

COUNCIL ASSESSMENT REPORT

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSHCC-137 DA2022/00538
PROPOSAL	Mixed Use Development - Shop top housing, comprising commercial premises (4), carparking (172), podium level, and residential (106) units.
ADDRESS	Lot: 1 DP:1166015 643 Hunter Street Newcastle West
APPLICANT	ADW
OWNER	Next Level Seven Pty Ltd
DA LODGEMENT DATE	20 May 2022
APPLICATION TYPE	Local
REGIONALLY SIGNIFICANT CRITERIA	<p>The application is referred to the Hunter and Central Coast Regional Planning Panel ('the Panel') as the development is 'regionally significant development', pursuant to Section 2.1991) and Clause (3) of Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021 as the proposal is a general development that has a capital investment value of more than \$30 million.</p> <p>The application submitted to Council nominates the capital investment value of the project as \$49,590, 708 (excluding GST)</p>
CIV	\$49,590, 708 (excluding GST)
CLAUSE 4.6 REQUESTS	None
KEY SEPP/LEP	<ul style="list-style-type: none"> • <i>Environmental Planning and Assessment Act 1979</i> • <i>Heritage Act 1977</i> • <i>National Parks and Wildlife Act 1974</i> • <i>Roads Act 1993</i> • <i>State Environmental Planning Policy (Planning Systems) 2021;</i> • <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> • <i>State Environmental Planning Policy (Building Sustainability Index BASIX) 2004</i> • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021;</i>

	<ul style="list-style-type: none"> • <i>Newcastle Local Environmental Plan 2012;</i> • <i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017;</i> • <i>State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Building;</i> • <i>Newcastle Development Control Plan 2012 (NDCP 2012)</i> • <i>City of Newcastle's Community Participation Plan 2019</i>
TOTAL & UNIQUE SUBMISSIONS ISSUES SUBMISSIONS	<p>The proposal was publicly notified in accordance with the City of Newcastle's Community Participation Plan 2019. The notification period was from 26 May 2022 to 9 June 2022. Four submissions were received and a further five submissions were received following the end of the notification period.</p>
DOCUMENTS SUBMITTED FOR CONSIDERATION	<p><u>Assessment report and associated documents:</u></p> <ul style="list-style-type: none"> • Attachment A – Draft Schedule of Conditions. • Attachment B – Plans/Documents submitted with the application for assessment. • Attachment C – Agency Advice – Transport for NSW. • Attachment D – ADG Compliance Table <p><u>Documentation Submitted:</u></p> <ul style="list-style-type: none"> • Architectural Plans by Stewart Architecture Project No. 1833 dated May 2022; • Access Report by Indesign Access dated April 2022 • Acoustic Report by Paradigm 42 dated April 2022; • Apartment Design Guide Compliance Statement by Stewart Architecture dated May 2022 • Archaeology and Aboriginal Heritage Report by Umwelt dated April 2022; • BASIX Certificate by Evergreen Energy Consultants dated May 2022; • Civil Engineering Plans by Indesco dated April 2022 • Geotechnical Report by Qualtest dated September 2018; • Heritage Impact Statement by EJE Heritage dated May 2022 • Landscape Plan Context Landscape Architecture • Wind Assessment by CPP dated April 2022 • Statement of Environmental Effects by ADW Johnson dated May 2022 • Traffic Report by ttp dated September 2022
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	No
SCHEDULED MEETING DATE	4 April 2023

PLAN VERSION	27.03.2023
PREPARED BY	Holly Hutchens (Senior Development Officer).
DATE OF REPORT	20 March 2023

EXECUTIVE SUMMARY

This report details the City of Newcastle's ('CN') assessment of a development application (DA2022/00538) which seeks consent for the construction of a mixed use building comprising of commercial premises, car parking, residential dwellings (109 units), landscaping, access, associated site works and services, and earthworks.

The subject site is known as Lot: 1 in DP 1166015, 643 Hunter Street, Newcastle West. The land is currently vacant with hardstand, temporary fencing, and some construction material. The site had previously been occupied by the Empire Hotel, which was subject to a fire 2003. Demolition of the dilapidated building occurred in 2011. The site has an area of 2079m², is rectangular in shape and has a generally flat topography. The site is a corner lot having dual frontage to Hunter Street (40m) and Steel Street (50m). The site has been subject to previous archaeological studies as there is a high probability of aboriginal objects being found.

There are various land uses in the general vicinity of the site, being a mixture of commercial, retail, and residential. The five storey Hunter New England Health building, Pizza Hut and KFC and the four storey Ibis Hotel are located to the North of the Site along Hunter Street. To the south the seven storey Travelodge Hotel. The three storey Family Hotel is located to the east of the site, along Steel Street. To the west and adjoining the site is an 8-storey commercial building which is under construction, and the state heritage listed Theatre Royal.

Consultation

Urban Design

Prior to the lodgement of the development application, the proposal was previously reviewed by the Urban Design Review Panel (UDRP) on two occasions. The proposal has been reviewed by the UDRP on three occasions, the Panel provided support and confirmed that the development exhibits design excellence.

Several government agencies were consulted for their advice and are listed below.

- The application was referred to Ausgrid in accordance with Clause 2.48 of SEPP (Transport and Infrastructure) 2021. Ausgrid issued their advice, and no further assessment was required.
- The application was referred to Transport for New South Wales in accordance with Clause 2.121 of SEPP (Transport and Infrastructure) 2021. Transport for New South Wales issued their final advice, and no further assessment was required.
- Referred to **Attachment F** of this report for agency 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 or 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, 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).

Exhibition

In accordance with the *Environmental Planning and Assessment Regulation 2021* (ie as relevant at the date of lodgement) and the City of Newcastle's (CN) Community Participation Plan, the Application was notified between **26 May 2022 to 9 June 2022** and **four** submissions were received and a further **six** submissions were received following the end of the notification period in relation to the application.

Recommendation

Following consideration of the matters for consideration under Section 4.15(1) of the EP&A Act, the provisions of the relevant State Environmental Planning Policies, the provisions of the Newcastle Local Environmental Plan, the proposal is in the public interest and is supported.

Accordingly, pursuant to Section 4.16(1)(b) of the EP&A Act, DA2022/00538 is recommended for approval subject to the reasons contained at **Attachment A** of this report.

THE SITE AND LOCALITY

1.1 The Site

The subject site has a street address of 643 Hunter Street, Newcastle West, and is identified as Lot 1 DP 1166015.

The site has an area of 2,079 m² and is bounded to the north by Hunter Street, to the east by Steel Street, to the west by a new commercial development at 653 Hunter Street currently under construction and to the south by the Travelodge Hotel at 12 Steel Street. The subject site is a corner lot with an approximate frontage of 40.91m to Hunter Street, and 50.78m to Steel Street. The site has been previously occupied by the former Empire Hotel. The site had been in a state of disrepair for over 20 years and has become intrusive in the context of the West End.



