of the site ; CBD views to the east of the site; and the city west and river wetland views to the north-west and south-west.

	The built form and scale of the proposal does not impede existing views from nearby developments and provides view corridors and through-site link.
--	---

### Concurrence

4.6(4)(b) the concurrence of the Planning Secretary has been obtained.

Assumed concurrence is provided to regional planning panels (such as the HCCRPP) as per NSW Department of Planning Circular 'Variations to development standards' Ref: PS 20-002 dated 5/05/2020. There is no limit to the level of non-compliance for which concurrence can be assumed.

### Conclusion

In summary, it is considered that breaching the building height standard is appropriate and achieves a preferable outcome for the following reasons:

- The proposal is consistent with the objectives of both zone and height standard, including not resulting in any greater impact on the amenity of adjoining and nearby properties than a complaint scheme.
- The applicant has demonstrated that the proposal has a preferable urban design outcome to a compliant scheme, as supported by the Urban Design Review Panel and
- The development remains consistent with the Newcastle LEP and City Centre objectives by incorporating commercial and residential uses, assisting in the activation of the West End Precinct. Whilst the proposal exceeds to the prescribed building height standard for the site, the proposal will not result in any significant impacts to adjoining properties, particularly in respect to overshadowing, loss of privacy or loss of views.

It is considered that the applicant's written request has adequately addressed the matters required to be demonstrated and that the request to vary the height development standard with the Newcastle LEP 2012 can be supported as the proposal continues to achieve the objectives of the height development standard and the zoning and is in the public interest. In reaching this conclusion, regard has been given the relevant Judgements of the LEC.

### Building Separation

An assessment of the Clause 4.6 Variation has been undertaken and the variations to Clause 7.4 'Building separation' of the NLEP is listed below and is supported on the following basis:

#### Clause 4.6(1) – Objectives of clause 4.6

"(1) *The objectives of this clause are as follows—*

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances".*

Clause 4.6(2) - Operation of clause 4.6

"(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause".*

The operation of clause 7.4 is not limited by terms of Clause 4.6(8) of this LEP, or otherwise by any other instrument.

The proposal does not comply with Clause 7.4 'Building Separation' development standard, as outlined in the table below, and as such the applicant has submitted a request to vary the building separation standard under Clause 4.6 of the NLEP 2012.

**Table 9: Building Separation Numeric Differences.**

<b>NLEP - 7.4 Building Separation -</b>	<b>Control</b>	<b>Proposed</b>	<b>Variation</b>
<b>Proposed Building Separation</b>			
Not less than 24m at 45m or higher	24m between the eastern residential tower and commercial building (Stage 3)	16.4m	32%
	24m between the eastern tower and the western tower	17.2m – 27.9m	28%
<b>Approved Concept DA Separation (DA2018/01109)</b>			
Not less than 24m at 45m or higher	24m between the eastern residential tower and commercial building (Stage 3)	21m	12%
	24m between the eastern tower and the western tower.	24m	Compliant

Clause 4.6(3) – The Applicants written request

Clause 4.6(3) requires that the applicant provide a written request seeking to justify contravention of the development standard. The request must demonstrate that:



- "(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard'.

The applicant has provided the following environmental planning grounds to justify the non-compliance with the development standard (relevant extracts provided). The full request is included at Appendix E.

*'The proposed variation does not result in any unacceptable environmental impacts and provides additional benefits to the streetscape and public domain that would not be realised if the development complied strictly with the control. The building orientation increases the visual interest of the development and the prominence of the towers in the skyline. The built form of the towers achieves a design that is appropriate to the desired future character of the area and will become a site of significance for the precinct. As a result of the detailed design process that has occurred during the preparation of the DA, there is a partial non-compliance to part of the interface between the residential towers. However, this setback widens to 27.9 metres at the northern extent of the residential towers. This widening of the setback to the north has been incorporated into the design to improve solar access between the towers, and to enhance amenity to the relevant apartments. In relation to the reduced setback between the eastern residential tower and the recently constructed commercial building (Stage 3 of the Concept Plan Approval), it is noted that only the very upper portion of the upper level of the commercial building (Level 11) exceeds 45m in height (in addition to the plant level, which does not include windows and is set back from the main building façade at the west, north and eastern edges). The remaining floor levels for commercial use are less than 45m high. Accordingly, the proposed reduced setback does not create any significant additional non-compliance or associated impacts.*

*It is acknowledged that the intent of the building separation development standard is to ensure adequate distance is provided between developments to improve amenity, increase solar access, reduce noise issues and limit overlooking, between residential and non-residential uses and with boundaries to neighbours. It is considered that the full 24m building separation distance on all areas of the residential tower is not necessary, as the interrelationship between the two buildings and the proposed arrangement achieves an improved design outcome for the site. The proposed building orientation improves the amenity of the development, with the angled design of the towers opening the building floorplates to the north, enhancing views, solar orientation, privacy and ventilation to the apartments.*

*Whilst the proposed development does not meet the building separation requirements specified in Clause 7.4 of NLEP 2012, the proposal has considered the future development potential of adjoining sites and contributes positively to the locality incorporating through-site links which enable view sharing, pedestrian connectivity and built form relief.*

*Bates Smart recognises the importance of the future development potential of adjacent sites, namely 834, 840, 844 and 850 Hunter Street. The proposed residential towers comply with the required building separation to the existing adjoining buildings. As noted on the plans, the revised design provides a 12-metre setback to the median line of Cooper Street, and accordingly, should these adjoining sites be amalgamated and*

*redeveloped, a shared setback would facilitate compliance with the 24 metre building separation requirement.*

*The proposed design of the residential towers will enable a high quality, architecturally designed building to be constructed with an active ground floor presence for the benefit of the community and high amenity apartment living opportunity. The objectives of the Newcastle City Centre have been met by the proposed development. In light of this, there is considered to be sufficient environmental planning grounds to justify varying the development standards in this instance'.*

### Unreasonable and Unnecessary

An assessment against the relevant case law established in the NSW Land Environment Court has been undertaken below. These cases establish tests to assist in determining whether a variation under Clause 4.6 of the LEP is acceptable and whether compliance with the standard is unreasonable or unnecessary.

### Wehbe v Pittwater Council

Case law in the NSW Land & Environment Court has considered circumstances in which an exception to a development standard may be well founded. In the case of *Wehbe v Pittwater Council* [2007] NSWLEC 827 the presiding Chief Judge outlined the following five (5) circumstances

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

It is noted that there are no specific objectives related to Clause 7.4 Building separation, therefore the proposal is assessed against the objectives of the local provisions under Part 7 Newcastle City Centre – Clause 7.1 Objectives.

**Table 10: City Centre Objectives**

<b>Part 7 Additional Local provisions – Newcastle City Centre</b>	<b>Proposal</b>
<b>7.1 Objectives of Part</b>	
a) <i>To promote the economic revitalisation of Newcastle City Centre,</i>	The subject development is the final stage of a Concept Development Application which incorporates commercial, retail, office uses and high density residential. A development of this scale will strengthen and activate the West End Precinct and will reinforce the desired future character of the Newcastle City Centre.
b) <i>To strengthen the regional position of Newcastle City Centre as a multi-functional and innovative centre that encourages employment and economic growth,</i>	The proposal provides commercial space in proximity to the Newcastle Transport Interchange, the provision of additional commercial space will assist in providing more employment and investment opportunities.

c) <i>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,</i>	The proposed development is of high urban design quality, and integrating well with the public domain, laneways and surrounding public spaces. The design is compatible with the desired density and future character of the City Centre. The development will provide additional high density residential opportunities in a central city centre location, close to essential services.
d) <i>To promote the employment, residential, recreational and tourism opportunities in Newcastle City Centre,</i>	The developments will further reinforce the viability of the West End Precinct by providing high quality residential accommodation close to public transport, the harbour, and surrounding retail and commercial businesses.
e) <i>To facilitate the development of building design excellence appropriate to a regional city,</i>	The mixed-use development is a contemporary building, which has been designed to provide future occupants with a high level of amenity. The UDRP were satisfied that the proposal achieves design excellence and were supportive of the proposal. The development as a whole has been architecturally designed to present as a family of forms and to minimise the overall bulk of the buildings.
f) <i>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,</i>	The building separation distances resulting from the non-compliances does not result in any significant impacts on adjoining properties.
g) <i>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,</i>	The proposal will not result in any unreasonable impact on amenity or any significant adverse environmental impacts as a result of the variations.
h) <i>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 alike.</i>	The proposal remains consistent with the Newcastle City Centre. The mixed-use development will continue to assist in the activation of the West End Precinct which is still transitioning from light industrial and low scale commercial to the high-density mixed-use development.

2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.

The applicant does not challenge that the underlying objectives are not relevant.