Figure 1 – The Subject Site

1.2 The Locality

As shown in **Figure 1** above, the subject site is located within Newcastle West in an area of mixed uses and development typologies. The subject site is within the commercial core of Newcastle and is serviced by a range of transport modes including the light rail which is located approximately 92 metres to the north of the site, a number of bus routes which travel along Hunter Street and King Street and a dedicated cycleway which runs along Hunter Street.

To the south of the site is the Travelodge Hotel and associated car parking. The hotel building is located to the south-west of the subject site with an area of car parking extended along the southern boundary of the subject site. The hotel is now permanently closed with the potential for redevelopment in the future.

To the north of the subject site is Hunter Street, one of the main arterial roads into the Newcastle CBD. This part of Hunter Street is a classified road. Located on the northern side of Hunter Street, and opposite 643 Hunter Street, is a two-storey commercial building operating as a fast-food outlet (KFC).

To the east is Steel Street a two-way, north-south road linking Hunter Street to King Street. Along the eastern side of Steel Street are a range of one to three storey commercial premises.

To the west of the site is 653 Hunter Street. An approved 8 storey commercial development is currently under construction on this site. The development will be built to the common boundary between the subject site and 653 Hunter Street. A number of discussions were held

between the owners of these two sites to ensure that no impact would occur from one development on the other.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The development proposes the construction of a shop top housing development comprising commercial premises on the ground floor, a four-storey podium level, housing car parking (172), end of trip facilities, and service area, a podium level communal area, and a 16 storey residential tower (106 residential units).

Specifically, the proposal involves:

- Four commercial tenancies (commercial premises) located at ground level with a total GFA of approx. 709 sqm;
- 172 car parking spaces located on levels 1- 4.
- A four-level podium building predominantly incorporating commercial space and car parking.
- A communal landscaped area located on the roof of the podium building providing amenity areas and a swimming pool for residents of the proposal.
- A 16-level residential tower extending from the podium to a maximum building height of 65 m above ground level; and;
- The provision of 106 residential units which are categorised into one-, two-, and three-bedroom units.
- Associated infrastructure and stormwater management works.

Table 1: Development Data table

Control	Proposal
Site area	2079m ²
GFA	11,419.8m ²
FSR	5.49:1
Clause 4.6 Requests	No
Commercial Units	Four
No of apartments	106 residential units. A breakdown of the unit mix is as follows: One bedroom units: 29 Two bedroom units: 45 Three bedroom units: 32
Max Height	65m Roof – RL 67.7 Lift overrun.

Landscaped area	The proposal provides a communal landscaped area at level 4 including hard and soft landscaped areas and a swimming pool for use by residents
Car Parking spaces	172



Figure:2 Artist Impression, source Stewart Architecture



Figure:3 Artist Impression, source Stewart Architecture

2.2 Background

The development application was lodged on **20 May 2022**. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

Table 2: Chronology of the DA

Date	Event
20 May 2022	DA lodged
26 May 2022	Exhibition of the application from 26 May 2022 to 9 June 2022
23 May 2022	DA referred to external agency – Transport for NSW
24 May 2022	Request for Information from Council to applicant
13 July 2022	"Kick off" - Panel Briefing
14 September 2022	Request for additional information
13 October 2022	Response to RFI
2 November 2022	Panel Briefing
20 March 2023	Response to Council RFI

2.3 The Site History

The subject site in its existing condition is vacant, with all former buildings having been demolished in 2011. The Empire Hotel, that previously occupied the site was originally built in 1855 and was historically one of the most significant buildings to have been situated within the immediate area. A two storey shop top building had been erected on the same site around 1920, which subsequently merged with adjoining brick buildings during the 1920s -1930s.

The hotel fell into a state of disrepair and was subsequently gutted by a fire in 2003. The disused building had become problematic and unsafe, attracting concern from Council and the public.

The site was purchased by the Hunter Development Corporation in 2010 and the demolition of the remaining building was supported by Council and undertaken in 2011. Demolition works ensured that footings and in-ground material remained intact on the site.

Hunter Development Corporation prepared a proposal for a 14-storey affordable housing project, however the proposal was abandoned.

The site was subsequently purchased by the Catholic Diocese of Maitland Newcastle, who lodged an application for the erection of a 14 storey shop top housing development (128 residential units and ground floor commercial units), two levels of parking (136) and associated works. The application (DA2016/00564) was approved in 2017 by the then Joint Regional Planning Panel, however the site was subsequently sold.

The Current proposal has been reviewed on two occasions by the Urban Design Review Panel and during a Pre DA meeting with Council.

3. STATUTORY CONSIDERATIONS

3.1 Section 4.15(1) of the EP&A Act

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.

3.2 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.

(a) 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*
- *Newcastle Development Control Plan 2012*

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. 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)

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 3: Consideration of Design Quality Principles

Design Quality Principles	UDRP Comments	Officers Comments
Principle 1: Context and Neighbourhood Character	<p>25 September 2021</p> <p>The subject site has a current development approval (DA 2016/00564) for a 14-storey tower proposed for the corner of Hunter and Steel Street. A development application has been lodged for the neighbouring property to the west (653 Hunter Street) which will present a 5 storey blank wall to subject site's western boundary. The possible impacts of this blank wall on the amenity of the communal open space at podium level and the apartments of the approved development for the site is the reason for exploring an alternative proposal.</p> <p>The panel identified the importance of Steel Street as a link to the harbour (both vehicle and pedestrian) and the National Park at a pedestrian level. The sky views to the north are also valuable. The site is located within the B3 Commercial Core zone and is surrounded by a range of two – eight storey commercial buildings including a Travel Lodge to the south-west of the site.</p> <p>24 November 2021 No further comments</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.</p>

	<p><u>27 July 2022</u></p> <p>Council advised that the adjoining commercial development at 653 Hunter Street has been approved and has commenced construction.</p>	
Principle 2: Built Form and Scale	<p><u>27 July 2022</u></p> <p>The Panel congratulated the project team on the further design development of the building and the Panel have enjoyed watching this development evolve.</p> <p>The Applicant has further developed the corner treatment (corner of Hunter and Steele Street) which was previously treated as a 'notch' and did not reinforce the corner. The Applicant has taken a portion of the carpark and provided a residents' lounge – described as 'the lantern'. This lounge is accessible from the communal open space on the podium via a feature spiral stair. This activates this corner and acts as a 'lantern'. This new approach is supported.</p> <p>The carpark facade has been further developed and is intended to be illuminated. The Panel recommends uplighting opposed to downlighting as considered by the Applicant.</p> <p>The Applicant advised that the Regional Planning Panel reviewed the project and had asked for more information about the Travelodge setbacks. The Applicant prepared a conceptual approach for the Travelodge site and showed one way it could be developed without impacting its development potential, and meeting setback and overshadowing requirements. The Panel considered the approach a reasonable and equitable assumption, which worked well for aspect and solar access.</p>	<p>The height and location of the mixed-use building is not inconsistent with the surrounding built form and anticipated development.</p> <p>Shadow diagrams have been updated to better demonstrate the overshadowing impacts introduced on surrounding development and the public domain.</p>
Principle 3: Density	<p><u>29 September 2021</u></p> <p>The appropriate density will be the balance of achieving a well-activated podium that does not read as a carpark and has a positive contribution to the street. The setback of the corner units facing the Travelodge site is currently inadequate – particularly as the units in this location have their open space and Living areas orientated in this direction.</p> <p>The limited numbers of dwellings per floor otherwise offer the potential for a good level of amenity, aspect, and an appropriate density.</p>	<p>The density of the proposal remains relatively consistent.</p> <p>The proposal does not result in an exceedance to the prescribed FSR for the site.</p>

	<p><u>24 November 2021</u></p> <p>The density appears appropriate as the building provides good amenity, generous communal open space, street activation and meets the parking requirements.</p> <p><u>27 July 2022</u></p> <p>No further comments</p>	
Principle 4: Sustainability	<p><u>27 July 2022 Electric Vehicles</u></p> <p>Applicant advised they propose to provide Electric Vehicle (EV) charging in the carpark for both private residential parking and visitor parking areas.</p> <p>Preliminary feedback from electrical engineer is indicating that they can provide EV for all parking spaces – which was strongly supported by the Panel.</p> <p>The applicant's current approach is to provide some EV charges to visitor/ common parks so everyone can get a chance to use them, and then offer EV charges to residential purchases (at a cost of approx. \$5000 for 7kw Phase 2 Charger which is metred back to each apartment).</p> <p>The Panel suggested also having a few 'fast charges' (3 Phase) in the visitor parking area that is controlled by the strata.</p> <p>The Panel reiterates previous comments about photovoltaic array generation and that it should not impact on the skyline and should be integrated into the roof design.</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>
Principle 5: Landscape	<p><u>27 July 2022</u></p> <p>The public, communal and private landscape areas are being managed well.</p> <p>However, it is important to ensure that landscape intent is carried through to Construction Certificate stage, and to that end, confirmation of ADG compliant soil volumes should be provided at DA, in conjunction with confirmation that structural slab and beam dimensions and drainage / hydraulic penetrations have been allowed for in the preliminary structural design, to ensure that subsequent changes are not necessitated by inadequate structural provision for landscape loads.</p>	<p>The applicants have provided detailed landscape plans which details the soil depths proposed for the landscape area.</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>

	<p>There is a small planter bed on the Hunter Street podium level (outside units 404 and 405) that needs to be accessed from within the unit. This is not supported as the planter contributes to the façade and its maintenance will impact on the unit. It was suggested that this planter be deleted or relocated in an accessible location. Previous advice in respect to street trees was reiterated.</p>	<p>The applicant has amended the plans to remove the planter bed.</p>
<p>Principle 6: Amenity</p>	<p><u>27 July 2022</u></p> <p>The evolution of the design has continued to improve the amenity of the development.</p> <p>The following is recommended as the Applicant continues to refine and develop the design:</p> <p><u>Carparking levels.</u></p> <p>The Panel supports the changes to the façade screening (double screening system) that address light spill from carpark. The system proposes lighting as this will help obscure lighting from the carpark. The Panel recommends uplighting opposed to downlighting.</p> <p>The Applicant has established a double height residential communal space on the north-east corner ('lantern'). The Panel noted the spiral stair design lent itself to being an attractive sculptural element.</p> <p>There is potential conflict where carpark spaces are located close to adjacent storage cages, only separated by a narrow walkway. When items are removed this could potentially damage cars. The Applicant advised they exceed the required number of storage cages and can reduce them to avoid such conflicts.</p> <p><u>Podium Level</u></p> <p>Maintenance of planter on the Hunter Street needs more consideration. Access via units is not recommended.</p>	<p>The plans have been updated to address the storage cage conflicts.</p> <p>Landscape courtyard access door added to podium level.</p> <p>Generally, the proposal 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>
<p>Principle 7: Safety</p>	<p><u>27 July 2022</u></p> <p>The evolution of the design has continued to improve the safety of the development. The Applicant has successfully managed the public and private interface at various levels of the building. The following is</p>	<p>The proposal is considered to provide appropriate safety for occupants and the public for the following reasons:</p>

	<p>recommended to continue to refine and develop the design:</p> <p><u>Ground Floor</u></p> <p>Shift the access door, adjacent tenancy four, closer to the street frontage to eliminate long external corridor.</p> <p>Consider moving the letterboxes inside the foyer. This allows for more secure letter boxes and opportunity for artwork/ activation treatment on external wall near lobby entry – this will contribute to the street's activation.</p> <p><u>Carparking levels</u></p> <p>Improve sightlines around the residential lobbies by removing some of storage cages behind the car parks which are obstructing views to carparks' lobby areas.</p> <p>Provide a secure door at the ramp that connects the ground floor visitor parking level with the first-floor residential parking level. The gate should prevent unauthorised access to residential parking levels for both pedestrians and vehicles.</p>	<ul style="list-style-type: none"> - The proposal provides additional passive surveillance to the surrounding street network and interchange area. - The entry lobbies provide appropriate access. - Mail room added to residential lobby, and mailboxes relocated into the residential lobby.
Principle 8: Housing Diversity and Social Interaction	<p><u>29 September 2021</u></p> <p>The development has the opportunity to provide housing diversity in a range of unit sizes and types. The generous podium level can provide a space for residents to gather and interact on a daily basis. Social activity from the podium has the opportunity to contribute to the vibrancy of the street.</p> <p>The activation of the street, achieved by setting back the façade at ground level, could create public spaces for social interaction and improved street connection.</p> <p><u>24 November 2021</u></p> <p>The podium level communal space provides excellent opportunities for social interaction. The Panel recommends a variety of spaces that cater for groups but also individuals who are seeking a quiet place away from their apartment. This will increase the likelihood of the space being used by its residents.</p> <p><u>27 July 2022</u></p> <p>No further comments.</p>	<p>The proposal provides additional housing accommodation, in the city centre and in proximity to public transport.</p> <p>The generous communal space will offer suitable areas for social interaction.</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>
Principle 9: Aesthetics	<p><u>27 July 2022</u></p> <p><i>The Panel continues to support the aesthetic approach to the development, which has been further refined since the previous presentation.</i></p>	<p>The proposed development is appropriate in terms of the composition of building elements, textures, materials, and colours.</p>

	<p><i>The Panel reiterates previous comments regarding the importance of a signage strategy.</i></p>	<p>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.</p> <p>A signage strategy has been provided by the applicant.</p>
Recommendation	<p><u>27 July 2022</u></p> <p>The Panel is supportive of the proposal. A small number of relatively minor matters, as outlined under the headings above, are expected to be satisfactorily addressed, and it is anticipated that these will be resolved to the satisfaction of the Assessing Officers without necessarily referring further to the Panel.</p>	<p>The applicant has subsequently amended the plans to include:</p> <ul style="list-style-type: none"> o Ground floor carparking level lowered by 300mm. o Driveway grades updated to suit updated parking levels. o Door to fire egress corridor relocated. o Step added to fire egress path to suit updated parking level. o Mail room added to residential lobby. o Mailboxes relocated into the residential lobby. o Motorcycle space distribution across L1, L2 and L3 updated (Total remains the same). o Secure entry included at base of residential carpark ramp. o Storage cage arrangement updated. o Landscape courtyard access door added to podium level. o Pool pergola shown in elevation. <p>The UDRP have noted that the separation between the proposal and the adjoining commercial building facing Hunter Street and the theoretical setbacks to a conceptual tower located within the Travel Lodge site. The Panel were satisfied with the buildings offset, and the</p>

		<p>resulting relationship between the adjoining sites is considered satisfactory.</p> <p>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.</p> <p>In summary, the development 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.</p>
--	--	---

Apartment Design Guide (ADG).