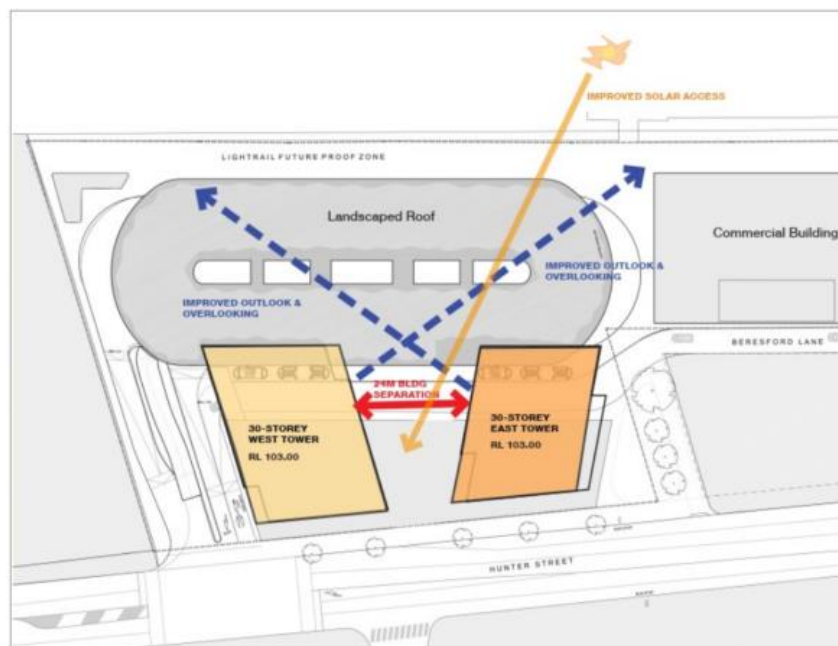
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

It is acknowledged that the intent of the building separation development standard is to ensure that adequate distance is provided between developments to improve amenity, increase solar access, reduce noise issues, and limit overlooking. During the assessment of the Concept Development Application the UDRP provided the below recommendation:

*'The issue of outlook from the overlapping towers requires further assessment. There are opportunities to adjust the orientation of one or both towers to maximise outlook and to achieve the optimum orientation for solar access to apartments.'*

Following the Concept Development Application approval, the applicants have continued to the review process with the UDRP in the altered building orientation, height, form, and massing. The splayed orientation results in improved amenity including solar access, and visual privacy. However, it is considered that strict compliance with the separation requirements would have a worse visual impact (contrary to Objective c) and e)) as it would be monotonous, and the design quality compromised in Newcastle city centre location. Further, applying the prescribed separation distances between buildings would likely result in a compromised building form, with reduced solar access and open space areas. and further impacts on the and present as a large massing-built form (contrary to objective e) and f)).

**Figure 6: Proposed outlook and Solar Access (Source: Bates Smart)**



4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

The applicant does not contend that the height standard has been abandoned.

5. The zoning of particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary. The applicant does not challenge that the zoning is inappropriate or that the standard is unreasonable or unnecessary.

### Public Interest

As outlined above, the proposal is consistent with the objectives of the building separation standard. The proposal is consistent with the objectives of the zone as set out in the table below:

**Table 11: Zone Objectives**

Zone B3 Commercial Core Objectives	Proposal
<i>To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.</i>	The proposal includes uses (residential, retail, commercial) which are considered compatible.
<i>To encourage appropriate employment opportunities in accessible locations.</i>	The proposal integrates appropriate uses along Hunter Street and Stewart Avenue. The proposal will benefit from being in close proximity to the Newcastle Light Rail Interchange and Bus Interchange. The proposal is located in the City Centre and includes commercial space which will promote further opportunities for employment.
<i>To maximise public transport patronage and encourage walking and cycling.</i>	The proposal is located above the NBI and adjoins the Newcastle Light Rail Interchange. The proposal provides car parking, bicycle parking and includes a green travel plan. As such the proposal is considered to maximise use of public transport, walking, and cycling.
<i>To provide for commercial floor space within a mixed use development.</i>	The proposal includes commercial floor space within a mix use development.
<i>To strengthen the role of the Newcastle City Centre as the regional business, retail and cultural centre of the Hunter region.</i>	The proposal is located within the West End Precinct of the Newcastle City Centre. The area is undergoing a period of transition from smaller scale commercial buildings and light industrial to high-density mixed-use

	development. The development will further strengthen the role of the City Centre and will appear as a centre point for the West End Precinct.
<i>To provide for the retention and creation of view corridors.</i>	<p>The proposal seeks to capitalise on opportunities for views toward the harbour to the north-east of the site; CBD views to the east of the site; and the city west and river wetland views to the north-west and south-west.</p> <p>The built form and scale of the proposal does not impede existing views from nearby developments and provides view corridors and through-site link.</p>

### Concurrence

4.6(4)(b) the concurrence of the Planning Secretary has been obtained.

Assumed concurrence is provided to regional planning panels (such as the HCCRPP) as per NSW Department of Planning Circular 'Variations to development standards' Ref: PS 20-002 dated 5/05/2020. There is no limit to the level of non-compliance for which concurrence can be assumed.

### Conclusion

In summary, it is considered that breaching the building separation standard is appropriate and achieves a preferable outcome for the following reasons:

- The proposal is consistent with the objectives of both Zone B3 Commercial Core and Part 7 Newcastle City Centre standards, including not resulting in any greater impact on the amenity of adjoining and nearby properties than a complaint scheme.
- The applicant has demonstrated that the proposal has a preferable urban design outcome to a compliant scheme, as supported by the Urban Design Review Panel and
- The development remains consistent with the Newcastle LEP and City Centre objectives by incorporating commercial and residential uses, assisting in the activation of the West End Precinct. Whilst the proposal exceeds to the prescribed building separation standard for the site, the proposal will not result in any significant impacts to adjoining properties, particularly in respect to overshadowing, loss of privacy or amenity.

It is considered that the applicant's written request has adequately addressed the matters required to be demonstrated and that the request to vary the building separation development standard with the Newcastle LEP 2012 can be supported as the proposal continues to achieve the objectives of the Part 7 Newcastle City Centre and the zoning and is in the public interest. In reaching this conclusion, regard has been given the relevant Judgements of the LEC.

## Clause 5.10 -Heritage Conservation

### (1) Objectives:

The proposed development is consistent with the objectives of Cl 5.10, being to conserve the heritage significance of heritage items (including associated fabric, setting and views), for the following reasons:

The site previously contained a listed heritage item of local significance, 'Former Newcastle Co-operative Store' (NLEP Item 504). Development consent was granted by TfNSW for demolition of this heritage item which has now been undertaken. A Planning Proposal to remove the now-redundant heritage listing from Schedule 5 of the NLEP was gazetted in 2021.

While the site retains intangible cultural heritage significance associated with the former use of the site, provision of effective heritage interpretation will enable this to be communicated on the site and impart the significance of the site to visitors. Appropriate conditions have been included in Appendix A - Draft Schedule of Conditions.

An Aboriginal archaeological survey was undertaken in 2016, which identified that the entire project site was within extended site area of AHIMS Site #38-4-1716. An AHIP was issued in March 2018 (AHIP C0003418) and is valid for 5 years. The AHIP is an area-based AHIP that applies to the whole of 854 Hunter Street, bounded by Hunter Street, Cooper Street, Beresford Lane and Beresford Street. A review of the AHIP confirms that the excavation for the residential towers component of the concept approval specifically was not anticipated or specifically considered, and was limited to "grading and levelling" and excavation for services around a depth of 1.5m. While the proposed works description is broad, and the recommendations of the ACHAR are not likely to be altered, however given that earthworks are proposed (supporting footings), it is considered that this matter should be duly addressed via a variation to AHIP C0003418 or written authorisation from Heritage NSW that the existing AHIP can apply to the excavation works for the residential towers via a condition of consent.

There are several multi-storey contemporary buildings in the vicinity, including commercial development at 6 and 12 Stewart Avenue. It is considered that the proposal is generally responding appropriately to its context. The development will activate and enhance the immediate area and have a flow on benefit to nearby streetscapes with greater integrity in the HCA. The proposed podium and tower elements are successfully articulated, referencing the proportions and details of the area. The architectural treatment of the proposed podium references the former façade of the Co-operative store. The face brickwork façade reflects numerous brick facades throughout the HCA expressed in a contemporary way. The physical separation of the podium and towers responds to the rhythm of the streetscape. In this regard it is considered that the proposed development will not have an adverse impact on the significance of the Newcastle City Centre HCA.

European archaeology has been previously assessed and considered in a Heritage Management Plan prepared by Artefact, which recommended application to Heritage NSW for a s140 excavation permit. It was later by Heritage NSW that a s140 excavation permit was not required and a s139(4) exception permit was issued. The s139(4) exception was expressly in relation to the construction of the Newcastle Bus Interchange and did not consider potential excavation for footings associated with the residential and commercial components of the concept masterplan. It is considered that the applicant is to apply for a section 140 excavation permit for the residential component of the site, or alternatively written authorisation is to be obtained from Heritage NSW that the existing s139(4) exception can apply to the excavation works via a condition of consent.



## (2) Requirement for consent

Clause 5.10(2) is satisfied as the application is seeking consent for the development.

## (3) When consent not required

Consent is required and is being sought by the application.

## 4) Effect of proposed development on heritage significance

The consent authority has considered the effect of the proposed development through this assessment. It is considered that the proposed development will not have an adverse impact on the heritage significance of the Newcastle City Centre HCA or nearby heritage items, and can be supported in respect of heritage matters, subject to conditions.

## (5) – Heritage assessment

The application has provided two heritage management documents that have assessed the various heritage components of this application:

A Statement of Heritage Impact (prepared by EJE Heritage) which sets out an assessment of the impact of the development on the Newcastle City Centre Heritage Conservation Area.

A Heritage Management Plan (prepared by Artefact) has been submitted which provides a framework for management of historical archaeology and Aboriginal sites

## (6) Heritage conservation management plans

A conservation management plan (CMP) is not required for this application.

## (7) Archaeological sites

The site is not a listed archaeological site and is not identified as an indicative archaeological site within the Newcastle Archaeological Management Plan 1997.

A Heritage Management Plan (HMP) prepared by Artefact has been submitted. The HMP identifies 4 main phases of historical activity related to European occupation of the site, with potential archaeological remains as follows:

- Moderate potential for remains associated with the former workshop and residential structures;
- High potential for remains associated with former wells, tanks, cisterns and latrines;
- Moderate to high potential for remains associated with former structural uses of the Store.