A SEPP 65 Design Statement (dated 09 May 2022 prepared by Stewart Architecture) was submitted in support of the current proposal. 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) of the SEPP the consent authority must take into consideration when determining a development application for consent to which SEPP 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.
- i)

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 4 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 4: Compliance with required topic areas of ADG

3B Orientation	
<p>Objective 3B-1 Building types and layouts respond to the streetscape and site while optimising solar access within the development.</p> <p>Objective 3B-2 Overshadowing of neighbouring properties is minimised during mid-winter.</p>	
Comment:	Compliance
<p>The subject site is located on a corner with Hunter Street to the North, and Steel Street to the East. The proposed development occupies 100% of the site footprint on the ground floor and podium levels with the ground plane commercial tenancies fronting the Hunter St and Steel St corner, back of house areas are located to the rear of the site along Steel Street.</p> <p>The buildings mass and shape above the podium level respond to the site's context. The design considers solar aspects to apartments and the proximity of existing developments overshadowing the site, with the longer axis (being the north/south) designed as a 'C' shape to provide apartments on the southern side access to a northern orientation.</p> <p>The upper-level apartments are predominately orientated to either the northern Hunter St frontage or the eastern Steel St frontage. The orientation of the upper level ensures that apartments capture the preferred sunlight access. Additionally, the buildings design has ensured a level of street activation and passive surveillance.</p> <p>The development has taken into consideration the buildings massing and form in the context of the surrounding, existing, future, and a conceptual development. The proposal results in additional overshadowing over the public domain, however this is negligible as it is largely concentrated over the adjacent road, and the Steel and King St intersection. and not public open space areas.</p> <p>The proposed development is considered satisfactory regarding overshadowing to</p>	Complies

the public domain and neighbouring buildings.		
3D Communal and public open space		
Objective 3D-1 An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping		
Design Criteria:	Comment:	Compliance
1. Communal open space has a minimum area equal to 25% of the site.	<p>The subject site is 2079 m² therefore 25% of the site area equates to 519.75 m².</p> <p>The proposed development includes a substantial open space area for communal activity on the podium level. The open space area is divided into two large outdoor spaces and two indoor communal spaces which includes an accessible WC.</p> <p>The western side terrace provides a community garden area and gathering spaces with an area of approximately 280 m². The eastern Terrace contains a 25m swimming pool, two pool decks and additional outdoor gathering areas and is approximately 430 m².</p> <p>The total area of communal open space is 770 m² equaling 37% of the site area and therefore meets minimum requirement.</p>	Complies
Design Criteria:	Comment:	Compliance
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).	<p>The eastern pool terrace (adjacent to Steel St) enjoys a northeast orientation and achieves significant daylight in mid-winter to the principal areas of the communal open space.</p> <p>The northern frontage of the western terrace achieves some direct sunlight in mid-winter to the principal community garden spaces.</p> <p>Overall, the proposal achieves more than two hours of direct sunlight to the majority of the pool terrace in midwinter. This area alone achieves more than 50% sunlight to the usable part of the space, therefore the proposal is consistent with the design objective.</p> <p>The communal podium open spaces provide a variety of landscaped and garden areas. The landscaping treatments define the open space areas, providing the opportunity for a variety of uses, which enhances the amenity overall.</p>	Complies

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
1. Deep soil zones are to meet the following minimum requirements:		<p>The subject site is 2079 m² therefore deep soil zones need to have a minimum dimension of 3m and 7% of total site area. This equates to 145.5 m².</p> <p>The proposed development occupies the entire site. The buildings ground level is entirely commercial/retail in nature, restricting opportunities for deep soil zones.</p> <p>The design criteria objectives have been considered through alternative methods by providing landscaping on the podium level incorporating alternative stormwater/irrigation systems.</p> <p>As such, the development is considered acceptable in this regard.</p>	Satisfactory (Merit based assessment)
Site area	Minimum dimensions		
greater than 1500m ²	6m	7%	
3F Visual privacy			
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
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>The proposal's residential component is situated above the podium level, which has been designed as a single tower structure. The tower's 'C' shape configuration is a form that contributes positively to the overall design. It is noted, that due to the configuration of the building, there is potential for overlooking/privacy issues between the apartments located at the alternate ends.</p> <p>The subject site has dual street frontages to Hunter and Steel Street, therefore building separation setbacks are not relevant to these boundaries.</p> <p>It is noted a commercial building on the western side of the proposal has been approved up to 8 stories high with a hard edge against the boundary.</p>	Satisfactory (Merit based assessment)
Building height	Habitable rooms & balconies	Non-habitable rooms	
up to 12m (4 storeys)	6m	3m	Provided additional privacy measures are implemented.
up to 25m (5-8 storeys)	9m	4.5m	
over 25m	12m	6m	

(9+ storeys)			<p>Above the podium, the tower is stacked in a consistent vertical form. The tower consists of identical unit layouts from fifth to the 18th floor, above the 19th floor penthouses are stepped back from the floor below which is the only change to the building form.</p> <p>Setbacks above 4th floor podium to 19th floor are as follows;</p> <p>1.0m setback from north boundary (Hunter St) 12.75m setback from east boundary (Steel St) 3.5m setback from south boundary.</p> <p>A varied setback between 5.6m - 6.45m from western boundary.</p> <p>As noted, due to the 'C' configuration of the building, there are non-complying setbacks between habitable rooms within the subject development.</p> <p>On levels 5 to 18 there is a 16.665m setback distance between UT2C-No.4 and UT3B-No.5 on each floor between bedrooms of Unit-05 and the balconies of Unit-04. However, this is deemed acceptable provided privacy treatment on the bedroom windows such as external screens are applied.</p> <p>The common apartment access corridor windows facing west will also require privacy measures as currently there is unacceptable overlooking of individual adjacent apartment balconies and living rooms of units-04 (located southwestern site corner).</p>	
<p>Note:</p> <p>Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2).</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>			<p>As such, if the additional privacy measures are implemented the proposed development will be consistent with the intent of this objective and acceptable in this regard.</p>	
A4 Solar and daylight access				
<p>Objective 4A-1</p> <p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space</p>				
Design Criteria:	Comment:		Compliance	

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.	The proposed development has 86 out of 106 apartments achieving a minimum of two hours of sunlight during midwinter to balconies and the internal living space. This equates to 81% of apartments, which is more than the 70% requirement.	Complies
Design Criteria:	Comment:	Compliance
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.	Not Applicable	N/A
Design Criteria:	Comment:	Compliance
3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	6 out of 106 apartments achieve no sunlight in mid-winter. This equates to 5.7% of total apartments and is less than the 15% maximum allowable and therefore complies.	Complies
4B Natural ventilation		
Objective 4B-3		
The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.		
Design Criteria:	Comment:	Compliance
1. At least 60% of apartments are naturally cross ventilated in the 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.	60% of apartments are required to be cross ventilated, which for the proposed development with 106 apartments this equates to a minimum of 64 apartments. The proposed development ensures that 62 apartments are naturally cross ventilated, which is 58.5%. The remaining 44 apartments are single fronted apartments. The use of stepped facades allows for the inclusion of windows on two sides of the living spaces, improving natural ventilation where possible. In this regard the 1.5% shortfall is deemed satisfactory.	Satisfactory (Merit based assessment)
Design Criteria:	Comment:	Compliance
2. Overall depth of a cross-over or cross-through apartment does	Not Applicable	N/A

not exceed 18m, measured glass line to glass line.													
4C Ceiling heights													
Objective 4C-1													
Ceiling height achieves sufficient natural ventilation and daylight access.													
Design Criteria:		Comment:	Compliance										
1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:		Mixed use	Complies										
<table><tr><td colspan="2">Minimum ceiling height for apartment and mixed-use buildings</td></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>		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	<p>The ground floor retail tenancy spaces have a floor-to-floor height of 6.0m, being Level 2.</p> <p>It is noted that there are either first floor mezzanine and/or void areas within the mixed-use spaces. This allows for a 3.3m ceiling height or other flexibility of space in the future.</p>			
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												
These minimums do not preclude higher ceilings if desired.		Apartments	Complies										
		<p>From Level 4 (podium level) to Level 17 the floor-to-floor height is 3.1m. This allows for a 400mm depth for the floor / ceiling structure to achieve the minimum ceiling height of 2.7m which is acceptable.</p> <p>Level 18 has a floor-to-floor level of 3.3m and can achieve a 2.7m ceiling height.</p> <p>Level 19, (the penthouse level) has a floor to roof height of 3.4m. This is capable of achieving the minimum 2.7m ceiling height.</p>											
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										
1. Apartments are required to have the following minimum internal areas:		All 106 apartments have internal areas that meet the minimum requirement.	Complies										
<table><tr><td>Apartment type</td><td>Minimum internal area</td></tr><tr><td>studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table>		Apartment type	Minimum internal area	studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>The layouts of apartments are simple, providing functional and useable spaces. There are some minor awkward spaces (unit 401) areas, however this is generally minimal overall.</p>	
Apartment type	Minimum internal area												
studio	35m ²												
1 bedroom	50m ²												
2 bedroom	70m ²												
3 bedroom	90m ²												
The minimum internal areas include only one bathroom. Additional													

bathrooms increase the minimum internal area by 5m ² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m ² each.		
Design Criteria: 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.	Comment: All habitable rooms within the apartments have window or doors within an external wall. There are no situations of borrowed daylight from adjoining rooms.	Compliance Complies
Objective 4D-2 Environmental performance of the apartment is maximised.		
Design Criteria: 1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Comment: All apartments are provided with combined living dining kitchen open-space areas.	Compliance Complies
Design Criteria: 2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Comment: All apartments have a maximum habitable room depth of less than 8m from a window for an open plan living / dining / kitchen area to the furthest kitchen bench.	Compliance Complies
Objective 4D-3 Apartment layouts are designed to accommodate a variety of household activities and needs.		
Design Criteria: 1. Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space)	Comment: 8 of the 9 apartment types have master bedrooms with a minimum area of more than 10m ² . Details of the non-complying master bedroom are as follows: Apartment type UT2A – 2 Bed x 15 apartments. The master bedroom has an area of approximately 9m ² . Of the remaining 109 bedrooms 19 have a minimum area more than the 9m ² minimum requirement excluding wardrobe space equating to 17.4%. The noncomplying bedrooms are as follows:	Compliance Satisfactory - (Merit based assessment)

	<ul style="list-style-type: none"> Apartment type UT2A – 2 Bed x 15 apartments. The second bedroom has an area of approximately 7.8m². Apartment type UT2B – 2 Bed x 15 apartments. The second bedroom has an area of approximately 7.84m². Apartment type UT2C – 2 Bed x 15 apartments. The second bedroom has an area of approximately 8.3m². Apartment type UT3A – 3 Bed x 15 apartments. The second and third bedrooms both have areas less than 9m², each having an area of approximately 8.3m². Apartment type UT3B – 3 Bed x 15 apartments. Each have 1 bedroom with an area of approximately 8.6m². <p>Overall, 105 of the total 215 bedrooms proposed development have an area are less than the minimum requirement equating to 48.8%.</p>	
Design Criteria:	Comment:	Compliance
2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	<p>135 of 215 bedrooms in the proposed development have bedrooms with a dimension less than the 3m minimum dimension requirement of the design criteria. This equates to around 62.8% of the bedrooms in the development.</p> <p>The drawings identify indicative furniture, this being a bed and bedside table located on either side. This has been shown within each of the 135 bedrooms that have a shortfall in width to demonstrate that the rooms are still capable of accommodating bedroom furniture.</p> <p>It is noted that given the reduced width, there is very little flexibility with furnishing options, multiuse, or alternative use spaces. Whilst this arrangement is not ideal, the proposed development can be regarded as satisfactory.</p>	Satisfactory. (Merit based assessment)
Design Criteria:	Comment:	Compliance:

<p>3. Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> • 3.6m for studio and 1-bedroom apartments. • 4m for 2- and 3-bedroom apartments. 	<p>7 of the 9 apartment types in the proposed development have living rooms or combined living / dining rooms which achieve the minimum distances required for the number of bedrooms provided in the apartment.</p> <p>Details of the non-complying apartments are as follows:</p> <ul style="list-style-type: none"> • Apartment type UT2C – 2 Bed x 15 apartments. The living room has a width of 3.9m which is 0.1m less than the minimum required width of 4.0m. The living space is of a usable size and layout and is deemed to be satisfactory. • Apartment type UT3B – 3 Bed x 15 apartments. The living / dining room has a width of 3.5m which is 0.5m less than the minimum required width of 4.0m. The configuration and size of the living / dining room provides less than desired amenity especially for a 3-bedroom apartment. <p>8 of the 9 apartment types are therefore considered to be complying, and as such the proposed development is deemed satisfactory overall.</p>	<p>Satisfactory (Merit based assessment)</p>
<p>Design Criteria:</p>	<p>Comment:</p>	<p>Compliance</p>
<p>4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.</p>	<p>Not Applicable</p>	<p>N/A</p>
<p>4E Private open space and balconies</p>		
<p>Objective 4E-1 Apartments provide appropriately sized private open space and balconies to enhance residential amenity.</p>		
<p>Design Criteria:</p>	<p>Comment:</p>	<p>Compliance</p>