The potential archaeological remains have been assessed by the Heritage Division as unlikely to have state or local heritage significance.

A condition of the REF required that the applicant apply for a Section 140 excavation permit. The HMP states that Heritage NSW have since confirmed that a s140 excavation permit is not required. The HMP states that a section 139(4) exception for the project has been endorsed by the NSW Heritage Division. The s139(4) is an exception from the need for an excavation permit in accordance with s139(4) of the NSW Heritage Act 1977. The s139(4) does not permit

removal of State significant relics, or impact to substantial intact archaeological relics of State or local significance.

A review of the s139(4) exception confirms that the endorsed exception covers only those proposed works described in the application, being "to excavate and redevelop the site of the former Newcastle Cooperative Store as part of the Newcastle Bus Interchange" and did not include basement excavation now proposed for the residential component.

It is noted that the development consent for the commercial building at 6 Stewart Avenue, which also formed part of the concept approval and is part of the same site, included a condition that the applicant obtain an approved s140 excavation permit prior to works commencing. It is considered that this matter should be addressed via application to Heritage NSW for a s140 Excavation Permit or alternatively written authorisation is to be obtained from Heritage NSW that the existing s139(4) exception can apply to the excavation works for the residential towers via appropriate conditions which have been included in the draft schedule of conditions.

#### Clause 5.21 - Flood planning

Development Application DA2021/01530 includes resubmission of a high-level Flood Risk Assessment (FRA) previously prepared by BMT (dated 23 August 2018) for the concept development application DA2018/01109. The subject allotment is identified as being affected by fringe local catchment (flash) and ocean flooding during both the 1% Annual Exceedance Probability (AEP) and Probable Maximum Flood (PMF) events.

The amended architectural plans indicate the ground floor of the proposed development is generally compliant with flood planning level requirements set out in the Flood Risk Assessment prepared by BMT for the concept development DA2018/01109.

The overall flood impact of the development is expected to be low considering the considerably open ground floor designs of this development and the adjoining bus interchange.

#### Clause 6.1 - Acid sulfate soils

The site is identified as being affected by acid sulfate soils Class 3 & Class 4.

The potential disturbance of acid sulfate soils during earthworks has been assessed under the initial Part 5 approval. The final stage 4 mixed use development will involve the further excavation to facilitate the construction, an Acid Sulfate Soils Management Plan has been prepared. The proposal is considered acceptable in this regard.

#### Clause 6.2 - Earthworks

Earthworks are proposed as part of this development.

A considerable number of earthworks have already occurred on the site to facilitate the construction of the car park, which will form part of the subject development and provide for parking associated with the residential and commercial use on site.

A Geotechnical Report and Contamination report have been provided. The earthworks proposed are unlikely to have any detrimental impact on the immediate site.

Appropriate mitigation measures will be implemented prior to any earthworks commencing on the site, in accordance with the erosion and sedimentation plans submitted with the application. The proposal is considered acceptable.

## Part 7 Additional Local provisions– Newcastle City Centre

**Table 12: Consideration of the Part 7 Controls**

Clause	Control	Proposed	Compliance
Clause 7.1 - Objectives		The proposed development is compatible with the objectives, the proposal ensures a high quality of design excellence that will function as a multi-use site. The development will provide for a compatible mixture of both residential and commercial, which will ensure the greater employment opportunities and access to services within a central location.	Yes Complies
Clause 7.3 - Minimum building street frontage	20 metre street frontage	The site is within B3 Commercial Core Zone and has street frontages to both Hunter and Cooper Street that exceed 20 metres.	Yes Complies
Clause 7.4 - Building Separation	Minimum 24m Building Separation	<p>The developments built form incorporates two residential towers that are both above 45m in height. The towers emerge form a five storey commercial podium area.</p> <p>The adjoining commercial building also slightly exceeds 45m in height.</p> <p><u>Commercial building and residential eastern:</u></p> <p>A separation of 16.4m is proposed between the eastern residential tower and the commercial building. This is a 32% variation to the required 24m.</p> <p>The original concept development application approved a 12.5% variation with a 21m separation.</p> <p><u>Eastern tower and western tower:</u></p> <p>The separation distance varies between 27.9m – 17.2m. at 17.2m this</p>	Non compliances

		<p>a 28% variation to the required building separation of 24m.</p> <p>Under the approved concept development application, the building separation had been compliant.</p> <p>It is noted that a S4.55 modification to the concept development application has been concurrently submitted to reflect the proposed amendments.</p>	
Clause 7.5 - Design Excellence		<p>The development is identified as a key site. The final stage of the proposal does not require a design competition to be entered into as a waiver has been granted in accordance with C17.5 (5) which states the following: <i>'Subclause (4) does not apply if the Director-General certifies in writing that the development is one for which an architectural design competition is not required'</i>.</p> <p>The NSW GA has provided a letter dated 1 February 2018 which outlines the design process for the whole-site redevelopment, and that the design will achieve design excellence.</p>	Yes complies
Clause 7.6 - Active Street frontages in Zone B3 Commercial Core		<p>The site is within the B3 Commercial Core Zone and the building incorporates an active street frontage comprising retail premises and the lobby area if the commercial uses at ground floor fronting Hunter Street.</p>	Yes Complies
Clause 7.10 - Floor space ratio for certain development in Area A		<p>The NLEP Floor Space Ratio Map identifies the site as being located within Area A. C17.10 (a) reduces the allowable FSR for the site to 5:1 for non-commercial buildings.</p> <p>The proposal complies with this as discussed under Clause 4.4.</p>	Yes Complies

The proposal is considered to be generally consistent with the LEP.

### 3.4.2 Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are several proposed instruments which have been the subject of public consultation under the EP&A Act, and are relevant to the proposal, including the following:

## **Review of Clause 4.6 of the Standard Instrument LEP: Explanation of Intended Effect**

The review of Clause 4.6 seeks to ensure that applications to vary development standards have a greater focus on the planning outcomes of the proposed development and are consistent with the strategic context of the site. The EIE was exhibited from the 31 March to 12 May 2021 and outlines those amendments to Clause 4.6 will include new criteria for consideration.

The proposed development does not include a Clause 4.6 variation request and is therefore not considered to be inconsistent with the proposed changes to Clause 4.6 of the Standard Instrument and NLEP 2012.

## **Draft Remediation of Land State Environmental Planning Policy**

A proposed remediation of Land State Environmental Planning Policy ('Remediation of Land SEPP'), which was exhibited from 31 January to 13 April 2018, is currently under consideration. The proposed Remediation of Land SEPP is intended to repeal and replace the provisions of SEPP 55 (now Chapter 4 of SEPP (Resilience and Hazards) 2021) and Contaminated Land Planning Guidelines, and seeks to provide a state-wide planning framework to guide the remediation of land, including; outlining provisions that require consent authorities to consider the potential for land to be contaminated when determining development applications; clearly list remediation works that require development consent; and introducing certification and operational requirements for remediation works that may be carried out without development consent.

The Remediation of Land SEPP is aimed at improving the assessment and management of land contamination and is associated remediation practices. The modified proposal is consistent with the draft provisions and is considered to be acceptable subject to conditions of consent having been assessed in detail against the current provisions of SEPP (resilience and Hazards) 2021.

### **3.4.3 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

- *Newcastle Development Control Plan 2021* ('the DCP')

#### *Section 3.10 Commercial uses*

The DCP encourages commercial development that attracts pedestrian traffic and activates street frontages. The inclusion of retail uses on the ground level of the development will provide an active street frontage to Hunter Street.

#### *Section 4.01 Flood Management*

Development Application DA2021/01530 includes the resubmission of a high-level Flood Risk Assessment (FRA) previously prepared by BMT (dated 23 August 2018) for the concept development application DA2018/01109. The subject allotment is identified as being affected by fringe local catchment (flash) and ocean flooding during both the 1% Annual Exceedance Probability (AEP) and Probable Maximum Flood (PMF) events.

This FRA is based on a refined (2m grid resolution) version of a catchment flood model previously developed for City of Newcastle as part of the Newcastle City-wide Floodplain Risk Management Study.

Drainage capacity exceedance is identified as the primary flood mechanism during the 1% AEP event, resulting in shallow flooding of less than 100 mm throughout the development site. Three separate overland flood flow paths develop through the development during the 1% AEP:

- i. Flow from Denison Street overtopping Hunter Street and flowing north along Beresford Street (now the west bus entrance to the Interchange) and Cooper Street.
- ii. Flood waters pond behind the light rail corridor and flow eastwards towards the northern site boundary.
- iii. Flood waters overtop Hannell Street front the east and flow westwards along the northern site boundary.

Ponding water from the light rail corridor is identified as the major contributor to flooding within the development site during the 1% AEP event. The peak 1% AEP level at the site is estimated at 2.7 m AHD, providing a Flood Planning Level of 3.1 m AHD. A lowered 400 mm freeboard is adopted to factor for potential structure blockages in the surrounding area.

The site is estimated to be inundated up to 4.2 m AHD at Hunter Street and 3.6 m AHD throughout the site during the PMF event.