<p>1. All apartments are required to have primary balconies as follows:</p> <table border="1" data-bbox="261 281 656 548"> <thead> <tr> <th>Dwelling type</th><th>Min. area</th><th>Min. depth</th></tr> </thead> <tbody> <tr> <td>Studio</td><td>4m²</td><td>-</td></tr> <tr> <td>1 bedroom</td><td>8m²</td><td>2m</td></tr> <tr> <td>2 bedroom</td><td>10m²</td><td>2m</td></tr> <tr> <td>3+ bedroom</td><td>12m²</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 ²	-	1 bedroom	8m ²	2m	2 bedroom	10m ²	2m	3+ bedroom	12m ²	2.4m	<p>All apartments have primary balcony areas that achieve the minimum area and depths required for the number of bedrooms provided in the apartment.</p>	<p>Complies</p>
Dwelling type	Min. area	Min. depth															
Studio	4m ²	-															
1 bedroom	8m ²	2m															
2 bedroom	10m ²	2m															
3+ bedroom	12m ²	2.4m															
<p>Design Criteria:</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 15m² and a minimum depth of 3m.</p>	<p>Comment:</p> <p>7 of the 8 apartments located on a podium or similar structure (Level 4 and Level 19) have a private open space in excess of the 15m² minimum requirement and have depth of more than the 3m minimum requirements.</p> <p>The noncomplying apartment is Apt 401 UT1A which has an area of 9.9m³ and does have a min dimension of 3.0m.</p> <p>Apt 401 UT1A is a one-bedroom apartment, larger than the min apartment size, with additional amenity provided in the form of an internal study space. The living area is located adjacent to the private open space and becomes an extension of the living space.</p> <p>The living space includes glazing on two sides making the space feel connected with the open private space / adjacent landscaping. It is also noted that there is a narrow extension of the private open space on the eastern side of the living space which is less than 1m and therefore excluded from being included in the total POS area. However, this does in essence provide an increased feeling of space both within the apartment living space and external open space.</p> <p>The private open space is sized 3.0 x 3.3 and is capable of flexible uses and furniture arrangements. It is deemed this space is adequate and consistent with the intent of the design guidelines in this circumstance.</p>	<p>Compliance</p> <p>Satisfactory (Merit based assessment)</p>															
<p>4F Common circulation and spaces</p>																	

Objective 4F-1										
Common circulation spaces achieve good amenity and properly service the number of apartments.										
Design Criteria: 1. The maximum number of apartments off a circulation core on a single level is eight.	Comment: The max number of apartments sharing a circulation core on a single level in the proposed development is seven. This is less than the maximum of eight and therefore meets the requirements.	Compliance Complies								
Design Criteria: 2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Comment: The proposed development is 19 storeys and includes 106 apartments. The design criteria permits a maximum of 40 apartments serviced per lift in a 10+ storey building. The development provides 3 lifts. Under the design criteria allowance, 3 lifts would be capable of servicing a maximum of 120 apartments. The proposed development has 3 lifts which each service 35.4 apartments, this is less than the 40 apartments max per lift in the design criteria.	Compliance Complies								
4G Storage										
Objective 4G-1										
Adequate, well designed storage is provided in each apartment.										
Design Criteria: 1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table border="1"><thead><tr><th>Dwelling type</th><th>Storage size volume</th></tr></thead><tbody><tr><td>1 bedroom</td><td>6m³</td></tr><tr><td>2 bedroom</td><td>8m³</td></tr><tr><td>3+ bedroom</td><td>10m³</td></tr></tbody></table> At least 50% of the required storage is to be located within the apartment.	Dwelling type	Storage size volume	1 bedroom	6m ³	2 bedroom	8m ³	3+ bedroom	10m ³	Comment: All apartments are provided with storage that satisfies the minimum volumes requirements. Adequate storage of at least 50% of the required volume is provided internally within each apartment as well as additional secure storage located on the ground floor or within the car parking areas. It is noted that there is no detail provided as to what secure storage is allocated to each apartment nor the specific volumes of these areas. It appears after a review of the documentation there are 115 secure storage cages proposed. The development consists of a total of 106 apartments, so it is deemed that these spaces are capable of being configured, appropriately sized, and allocated to individual apartments.	Compliance Complies
Dwelling type	Storage size volume									
1 bedroom	6m ³									
2 bedroom	8m ³									
3+ bedroom	10m ³									

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.

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 contamination investigation report by Qualtest identified fragments of potential Asbestos Containing Material (ACM) in the central part of the site, on the site surface adjacent to where concrete had been broken. ACM is likely to be present on the site surface and under the concrete slabs (i.e. possibly used as formwork) across the site.

The report and SOEE's identifies 2 options to remediate this asbestos as being off-site disposal or capping under structures. As such a RAP was requested to clarify how asbestos was proposed to be managed noting that capping of contamination is category 1 remediation which requires development approval. The capping of asbestos on site and long-term management would require adequate justification and appropriate conditions applied to the approval should this remediation strategy be considered acceptable.

Generally, fragments of asbestos encountered during demolition/construction works should be collected and disposed of at a licenced waste facility in accordance with procedures identified in an appropriate hazardous substances management plan, and/or asbestos removal control plan, or construction environmental management plan.

As the applicant has accepted conditions requiring any asbestos identified during demolition/construction works is to be removed offsite, a remediation action plan is not considered to be required.

The site has been subject to a preliminary contamination investigation:

- Qualtest Laboratory (NSW) Pty Ltd (18 September 2018) Onyx Development Phase 1 & Contamination Assessment. NEW18P-0156-AA. Rev 0.

This investigation included sampling of soil at 7 locations as well as sampling of 7 soil stockpiles and 3 groundwater bores. The most sensitive landuse criteria was selected for the soil analysis (Health investigation Level A, residential with access to soil). This is considered to be a conservative approach as there will be a commercial use on the ground level with no practical access to soil in respect to the residential uses 4 floors above. Soil samples included the typical array of potential contaminants including hydrocarbons, BTEX, heavy metals, OCP, OPP, PCBs and asbestos.

Soil and groundwater sampling results were below the conservative sensitive residential land use criteria. The only contaminant identified above the land use criteria were some fragments of asbestos sheeting associated with existing slabs. Such material is often encountered during demolition/construction and can be effectively addressed via an appropriate management plan which can be enforced with a condition of consent.

It is considered that the site has been subject to adequate investigation, and it has been reasonably demonstrated that the land is suitable for the proposed land use in respect to clause 4.6 of the Resilience and Hazards SEPP.

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 3 September 2022 relating to matters and information that will be required prior to the issue of a Construction certificate.

Division 17 Roads and traffic

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).

It is confirmed that Hunter Street is a local road and King Street is a classified regional road. Council is the roads authority for both roads and all other public roads in the area, in accordance with Section 7 of the Roads Act 1993.

Transport for NSW provided correspondence dated 14 June 2022 requesting additional information which included an updated Traffic Impact Assessment addressing traffic counts for all relevant traffic routes, the distribution on the road network of the trips generated by the development proposal, updated SIDRA modelling.

The applicant provided the requested additional information and TfNSW subsequently provided a response stating *"TfNSW has reviewed the information provided and 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"*.