The FRA makes the following site-specific recommendations to achieve flood planning requirements in the Newcastle Development Control Plan (NDCP) at the proposed mixed use development at 854 Hunter Street:

- a) The Flood Planning Level (FPL) of kiss-and-ride (north) facing retail outlets is 3.1 m AHD. This level may be reduced to resolve connectivity issues to the proposed kerb level (2.9 m AHD) provided alternative flood risk management solutions are implemented to mitigate risk to property.
- b) All potential water entry points to basement levels should be set at or above the PMF level of 3.6 m AHD (or 4.2 m AHD along Hunter Street).
- c) The vehicular access ramp to the basement parking level shall grade up to the FPL (3.1 m AHD) prior to descending.
- d) Hunter Street facing retail outlets shall have floor levels set above the street level to manage property risk associated with ingress of water from overflow flooding from the Hunter Street kerb and gutter.
- e) On-site flood free refuge should be provided to accommodate potential users of the ground floor and basement levels, above the PMF level of 3.6 m AHD (or 4.2 m AHD along Hunter Street).

### Basement Water Entry Points

It is noted that the previously proposed basement level has been deleted in the latest amended development architectural plans. Therefore, the issue regarding potential water entry points into the basement level are no longer an issue relevant to the current development.

### PMF Levels at Hunter Street

The FRA estimates the PMF level at the development site to be 4.2 m AHD "along Hunter Street" and 3.6 m AHD "throughout the rest of the site."

The FRA, being a "high-level" assessment prepared for the concept development DA2018/01109, does not detail the extent of the PMF along Hunter Street that is expected to reach a level of 4.2 m AHD. As such, it is unclear if the basement water entry points identified in the prior section must be set at a minimum level of 3.6 m AHD or 4.2 m AHD.

The Applicant is to consult a suitably qualified flood engineer to determine the relevant PMF level affecting the proposed stairwells and residential lifts on the ground floor.

Confirmation of the PMF level affecting the development was requested in association with flood protection measures for the proposed basement area. This issue is no longer relevant considering the proposed basement area has been deleted in the most recent development plans submitted for assessment.

### Proposed Floor Levels at Ground

Design floor levels are not provided in the ground floor plan DA.03.00 for a number of proposed utility and commercial rooms. The ground floor plan shall be amended to include finished floor levels for all utility (switch, fire pump, waste, bulky goods, stairwells, substations) and retail (R.2 at Beresford Ln) rooms.

It is noted that the floor level of retail R.3 is proposed at 3.40 m AHD which is below the adjacent Hunter Street kerb design level of 3.63 m AHD. This is not consistent with advice provided in the FRA, which recommends Hunter Street-facing retail outlets be set no lower than the street level to manage risk associated with the potential ingress of runoff and flood flows from Hunter Street.

Ground floor architectural plans have been amended with variable design finished floor levels to address requirements set out in the Flood Risk Assessment (FRA) by BMT and Council's NDCP. A full inventory of ground floor facilities are as follows:

- Retail outlets facing Hunter Street (R.1-R.3) are proposed with floor levels ranging from 3.60m at R.3 to 3.80m AHD at R.1. These levels are proposed above the kerb level in the adjoining road reserve per the requirements of the FRA.
- The retail outlets R.4 and R.5 are proposed with floor levels of 3.20m AHD and 3.40m AHD respectively. These levels are above the flood planning level of 3.10m AHD for rooms fronting Beresford Lane as recommended in the FRA.
- The remaining rooms, including utility areas, lobbies, and circulation walkways, throughout the development are proposed above the flood planning level of 3.10m AHD.

The amended architectural plans indicate the ground floor of the proposed development is generally compliant with flood planning level requirements set out in the Flood Risk Assessment prepared by BMT for the concept development DA2018/01109.

### Flood Emergency Response Plan

The development site is identified as being affected by the PMF event with a high Risk to Life classification of L4. Section 4.01 of the NDCP requires the provision of on-site refuge at or above the estimated PMF level where development is proposed in L4 zones. This refuge is to be accessible to users of the ground floor and basement areas of the development.

A draft Flood Emergency Response Plan was to be prepared by a professional engineer experienced in flood management and submitted to Council for further assessment. The draft shall include the following components:

- a) Likely flood behaviour;
- b) Flood warning systems;
- c) Education awareness program;
- d) Evacuation and evasion procedures;
- e) Evacuation routes and flood refuges; and
- f) Flood preparedness and awareness procedures for residents and visitors.

Considerations were to include the full range of flood risks, the proposed use of the site, site access constraints and local area evacuation routes to high ground. The plan is to be aimed at self-directed evacuation or evasion to minimise the draw on limited State Emergency Services resources.

Particular concern is raised with regard to the evacuation of users of the ground floor utility and retail areas. Assuming all elevators will be inoperable during an extreme flood event, flood free refuge on the first floor can only be reached from the ground floor via three stairways accessed externally from Beresford Lane. This route is not plainly evident or self-directing and will direct evacuees through Beresford Lane which, being lowest point at the development, may already be inundated as an extreme flood event develops at the site.

#### Internal Access to High Ground

The ground floor layout has been reconfigured in response to Council's concerns and comments. The Commercial Lobby has been relocated to the west side of the Through Site Link and will be accessed internally via the link. Additional passageways have been proposed through the utility/servicing areas to allow internal access to both residential stairwells.

#### Evacuation and Refuge Procedure

A Draft Flood Emergency Response Plan (FERP) was not included in the latest set of documentation. Instead, a written response was prepared by Northrop CE addressing requirements a) to f) in the issue above.

In the event of a flood emergency, occupants of the ground floor will be directed to seek refuge in the upper levels via the two residential staircases at the east and west of the development,



and the commercial staircase adjoining the through site link. The three staircases may be accessed by pedestrians via passageways internal to the development.

Refuge is proposed to be sought in the commercial and residential lobby areas which provide approximately 58m<sup>2</sup> of floor space per storey. This was calculated to be sufficient for the refuge of 115 people (estimated based on BCA requirements) reasonably expected to be present in the ground floor retail and maintenance areas during a flooding event.

### Assessment

Evacuation to flood-free refuge in the upper floors is no longer reliant on externally accessed doorways. Ground floor access to the commercial and residential stairways have been reconfigured to allow internal access facilitating safe on-site evacuation routes.

Preliminary FERP details provided in the response by Northrop CE confirm on-site flood refuge in the upper floors can be reasonably accommodated for 115 or more people occupying facilities on the ground floor.

It is noted that internal access to the residential stairways is provided via somewhat complex passageways in utility/maintenance areas and through no less than 3 doors. To mitigate potential disorientation and ensure the route to flood-free refuge is plainly evident, conditions will be recommended requiring appropriate use of signage and diagrams on the ground floor to inform safe evacuation to on-site refuge.

### Model-based Flood Impact Assessment

In accordance with Council's senior flood engineer's assessment of concept development DA2018/01109, a condition will be attached to DA2021/01530 requiring the submission of a model-based flood assessment detailing the off-site impacts of the proposed development. Flood modelling is to also include development carried out to date at The Store/Bus Interchange site.

This model-based flood impact assessment shall be submitted to Council for review prior to the issue of any Construction Certificate for the development DA2021/01530.

Following further discussion and consideration it was determined that model-based flood impact assessment would not be necessary considering the development is in a fringe flood area and maintains previously existing flow paths through the pre-developed site.

The overall flood impact of the development is expected to be low considering the considerably open ground floor designs of this development and the adjoining bus interchange.

### *Section 4.03 Mine Subsidence*

A Section 15B Certificate dated 28 April 2017 has been issued by NSW Subsidence Advisory, indicating that the property is not within a Mine Subsidence District.

### *Section 4.04 Safety and Security*

The Concept Approval required the submission of a formal Crime Prevention Through Environmental Design (CPTED) Statement prepared by KDC dated 2018. The assessment addressed the concept plan only for the four key principles of crime prevention and does not contain specific recommendations for design elements. The report comments on the large

expanses of glass at street level, active street frontages, appropriate day and night lighting and the location of public domain areas which will encourage natural surveillance.

In regard to natural access control, the following elements have been considered in the report: delineated vehicular and pedestrian access points; inclusion of appropriate lighting and signage for occupants and service vehicles; active street frontages; street wall boundary to the south and eastern boundary; secure building access; and landscaping to encourage gathering in public spaces. The various elements across the site are connected by a pedestrian network and public spaces.

Territorial reinforcement has been acknowledged and the site has been designed to control access to private aspects. The built form of the various elements will create clearly defined boundaries, inclusion of CCTV and signage to control activities and movement across the site.

Robust materials are to be included in the construction of the building elements and vandalism and graffiti removed. The report comments that rather than 'target hardening' elements being included, elements for natural surveillance and self-policing have rather been incorporated.

The recommendations of this report will be included in the draft conditions of consent.

#### *Section 4.05 Social Impact*

The Statement of Environmental Effects prepared by SLR suggest that the project will provide a number of social and economic impacts including:

The proposed development will have a positive impact within the community by providing additional opportunities within the Newcastle City Centre. The apartments have been designed to achieve a high level of design excellence and compliance with SEPP 65 and the ADG.

The location will ensure that future occupants will have access to alternate modes of transport and essential services.

It is agreed that the above benefits will be realised, however there is potential for adverse construction impacts and/or parking impacts, which are discussed in this report under Parking and Traffic.

#### *Section 5.01 Soil Management*

A Sediment and Erosion Management Plan prepared by Northrop dated 19 April 2022 has been submitted with the application to minimise sediments being removed from the site during the construction period. A condition has been placed on the consent to ensure such measures are in place for the entire construction period.

#### *Section 5.02 Land Contamination*

As previously discussed under Chapter 4 Land Contamination of the Resilience and Hazards SEPP discussion, the site is identified as contaminated. The applicant has submitted a Remediation Action Plan which has been relevant to all previous stages of the concept proposal. The RAP has stated that given the level of remediation required for construction of the proposed development, off-site disposal of contaminated material was considered to be the most appropriate remediation option for the site. The proposed development is considered satisfactory having regard to the SEPP and Section 5.01 of the DCP.

## Section 6.01 Newcastle City Centre

A brief response to each of the relevant elements/chapters contained within Section 6.01 (Newcastle City Centre – Locality Specific Provisions) is provided below.

Section 6.01.02 – Character Areas – West End This section of the DCP contains the character statements and supporting principles for development within various precincts of the Newcastle City Centre. The subject site is within the 'West End' precinct. The overall key principles applicable to this site are detailed as follows:

*"1. New public spaces are created to meet the demands of the future CBD and existing public open spaces are improved, such as Birdwood Park and Cottage Creek. Opportunities for new publicly accessible spaces are identified.*

*4. Development along the former rail corridor, Cottage Creek, lanes or through-site links provide a building address to encourage activity, pedestrian and cycleway movement, and improve safety.*

*5. Building entries are inviting with activate frontages that allow visual permeability from the street to within the building".*

### Section 6.01.03 – General Controls

This section of the DCP contains general controls that apply to development within the city centre precinct.

#### A1. Street Wall Heights

Street wall heights of new buildings define and enclose the street, are appropriately scaled, and respond to adjacent development. The required street wall height for the site is 16 and 8m within this street block, with the development above street wall height required to be set back by a minimum of 6m. Variations have been identified and are discussed below.

Figure 7: NDCP Figure 6.01.12 (Source SLR Statement of Environmental Effects).



An 8m setback is required along Hunter Street and 16m along Stewart Avenue and Brewery Lane. Development above the Street wall height is required to be setback a minimum of 6m.

The proposal seeks to create a consistent podium height across the new precinct. The development proposes a podium structure along Hunter Street which will have a 16m street wall height, with a 3m setback, this is consistent with the former Store building which was 13m. It is noted that the variations to street wall height had been considered and approved under the Concept Development Application.

The Stage 3 Commercial building has a street wall height of 16m. The building across the development site have been designed to ensure that they are consistent with scale and building form, ensuring that they buildings are integrated.

As noted with the submitted SOHI the transition between the podia and the proposed towers, is similar to the main parapet line of the former Store building. The transition between the podia and the proposed towers will breakup the bulk of the development.

#### A2. Building setbacks

The control specifies a zero setback, with zero setbacks also required to side and rear boundaries below street wall heights.

The front, side, and rear setbacks requirements in the DCP for the development below street wall height is nil, with the exception of 10m setback to northern boundary. The setback about the street wall height (16m) is 6m Stewart Avenue, Brewery Lane, and Cooper Street.

The residential tower setback is 3m from the edge of the podium along Hunter Street. The proposed building setbacks are considered to be appropriate for the site and are consistent with the approved setbacks of the Concept Development Application.

#### A3. Building separation

Building separation has been addressed within the ADG section of this report and under Part 7 of the NLEP.

#### A4. Building depth and bulk

This clause specifies that residential floor plates above street wall heights are required to have a minimum GFA of 900m<sup>2</sup> per floor and a maximum building depth of 18m. The Architectural Plans provided by Bates Smart indicates that the following floor plates and building depths are proposed range from 67m<sup>2</sup> to 821m<sup>2</sup> with a depth of more than 25 metres.

This is considered reasonable as the building incorporates the existing NBI, existing car park structure, and the upper podium level with integrate the communal open space, amenities, pool, and tennis court within the space.

#### A5. Building exteriors.

This section specifies requirements with respect to exterior finishes and detailing. Details of the colours and materials to be used are contained within the submitted architectural plans. The UDRP at its meeting 25 November 2021 confirmed that *"The Panel noted the urban response and overall aesthetic approach to the development was well-considered. The solidity of the base of the building anchors the development at street level and is a legible, modern*

*reference to the former historic Store building on the site".* With the Panels support it is considered that the external materials as detailed within the submitted plans to be satisfactory.

#### A6. Heritage Buildings

This clause provides requirements relating to heritage buildings and sight lines. As discussed, the previous heritage building known as The Store has been demolished under the previous Part 5 assessment.

#### A7. Awnings

This section specifies that continuous street awnings are to be provided to address pedestrian amenity. The proposal will be provided with an awning that extends along Hunter Street which will wrap part of Beresford Lane. The provisions of this section have been addressed.

#### A8. Design of parking structures

This clause requires that the carparking must be effectively integrated within building design, have access which is not located on the primary frontage and provide design solutions to screening from public spaces. Stage 2 application included a multilevel car park, accessed via Hunter Street, and is appropriately screened. The proposal meets the requirements of this section.

#### A9. Landscaping

This section is separately addressed under SEPP 65. It is noted that the UDRP panel were generally supportive of the proposed landscaping.

### B. Public domain

#### B1. Access network

This section requires the provision of improved and new pedestrian connections which has been appropriately addressed within the previously staged applications.

#### B2. Views and vistas

This section provides requirements relating to views and vistas, which maintained.

#### B3. Active Street Frontages

This section specifies that active street frontages are to be a minimum of 70% of the primary street frontage. The proposal provides an active street frontage to Hunter Street. The proposal as designed is acceptable.

#### B4. Addressing the street

This section provides detailed requirements regarding the siting and height of building entries, for which appears to be generally achieved.

#### B5. Public artwork

This section requires that development on key sites or over 45m in height are to be allocated 1% of the capital cost of development towards public artwork. As the subject site is identified as a 'Key site' this section applies and a condition to this to this effect will be attached to the consent, if approved.

#### B7. Infrastructure.

This is separately addressed under section 7.06 stormwater and section 4.01 Flooding.

## *6.02 Heritage conservation areas*

### 6.02.07 Infill development in HCAs

The proposal is non-compliant with a number of DCP controls in relation to the HCA; however, these guidelines are more relevant to HCAs with cohesive streetscapes and consistent building typologies. The established significance as described in the listing has little relevance for the context of the subject site, which is characterised by mid- to late-twentieth century commercial buildings and modern high-rise development. This is recognised by DCP 6.01, which states that ‘the predominance of larger consolidated land holdings and fewer environmental and heritage constraints’ of the West End area ‘make this precinct ideally suited to become the future CBD of Newcastle.’ Despite isolated buildings of heritage significance in the vicinity, including the Cambridge Hotel and the former Castlemaine Brewery, the streetscape does not demonstrate a consistent character and is characterised by a wide range of building styles, uses and scales. There are several multi-storey contemporary buildings in the vicinity, including commercial development at 6 and 12 Stewart Avenue. It is considered that the proposal is generally responding appropriately to its context. The development will activate and enhance the immediate area and have a flow on benefit to nearby streetscapes with greater integrity in the HCA.

DCP 6.02.07 requires that infill development be designed to correspond to the prevailing height, form and character of contributory buildings in the vicinity, in order to reinforce the character of the HCA. It is considered that using the predominant height and form of the nearby contributory buildings as a guide for the proposed development would be inappropriate due to the existing context. The character and style of the new development is related to the immediate area, which is characterised by late twentieth century and modern infill buildings.

The proposed podium and tower elements are successfully articulated, referencing the proportions and details of the area. The architectural treatment of the proposed podium references the former façade of the Co-operative store. The face brickwork façade reflects numerous brick facades throughout the HCA expressed in a contemporary way and responds to the typical setbacks of the northern side of the street. The physical separation of the podium and towers responds to the rhythm of the streetscape. The incorporation of a laneway between the podia references a previous historic lane and opens views to the Castlemaine Brewery opposite the site for pedestrians leaving the bus interchange.

Overall, it is considered that the proposed development will not have a detrimental impact to the significance of the HCA and is responding appropriately to the 21<sup>st</sup> century context of the west end, while also responding to the historical nature of more intact streetscapes and nearby heritage items through the detailing of the podia at the pedestrian level.

## *Section 5.04 Aboriginal Heritage*

Aboriginal heritage was considered as part of the REF investigations undertaken for the Newcastle Bus Interchange (now completed). The assessment covered the entire site of the

concept Development Application. The assessment concluded that there is the potential for Aboriginal objects to occur beneath the surface layer of historical disturbance. An Aboriginal Cultural Heritage Assessment Report (ACHAR) was prepared by Artefact (December 2017) and submitted with an application to the Office of Environment and Heritage (OEH) (now Heritage NSW) for an Aboriginal Heritage Impact Permit (AHIP) under the National Parks and Wildlife Act 1974. AHIP C0003418 was issued on 22 March 2018 to TfNSW for the construction of the Newcastle Bus Interchange.

A review of the AHIP confirms that the excavation for the residential towers component of the concept approval specifically was not anticipated or specifically considered, and was limited to "grading and levelling" and excavation for services around a depth of 1.5m. The 'proposed works' stipulated in the AHIP are indicated as follows:

*"The proposal consists of the development of The Store site for the Newcastle Bus Interchange. Works will cover the whole site and will include, but are not limited to:*

- Geotechnical investigations, including the excavation of boreholes and pits.*
- Relocation and installation of utility services, including: sewerage, stormwater drainage, water mains, power suppl and communications network.*
- Demolition of existing structures and associated footings, including The Store buildings and the Store carpark.*
- Ground preparation, including excavation to the required subgrade, grading and levelling.*
- Construction of the bus interchange, including: pavement, kerbing and hardstand (including the removal of some kerbing), landscaping, turning areas, bus stands and associated shelters, wayfinding and signage, lighting and a drivers facility."*

While the proposed works description is broad, and the recommendations of the ACHAR are not likely to be altered if basement excavation was proposed, it is considered that this matter should be duly addressed via a variation to AHIP C0003418 or written authorisation from Heritage NSW that the existing AHIP can apply to the basement excavation works for the residential towers (via a condition of consent).