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

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.

Clause 4.3 - Height of buildings

In assessing the Application consideration has been given Clause 4.3 'Height of Buildings'. The Application nominates a maximum building height of 64.95m being RL 67.7 (lift overrun) which exceeds the prescribed maximum building height of 60m.

Part 7, Clause 7.5 (6) of the NLEP, provides an additional 10% in height greater than that permitted by clause 4.3, but only if the proposal has been reviewed by a design review panel. The proposal has been reviewed by the Urban Design Review Panel and its height and built form is considered to achieve design excellence.

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 remains consistent with the objectives of Clause 4.3.

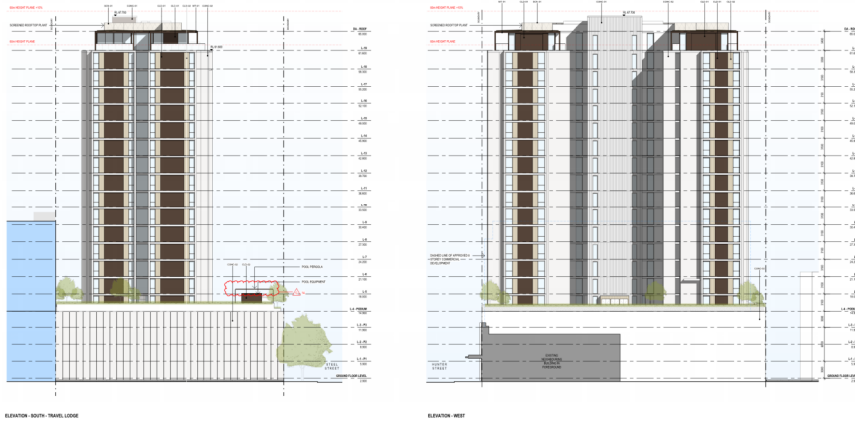


Figure 4 - Elevations identifying building height.

Clause 4.4 - Floor Space Ratio

The subject site is identified on the Newcastle LEP 2012 Floor Space Ratio Map as having a prescribed floor space ratio of 6:1. The proposed development has a Gross Floor Area of 11,419.8m², while the site has an area of 2,079m² resulting in a FSR of 5.49:1.

Clause 7.10 of NLEP 2012 details additional provisions relating to development within "Area A" on the FSR Map, identifying an alternate maximum FSR of 5:1 for sites located within "Area A". The site is located within "Area A" therefore this provision applies.

However, Clause 7.5(6) of NLEP 2012 also permits the erection of a building to which the clause applies resulting in an FSR of not more than 10% greater than that allowed by Clause 7.10, but only if the design of the building has been reviewed by a design review panel.

The design of the building has been reviewed by Council's Urban Design Review Panel who have confirmed the proposal achieves design excellence, therefore the 10% bonus provision can be applied resulting in a maximum FSR of 5.5:1.

The proposed development is compliant with an of 5.49:1, which does not exceed the maximum FSR prescribed for the site with the inclusion of the 10% bonus.

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 conservation areas (including associated fabric, setting and views), for the following reasons:

- There are several multi-storey contemporary buildings in the vicinity, including the Ibis development and the Verve apartments. 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 two-storey scale of the proposed podium references the dominant two-storey scale of contributory buildings in the vicinity. In this regard it is considered that the proposed development will not have an unacceptable adverse impact on the significance of the Newcastle City Centre HCA.

Further information is required regarding the following:

- The project area has been previously identified as a Potential Archaeological Deposit (PAD) and registered as an Aboriginal archaeological site (38-4-0832) on AHIMS. An Aboriginal Cultural Heritage Assessment Report (ACHA) was prepared by Umwelt (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 C0003057 was issued on 19 July 2018. Under the AHIP, archaeological testing was undertaken across the project area which demonstrated the presence of sub-surface archaeological material. This AHIP is no longer valid (lapsed 29/11/2019). There is currently no approval in place for harm to Aboriginal objects within the project area. The Archaeological Summary report provided with the application recommends that an updated ACHA report is completed to determine whether the ground disturbance works will extend outside the footprint subject to test excavation under the previous AHIP. This ACHA is to reference the results of test excavation conducted under AHIP C0003057 to inform recommendations regarding any requirements to obtain a new AHIP for the project.

The following matter is recommended to be addressed via conditions of consent:

- A Historic Archaeological Assessment Report was prepared by Umwelt in 2017 in relation to a previous development proposal for the site. This report identified that the project area has the potential to contain relics. A Section 140 Excavation Permit (2017/s140/13) was issued by OEH, then subsequently varied under section 144 of the Heritage Act as S144/2018/006 to reflect a change of ownership of the site. The s144 approval is valid until 20 June 2023.
- Archaeological monitoring was undertaken in accordance with the s144 permit during removal of the concrete slab on the site. No relics were identified. It is noted that the development application being considered is a different design to that for which the Excavation Permit was issued. The Archaeological Summary provided with this application notes that while the overall design of the development has changed the ground disturbance works for building foundations are likely to comprise a similar disturbance footprint to that previously approved by the s144 permit.
- It is considered that this matter should be duly 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 s144/2018/006 can apply to the excavation works for the development (via a condition of consent), noting the change in design and passage of time.

2) Requirement for consent

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

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.
- An Archaeological Summary document (prepared by Umwelt) has been submitted which sets out the previous archaeological approvals and excavations undertaken on the site, and recommendations as to further approvals/investigations required.

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 Historic Archaeological Assessment Report was prepared by Umwelt in 2017 in relation to a previous development proposal for the site. This report identified that the project area has the potential to contain relics. A Section 140 Excavation Permit (2017/s140/13) was issued by Heritage NSW. The permit was subsequently varied under section 144 of the Heritage Act as S144/2018/006 to reflect a change of ownership of the site. The s144 approval is valid until 20 June 2023.
- Archaeological monitoring was undertaken in accordance with the s144 permit during removal of the concrete slab on the site. No relics were identified. It is noted that the development application being considered is a different design to that for which the Excavation Permit was issued. The Archaeological Summary provided with this application notes that while the overall design of the development has changed the ground disturbance works for building foundations are likely to comprise a similar disturbance footprint to that previously approved by the s144 permit.
- It is considered that this matter should be duly addressed via application to Heritage NSW for a new s140 Excavation Permit or alternatively written authorisation is to be obtained from Heritage NSW that the existing s144/2018/006 can apply to the excavation works for the development (via a condition of consent), noting the change in design and passage of time.

8) Aboriginal places of heritage significance

- The project area has been previously identified as a Potential Archaeological Deposit (PAD) and registered as an Aboriginal archaeological site (38-4-0832) on AHIMS. An Aboriginal Cultural Heritage Assessment Report (ACHA) was prepared by Umwelt (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 C0003057 was issued on 19 July 2018. Under the AHIP, archaeological testing was undertaken across the project area which demonstrated the presence of sub-surface archaeological material.