## *Section 5.05 Heritage Items*

### 5.05.01 General Principles

*The site previously contained a listed heritage item of local significance, 'Former Newcastle Co-operative Store' (NLEP Item 504). Development consent was granted by TfNSW for demolition of this heritage item which has now been undertaken. A Planning Proposal to remove the now-redundant heritage listing from Schedule 5 of the NLEP was gazetted in 2021. While the site retains intangible cultural heritage significance associated with the former use of the site, provision of effective heritage interpretation will enable this to be communicated on the site and impart the significant of the site to visitors. A condition of consent is recommended in this regard.*

#### 5.05.06 Development in the vicinity of heritage items

The site is in the vicinity of two listed heritage items, 'Castlemaine Brewery (former) (SHR 00312) and 'Cambridge Hotel' (NLEP Item 502). The form, scale, materials and detail of the 4-storey podium of the development responds effectively to the massing and character of the Brewery opposite the site. Existing views to the Brewery will be maintained. The incorporation of a laneway between the podiums also opens views to the Brewery for pedestrians leaving the bus interchange.

No significant landscaping will be impacted. Impacts to European archaeology on the site was considered as part of the REF for the Newcastle Bus Interchange. The potential archaeological remains have been assessed by the Heritage Division as unlikely to have state or local heritage significance. The submitted Heritage Management Plan provides management measures and recommendations that can be addressed by way of conditions. Significant views to the Cambridge Hotel are achieved primarily looking west along Hunter Street, directed toward the landmark corner parapet of the hotel facing the corner of Hunter and Wood streets. This view will not be adversely impacted.

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

Landscaping is located on the podium level. The modification involves minor design changes to the podium and therefore changes to the previous landscaping plan are proposed. The plans indicate a large, landscaped area which provides acceptable amenity for future occupants.

#### *Section 7.03 Traffic, Parking and Access*

##### Parking

The original approval of the concept masterplan DA 2018/01109 approved a parking surplus for the residential apartments in Stage 4 of some 58 spaces over and above Council's DCP. A subsequent modification of this application in June 2020 DA 2018/01109.01 increased the surplus to 113 spaces. The subject application reduces this residential parking surplus of 113 to 89 spaces.

It is noted that DA 2018/01109.01 Condition No. 17 states:

*"On-site car parking accommodation is to be allocated to the different land uses within the development on the basis of one space per 75m<sup>2</sup> for the Commercial Building (stage 3) and the specific parking rates that are detailed in the Newcastle Development Control Plan 2012 for all other land uses, with any excess parking being allocated to the residential component of the development only after the required number of parking spaces has been allocated for the commercial/retail uses".*

Table 5 (of the response to RFI) below details the parking provision across the entire site the subject of the Concept Masterplan DA 2018/01109



**Table 5 Proposed Development Car Parking Supply (Source: Extract from SLR Traffic and Transport Response)**

Parking Location	Parking Supply	
6 Stewart Avenue	Basement	38
Multi-deck	Level 1	137 spaces
	Level 2	140 spaces
	Level 3	140 spaces
	Level 4	140 spaces
	Level 5	140 spaces
Total		735 spaces

Table 6 (of the response to RFI) below details the parking provision across the entire site the subject of the Concept Masterplan DA 2018/01109 (inclusive of Stage 4)

**Table 6 Proposed Car Parking Allocation (Source: Extract from SLR Traffic and Transport Response)**

Concept Masterplan Development Stage	Land Use	Yield		Minimum Parking Requirement (spaces)	Parking Allocation (spaces)		
					6 Stewart Av	Multi-deck	Total
Constructed 6 Stewart Avenue	Retail	318sq.m		222.5 (223)	38	186	224
	Office	16,371sq.m					
Proposed 30 storey mixes used	Retail	510sq.m		34.7 (35)	0	35	35
	Office	2,095sq.m					
	Residential	66	1 bed units	39.6	0	40	40
		178	2 bed units	160.2	0	218	218
		108	3+ bed units	151.2	0	182	182
		352	Total units	35.9 (36)	0	36	36
Total		-		658	38	697	735

Parking is proposed to be provided for the Retail / Office space at a rate of 1 space per 75m<sup>2</sup> of GFA totalling 35 spaces. This parking provision complies with the parking rate outlined under the Concept Masterplan DA 2018/01109.01 Condition No. 17 and therefore satisfactory.

The DCP rate for residential visitor parking has been reduced by 50% to 36 spaces. Council has accepted a reduction in the order of 25 to 50% for development of this nature in the CBD. It is understood that these spaces are being underutilised and therefore the parking rate under our DCP is not reflective of the demand. On this basis the proposed reduction in parking is supported and considered adequate to cater for the residential visitor parking demands of this development

A total of 440 spaces are proposed for the residential units (excluding visitor parking) as detailed in Table No 6, representing a surplus of around 89 spaces. The applicant is principally using market demand as the justification for this parking supply. 'Market demand' in itself is not considered to be sufficient justification for the departure from Council's DCP. In addition, the oversupply of resident parking does not align with the objectives of Council's Parking Plan 2021-2030, which aims to increase active and public transport use in the city centre.

Notwithstanding, it is acknowledged Council has historically approved a surplus residential parking component with each application on the subject site. Furthermore, the proposal under DA 2021/01530 represents a reduction in the surplus residential parking from the current 113 spaces approved under DA 2018/01109.01 to 89 spaces.

In conclusion and with consideration for the above the proposed parking provision for Stage 4 as detailed in Table No. 6 is supported, such being inclusive of the 89-space residential parking surplus.

Due to the surplus vehicle spaces no additional requirement has been applied for motorcycles.

### Bicycle Parking

A total of 438 bicycle parking spaces have been proposed for the development with specific details being outlined in the applicant's traffic report as detailed below. A review of the bicycle provision confirms compliance with Council's DCP.

The application proposes 356 storage cages x Class 1 for residents, 45 x Class 2 for office / commercial and 37 Class 3 spaces for visitors. The Class 2 end of trip facilities (refer Figure 1) are proposed on the ground floor within the eastern tower, while the 37 x Class 3 bicycle parking spaces are proposed to be located within the public plaza area adjacent to the eastern tower.

**Table 7 Proposed Bicycle Parking Supply (Source: Extract from SLR Traffic and Transport Response)**

Level	Residential Occupant (Class 1)		Office and Retail (Class 2)		Visitors (Class 3)
	West Tower	East Tower	West Tower	East Tower	Total
Ground	-	-	20	25	Not explicitly shown
Level 2	39	-	-	-	
Level 3	39	-	-	-	
Level 4	75	69	-	-	
Level 5	32	102	-	-	
<b>Total</b>	<b>185</b>	<b>171</b>	<b>20</b>	<b>25</b>	
	<b>356</b>		<b>45</b>		

The End of Trip facilities supply is summarised in **Figure 1**. These facilities are located on the ground floor, adjacent to the residential lobby within the eastern tower.

**Figure 1 Proposed Bicycle End of Trip Facilities (Source: Extract from SLR Traffic and Transport Response)**

End-of-Trip Component	West Tower		East Tower		Total
	Male	Female	Male	Female	
Lockers	28	28	-	-	48
Shower cubicle	2	2	-	-	4

### Green Travel Plan

In accordance with the requirements of the concept DA 2018/01109 Condition 20 a Green Travel Plan is required to be submitted to and approved by Council prior to any occupation of Stage 4. Accordingly, an appropriate condition has been recommended for this application to address this matter.

### Site Access

Vehicle access to the site is obtained via the Hunter Street traffic signalled control intersection and The Store Lane both constructed under previous stages of this development. These accesses are considered to be suitable and able to accommodate the traffic generated by this development.

## Store Lane

It is acknowledged that the applicant proposes to amend kerbside parking to incorporate a 14m loading zone and 5 kerbside parking spaces (inclusive of 2 x disabled spaces). The road is not public road and therefore the change does not require referral to the Newcastle City Traffic Committee.

### *Section 7.04 Movement Networks*

#### Traffic Generation

TfNSW in their letter dated 23 December 2021 recommended that consideration be given to the introduction of an exclusive left turn lane in Hunter Street at the traffic control signals for east bound traffic to address traffic queuing. This would also necessitate the removal of the right turn movement from Hunter Street into Denison Street. Council raised concerns in relation to the broader impacts of the removal of the right turn into Denison Street and therefore does not support this recommendation.

At the request of TfNSW the applicants traffic consultant in association with Stage 4 has undertaken additional traffic modelling to re-affirm the operation of the local road network inclusive of the upgraded traffic signal-controlled intersection with Hunter Street. It is understood from TfNSW final referral and subsequent correspondence that no road mitigation measures are required in association with this development.

### *Section 7.05 Energy Efficiency*

Suitable energy efficiency provisions having been included in the proposed development.

### *Section 7.06 Stormwater*

A mixed-use development is proposed consisting of a ground floor retail area, shop-top office space, and two residential towers containing 356 apartment units. The submitted stormwater management plan prepared by Northrop Consulting Engineers proposes the following to manage stormwater at the proposed development:

- a) Roof rainwater from each tower is to be directed to separate 10,000 L retention and reuse tanks (total 20 kL capacity) located at the podium level (Level 04). Harvested roof water will be reused for landscape irrigation at the podium and car park level.
- b) Overflow from rainwater tanks will be connected to existing stormwater connection points constructed at the ground level as part of previous development stages.
- c) Hardstand runoff from the podium level and balcony catchments will be directed to a 15 m<sup>3</sup> cartridge filtration chamber for treatment prior to release to an existing stormwater discharge point in Beresford Lane prepared as part of a previous development stage.
- d) Ground level hardstand areas will also be diverted to the filtration chamber for treatment and discharge. Where possible, hardstand areas will be directed to landscaping for passive treatment.

A pump-out system is proposed in the basement area to extract water to the filtration chamber for treatment and discharge.

### On-site Storage

The subject allotment (2759 m<sup>2</sup>) will be made 92.5% impervious which generates a minimum on-site stormwater storage of 58 m<sup>3</sup> in accordance with Section 7.06 of the NDCP. The proposed rainwater tanks and filtration chamber provide a total of 35 m<sup>3</sup> of on-site stormwater storage at the development.

This reduced level of on-site storage is proposed on the basis that:

- a) The site has historically been 100% impervious. The new development will slightly reduce this impervious coverage to 92.5%.
- b) More than 90% of the site (2570 m<sup>2</sup>) will be captured to the stormwater harvesting system or the cartridge filtration chamber.
- c) Site constraints prohibit the provision of additional stormwater storage in the basement or podium level.
- d) The site is located only 380 m from Newcastle Harbour, the end point of the public stormwater system to which this development connects.

Northrop posits that on-site detention will delay peak discharge from the development to coincide with peak flows conveyed from the upstream catchment. By eschewing on-site detention, peak development flows can be discharged to Newcastle Harbour to 'beat' peak loading on the public stormwater system.

Council, in an email exchange with Northrop on the 13th of July 2021, indicated agreement that the capture of the ground level catchment to on-site detention may be disadvantageous but noted that reuse and combined treatment/storage should be provided where possible.

The proposed development provides on-site retention and reuse (20 kL) and combined treatment/storage (15 kL) prior to discharge to the public drainage system. Additional on-site storage will not be sought on the basis that on-site detention may delay peak discharge from the site and contribute to peak loading on the public drainage system to Newcastle Harbour.

### Stormwater Quality

A MUSIC-link report is submitted demonstrating the proposed stormwater management system achieves water quality requirements set out in clause 7.06.02 (1)(vi)(f) of Section 7.06 of the NDCP. Runoff from podium and ground floor hardstand areas will be captured to inlet pits fitted with ocean guard inserts and conveyed to a storage tank for treatment via cartridge filters. Clean roof rainwater will be captured for reuse however any overflow will be discharged direct to the public stormwater system.

### Plan Currency

The submitted stormwater management plan proposes the capture of rainwater from a roof catchment area of 1,285 m<sup>2</sup> to two 10,000 L tanks for reuse at the development.

It is likely this stormwater management plan is based on an earlier architectural design iteration. The submitted architectural plans propose the rooftop areas of both residential

towers with communal terrace and open mechanical plant areas around a small plant room and lift overrun. This open rooftop design replaces full-roof designs proposed in previous architectural plan iterations, greatly diminishing the available roof area for rainwater capture and reuse to approximately 300 m<sup>2</sup>.

Both the MUSIC model and stormwater management plan shall be updated to reflect the current residential tower rooftop design. The stormwater management plan is to include a catchment plan identifying all unroofed hardstand, landscaping, roof, and impervious balcony/terrace areas.

The submitted stormwater management plans and MUSIC modelling has been updated during the assessment process to reflect the current proposed architectural design.

Due to architectural changes to the roof design, the available roof catchment has been reduced to 317m<sup>2</sup>. The new rooftop mechanical plant and landscaping area (982m<sup>2</sup>) replacing much of the roof catchment will be drained to the proposed filtration and treatment tank.

Podium and balcony/terrace areas (totalling 586m<sup>2</sup>) will also be drained to the below-ground treatment tank.

No changes are proposed to the capacity and design of the below-ground treatment tank or the above-ground reuse tanks.

Runoff over outdoor ground floor areas (176m<sup>2</sup>) such as the plaza and through site link will bypass site controls and drain northward to the stormwater system in Beresford Lane.

The proposed reuse storage at the development is considered to be maximised considering the diminished roof top area available for harvesting. Additional retention and reuse capacity will not be sought.

The MUSIC model has been updated to reflect architectural changes to the catchment areas. The indicated pollutant load reductions remain compliant with minimum NDCP requirements.

#### Stormwater management for Bus Interchange Carpark Landscaping

Existing infrastructure in the adjoining Bus Interchange Carpark structure is shown in the revised stormwater management plans confirming the location of the existing roof-top Syphonic drainage system that will carry runoff from the proposed multipurpose recreational rooftop area to the street level.

Further drainage detail of proposed recreational areas atop the Interchange is deferred to the landscaping design, which proposes drainage of subsoil and surface flows to the nearest available roof outlet.

#### Connection to Public Domain

Design surface levels are to be provided along the full building perimeter to confirm the level at which the building will connect to the surrounding public domain. Surface levels at the building perimeter must allow adjoining public footpath to be constructed with crossfalls directing runoff away from the development.

The proposed ground floor plan shall be amended to include these design surface levels.

Spot design levels have been provided around the perimeter of the building footprint along with proposed floor levels of retail outlets and utility rooms fronting public road reserve.

Retail outlets R.1 to R.3 are proposed up to 100mm above (at 3.60m – 3.80m AHD) the kerb level in the adjoining public footpath. These proposed floor levels are generally compatible with the kerb level in the Hunter Street frontage and will likely not result in connectivity issues.

Retail outlets R.3 and R.4 fronting Cooper Street will, being proposed at 3.60m AHD and 3.20m AHD respectively, match to the slight slope (3%) of the adjoining roofed outdoor seating in Cooper Street Plaza.

Utility and service rooms (including substations, waste, and loading) fronting Beresford Lane are proposed with floor levels in the range of 3.10m – 3.20m AHD. These rooms are not expected to have connectivity issues with the Beresford Lane footway, which is at approximately 3.10m AHD near the boundary.

Some concern is raised with regard to how retail outlet R.5, being proposed with a floor level at 3.40m AHD, will connect to the footpath in Beresford Lane. The Applicant is to review this issue and confirm whether retail outlet R.5 is intended to have pedestrian access from Beresford Lane or be accessed only via the Through Site Link.

#### *Section 7.08 Waste Management*

Waste Collection Waste collection for the residential, commercial, and retail have been proposed from the provided bin storage areas on the ground floor area. No vehicles are proposed to enter the site with all servicing inclusive of waste collection occurring in the proposed loading zone in The Store Lane kiss and ride area.

Although, CN does not object to the proposal as submitted however, CN still requires that the residential component of the bin storage areas and location of this area should be designed to be suitable for CN to provide waste collection service for the residential waste collection if required in the future.

CN service trucks are able to park in Store Lane collect the residential bins from the allocated storage area, which is designed to satisfy CNs required travel distance. The development can therefore be serviced by CN if the need arises, which will be subject to a separate agreement with CN Waste Management Services.

- *City of Newcastle S7.11 Development Contributions Plan 2022*

This Contributions Plan has been considered and included the recommended draft consent conditions:

#### *Description Contribution*

- Transport: \$662,810.55
- Open Space and Recreation: \$2,848,239.1
- Community Facilities: \$526,902.98
- Plan Preparation and Administration: \$100,804.34

**TOTAL: \$4,138,756.97**

#### **3.4.4 Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act**

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

#### **3.4.5 Section 4.15(1)(a)(iv) - Provisions of Regulations**

The following relevant matters contained in the EP&A Regulation must be taken into consideration by a consent authority in determining a development application.

- Matters in Clause 94 where the consent authority is to take into consideration whether it would be appropriate to require the existing building to be brought into total or partial conformity with the *Building Code of Australia*.

These provisions of the EP&A Regulation 2021 have been considered and are addressed in the recommended draft conditions (where necessary).

#### **3.4.6 Section 4.15(1)(b) - Likely Impacts of Development**

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the section below.

The consideration of impacts on the natural and built environments includes the following:

- Public Domain & Landscaping

The Concept Application details the overall landscaping concept for the overall site, including the NBI area which are "High Level".

With respect to the proposed landscaping for the final stage being the Mixed-Use component; landscaping is well integrated into the common areas and public domain. Street tree planting is intended along Hunter Street, Brewery Land and Cooper Street. The landscaping proposed for the ground floor gives careful consideration to the public domain, draft conditions of consent will be included to address public domain and landscaping requirements.

- Geotechnical Constrains: A Geotechnical Assessment and Contamination Report have been submitted with the application and have been previously prepared for the site. The required earthworks are unlikely to have a detrimental impact on the immediate site or the adjoining properties.
- Wind Assessment: The application includes a Pedestrian Wind Environment Study (PWES). The result of the study indicated that the wind conditions for the majority of trafficable outdoor locations within and around the development will be suitable for their intended uses. The reports wind mitigation measures will be included in the draft conditions of consent.

- Acoustic Impacts: The application includes the submission of a Noise Assessment Report, which has assessed the potential noise impacts associated with the development.

Construction: During construction the proposal will be managed in accordance with the relevant NSW Construction Noise Guidelines. Notwithstanding, construction noise will be managed via appropriate draft conditions of consent.

Operation: A theoretical acoustic assessment was carried out by Muller Acoustic Consulting dated September 2021 to support the proposal. The assessment modelled the impacts from road noise, amplified music and speech/conversation from residents and patrons on the podium communal open space and hypothetical ground floor café/bar tenancies. Additionally, operational noise from the rooftop mechanical plant, and car park emissions from the store car park and buses entering and leaving the Newcastle Interchange have been assessed against relevant Noise Policy for Industry criteria.

The section of rail adjacent to the proposal accommodates passenger trains to the Newcastle Interchange. The distance to the nearest rail track to the project site is approximately 60m and rail traffic would be slowing and be at speeds of less than 80km/hr. Therefore, in accordance with Section 2.1.1 Rail Noise Screening Test of the Development Near Rail Corridors and Busy Roads – Interim Guidelines, the project is outside the buffer zone required for a detailed acoustic assessment, hence, rail noise has not been considered further in this assessment

The acoustic assessment demonstrated that provided the recommendations in Section 7 (which set out the operating requirements for the recreational podium with restricting the use to only day and evening hours along with glazing and construction requirements for the residential component of the development) are applied, internal noise levels will be compliant with all relevant adopted NSW guidelines along with satisfying the project noise goals for the site. This will be addressed by an appropriate condition of consent.

Mechanical plant associated with the development was also assessed, where generic data was used for modelling purposes. No plant has been selected at this stage and thus all external noise emissions as part of this assessment are theoretical. The acoustic consultant however has recommended that the plant room be enclosed with acoustic treatments which are incorporated into the design of the building to ensure compliance with the relevant noise criteria. This will be addressed by an appropriate condition of consent.

A maximum level assessment (sleep disturbance) has also been assessed against the EPA maximum noise trigger level to the nearest residential tenancies for Tower 1 and Tower 2. Results of the sleep disturbance calculations are expected to remain below maximum noise trigger levels for all receivers except for northern façade receivers adjacent to the recreational podium. Noise levels from yelling in this area at night have the potential to exceed the trigger level which will require noise controls strategies. These are addressed in the below recommended conditions of consent whereby the use of the recreational podium be restricted to 7am to 10pm Monday to Sunday.



Along with the above assessment Council will recommend further conditions relating to deliveries and waste collection be restricted to daytime hours. These also will be covered by recommended conditions of consent.

- Construction Impacts: Potential and likely impacts during the construction phase have been appropriately considered and are acceptable subject to the preparation and implementation of a Construction Management Plan.
- Water NSW

The site proposed for the development is located on an aquifer with a geological formation excluded from water sharing plans gazette under the Water Management Act 2000 and remains under the Water Act 1912.

WaterNSW no longer issues General Terms of Approval under the Water Act 1912 as the integrated development provisions as per Section 4.46 of the EP&A Act only apply to the Water Management Act 2000.

However, WaterNSW can consider granting and issuing a licence under Section 115 and 116 of the Water Act 1912 for dewatering subject to exemptions under the Embargo Gazetted on the 11 April 2008. The consent holder must obtain the necessary licences from WaterNSW prior to the commencement of any works to extract groundwater.

WaterNSW however have noted that *"groundwater in alluvium is subject to an embargo under S113A of the Water Act 1912. An application for water take can only be accepted under the examples listed in the embargo. The proponent will need to apply for a licence under the Water Act subject to the embargo after consent has been given"*.

Accordingly, it is considered that the proposal will not result in any significant adverse impacts in the locality as outlined above.

### **3.4.7 Section 4.15(1)(c) - Suitability of the site**

The site is considered to be suitable for the proposed development having had regard to the characteristics of the site and the locality, subject to the addressing of recommended conditions of consent.

### **3.4.8 Section 4.15(1)(d) - Public Submissions**

The submission is considered in Section 4 of this report.

### **3.4.9 Section 4.15(1)(e) - Public interest**

The proposed mixed use development comprising Stage 4 of the Concept Proposal (as amended and recommended to be approved in a separate report for the modified Concept DA – MA2021/00450, if approved, will bring to reality the vision for the revitalisation of the West End Precinct as contained within Council's Documents. The development will activate the Hunter Street frontage and provide for the planned through-block connection between Hunter Street, Cooper Street, the Newcastle Interchange, and Stewart Avenue. Through a design

excellence process, the built form will integrate existing heritage elements surrounding the site and will deliver the urban design outcomes contemplated by the strategy.

It is recognised that there is potential for short to medium term economic impacts on business and amenity impacts on residents (noise, vibration, and parking during the construction phase).

On balance the proposed development is considered to be within the public interest and adequately responds to environmental, social and economic impacts from the development.

## 4. REFERRALS AND SUBMISSIONS

### 4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in Table 5.

**Table 13: Concurrence and Referrals to agencies**

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
<b>Concurrence Requirements (s4.13 of EP&amp;A Act)</b>			
Water NSW	Section 8.9(1) of the Biodiversity and Conservation SEPP	Water NSW has confirmed via an email dated 29 November 2021 that groundwater on the site is not subject to the Water management Act 2000 and is therefore not considered integrated development. WaterNSW no longer issues General Terms of Approval under the Water Act 1912 as the integrated development provisions as per Section 4.46 of the EP&A Act only apply to the Water Management Act 2000.	NA
Rail authority for the rail corridor	2.97 Development adjacent to rail corridors - <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	The proposal involves development adjacent to a rail corridor.  Concurrence has been granted conditions of consent are contained within the letter provided by Sydney Trains on the 22 December 2021.  No additional information is required.	Y
<b>Referral/Consultation Agencies</b>			

Electricity supply authority	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	Ausgrid has provided advice on the 6 December 2021.  No further information is required.	Y
Transport for NSW	Section 2.121 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development that is deemed to be traffic generating development in Schedule 3.	No further information is required.	y
Design Review Panel	CI 28(2)(a) – SEPP 65  Advice of the Design Review Panel ('DRP')	The advice of the DRP has been considered in the proposal and is further discussed in the SEPP 65 assessment and the Key Issues section of this report. No further information is required.	Y
Hunter Water Corporation – No statutory approval role.	The application was not referred to HWC.	The applicant provided stamped plans from HWC.	Y
<b>Integrated Development (S 4.46 of the EP&amp;A Act)</b>			
<b>This application is not identified as an integrated development.</b>			

#### 4.1.1 Internal Referrals – Newcastle City Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 14**.

**Table 14: Consideration of Council Referrals**

Officer	Comments
Stormwater Engineer:  Dated: 7 May 2022	Council's Engineering Officer reviewed the submitted stormwater concept plan and considered that there were no objections subject to conditions.  <u>Outcome: Supported with conditions of consent.</u>
Traffic Engineer:  Dated: 26 May 2022	Council's Traffic Engineering Officer reviewed the proposal and considered and address traffic generation and car parking. These issues are considered in more detail under the traffic and parking section of this report and has been supported with conditions.  <u>Outcome: Supported with conditions of consent.</u>

<p>Senior Environmental Officer</p> <p>Dated: 9 December 2021</p>	<p>Council's Engineering Officer reviewed the submitted stormwater concept plan and considered that there were no objections subject to conditions.</p> <p><u>Outcome: Supported with conditions of consent.</u></p>
<p>Waste Services</p> <p>Dated: 6 June 2022</p>	<p>Council's Waste Management Officer reviewed the submitted stormwater concept plan and considered that there were no objections subject to conditions.</p> <p><u>Outcome: Supported with conditions of consent.</u></p>
<p>Heritage Officer</p> <p>Dated: 13 May 2022</p>	<p>Council's Heritage Officer/Consultant reviewed the submitted Heritage Impact Statement ('HIS') prepared for the applicant and concurred with the conclusion of the HIS.</p> <p><u>Outcome: Satisfactory subject to standard conditions being imposed on any consent granted.</u></p>

## 4.2 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan from 18 November 2021 until 17 December 2021. The notification included the following:

The Council received one submission, objecting to the proposal. The issues raised in this submission is considered in Table 15.

**Table 15: Community Submissions**

Issue	No of submissions	Council Comments
Parking	1	<p>Concern is raised regarding the existing on-street parking availability and the impact that the proposal will have on parking within the locality of the development site.</p> <p>It is considered that the proposal complies with the provisions for car parking in accordance the NDCP.</p> <p><b>Outcome:</b> This issue has been satisfactorily addressed subject to the imposition of relevant recommended conditions of consent.</p>

## 5. CONCLUSION

The development application for the mixed-use development is a significant development within the West End Precinct that will contribute to its revitalisation. The proposal allows for the delivery of the final and fourth stage of this precinct through a built form outcome which closely aligns with the scale and height of development previously approved via a Concept Plan in 2018 and as modified in June 2022.

The proposal has a number of benefits including: incorporating the existing Newcastle Bus Interchange building located on the ground floor for additional carparking, commercial use and a podium level amenity area. The design is a result of an accepted alternative design excellence process with collaboration with Bates Smart Architecture for the proposed building's location on the site.

The proposed development is compliant with the (modified) Concept Plan submitted concurrently with the application, with the exception of the height of the buildings, setbacks, and car parking, the design is consistent with Council's Development Standards and Controls.

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in the submission and the key issues identified in this report, it is considered that the application can be supported.

On balance the proposed development is suitable for the site and adequately responds to environmental, social and economic impacts from the development and therefore, is within the public interest. It is considered that the key issues have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions.

## 6. RECOMMENDATION

That the Development Application DA2021/01530 for Mixed use development including shop top housing with 352 dwellings, ground floor retail premises, and commercial premises. dwellings, ground floor retail premises, commercial premises, at be Lot 2 DP:1271240 & Lot 11 DP: 1270693 No. 854 - 874 Hunter Street Newcastle West APPROVED pursuant to Section 4.16(1) (a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent at Appendix A.

The following Appendixes are provided:

**Appendix A** – Draft Schedule of Conditions

**Appendix B** – Plans/Documents to be stamped

**Appendix C** – Agency Advice – Ausgrid, Transport for NSW, Sydney Trains

**Appendix D** – Apartment Design Guide Table

**Appendix E** – Clause 4.6 Variations