- This AHIP is no longer valid (lapsed 29/11/2019). There is currently no approval in place for harm to Aboriginal objects within the project area. The Archaeological Summary report provided with the application recommends that an updated ACHA report is completed to determine whether the ground disturbance works will extend outside the footprint subject to test excavation under the previous AHIP. This ACHA is to reference the results of test excavation conducted under AHIP C0003057 to inform recommendations regarding any requirements to obtain a new AHIP for the project.

Clause 5.21 - Flood planning

According to information provided in the Newcastle City-wide Floodplain Risk Management Study and Plan (BMT WBM June 2012), the subject allotment is affected by Ocean Flooding and Local Catchment Flooding during both the 1% Annual Exceedance Probability (AEP) and Probable Maximum Flood (PMF) events.

Clause 5.21 (2) requires that development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development is;

*"(a) compatible with the flood function and behaviour on the land, and
(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and
(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and
(d) incorporates appropriate measures to manage risk to life in the event of a flood, and
(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses".*

The proposed development has considered and addressed the impacts of flooding and the risks associated with flooding on the site and the surrounding areas. Concerns and comments that have been raised by CN have been subsequently addressed. The proposed development is supported.

Clause 6.1 - Acid sulfate soils

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

Clause 6.1 seeks to ensure that development does not disturb, expose, or drain Acid Sulfate Soils (ASS) and cause environmental damage. The development site is identified as containing Class 4 Acid Sulfate Soils (ASS). The submitted Geotech report included an investigation of ASS. The results indicate that ASS are not present in the top 2.4m however potential acid sulfate soils (PASS) may be encountered below this depth. It was recommended that an ASS management plan be prepared should PASS be disturbed during construction.

The consent authority will provide written notice to the Applicant by way of its recommendations and by way of the notice of determination, to the effect that the findings of the preliminary assessment are confirmed and that an ASS Management Plan is not required.

Furthermore, a condition of consent is recommended that requires further assessment of ASS potential to be undertaken during excavation. If ASS is found to be present, soils will be treated in accordance with the NSW Acid Sulfate Soils Advisory Committee's Manual.

The proposal is considered acceptable in this regard to this clause.

Clause 6.2 - Earthworks

Earthworks are proposed as part of this development. 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

Clause 7.1 – Objectives of Part, and Clause 7.2 Land to which this Part applies:

Part 7 of the NLEP 2012 contains additional locality specific provisions for development on land located within the Newcastle City Centre.

The subject site is included within the Newcastle City Centre as shown on the 'Newcastle City Centre Map'. In accordance with Clause 7.2, the provisions of Part 7 of the NLEP 2012 therefore apply to the subject Application.

The proposed development is consistent with the objectives of Part 7, which include promoting the economic revitalisation of the Newcastle City centre, facilitating design excellence, and protecting the natural and cultural heritage of Newcastle.

Clause 7.3 - Minimum building street frontage

This clause states that consent cannot be granted for a development in a B3 Commercial Core Zone unless the building will have an active street frontage, where the ground floor facing the street is to be used for business or retail premises. The proposal has a frontage to both Hunter and Steel Street that is in excess of 20m and provides commercial space on the ground floor.

Clause 7.4 – Building Separation

This clause requires that a building on land within the City Centre must be erected so that the distance from the building to any other building is not less than 24m at 45m or higher above ground level.

The proposal has a zero setback to the west and south side boundaries for the first four (4) levels which is compliant and encouraged by the Newcastle DCP. The setback of the residential tower to the western boundary varies from 5.6m and 14m and the southern boundary setback is 3.5m.

The proposed setbacks and building separation to the western boundary and neighbouring property does not adversely affect the existing building. The proposed and approved future development on the neighbouring site is for an 8-storey commercial building with a blank wall directly on the boundary.

The proposed development will not impact future development. The neighbouring building to the south of the subject site the 7 storey Travel Lodge Hotel is approximately 5.5m from the common boundary and is 31.38m from ground level.

The proposed built form is not expected to have any adverse impacts on future developments to the Travel Lodge site, and the applicant has provided concept development plans to further demonstrate this.

The proposed southern façade is a secondary façade with primary outlook to the north and east.

The setbacks have been determined based on extensive site analysis and through multiple design reviews with the Urban Design Review Panel.

Clause 7.5 – Design Excellence

Clause 7.5 applies to the erection of a new building or to significant alterations to a building and states that a consent authority must not grant consent to development within the Newcastle City Centre unless the development exhibits design excellence.

Clause 7.5(3) provides several matters that the consent authority must consider in deciding whether to grant consent on land to which the design excellence provisions apply. The proposed development is considered to deliver 'design excellence' and is of a high standard of architectural quality, having regard to the design excellence considerations provided in Clause 7.5(3) of the NLEP 2012.

As outlined within the SEPP 65 & ADG assessment, and as described within this report, the modified proposal has achieved design excellence, as considered by the UDRP.

Clause 7.5(4) provides that development consent must not be granted for certain types of development unless an architectural design competition has been held in relation to the proposed development, this includes 'development in respect of a building that is or will be higher than 48m in height'.

The development in its entirety has a building height greater than 48m. Accordingly, the provisions of Clause 7.5(4) apply to the subject Application.

However, Clause 7.5(5) specifies that Clause 7.5(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. Pursuant to Clause 7.5(5) of the NLEP 2012, the Government Architect NSW (delegate of the Director-General) has certified in writing that a design competition is not required for the proposed development, subject to the implementation of alternative design excellence process in accordance with the conditions of the waiver (letter dated 29 March 2022).

The alternative design excellence process provides a method of design integrity be established to ensure the development retains design excellence through to the completion of construction, this includes continuing review by CN UDRP at key milestones. Accordingly, a design competition is not required to be held prior to the granting of development consent.

Suitable conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment A**) requiring the development to be undertaken in accordance with the architectural design competition waiver issued by the Government Architect NSW.

Clause 7.6 – Active Street frontages in Zone B3 Commercial Core

Clause 7.6 states that consent cannot be granted for a development in a B3 Commercial Zone unless the building will have an active street frontage, where the ground floor facing the street is to be used for business or retail premises. The proposal satisfied this requirement with the inclusion of commercial retail premises at ground level along the Steel Street and Hunter Street frontages.

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

This clause applies to land identified in "Area A" within the Floor Space Ratio Map, the subject site is shown within this area and is therefore applicable to this development. C17.10 (a) reduces the allowable FSR for the site to 5:1 for non-commercial buildings.

Notwithstanding, under clause 7.5 of the NLEP the consent authority may grant consent to the erection or alteration of a building to which this clause applies that has a floor space ratio of not more than 10% greater than that allowed by clause 7.10 but only if the design of the building or alteration has been reviewed by a design review panel.

As the proposal achieved design excellence the development was considered and supported with an FSR of 5.49:1, which was compliant with the maximum 5.5:1 FSR.

(b) 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.

(c) 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 and commercial uses on the ground level of the development will provide an active street frontage to Steel and Hunter Street.

Section 4.01 Flood Management

According to information provided in the Newcastle City-wide Floodplain Risk Management Study and Plan (BMT WBM June 2012), the subject allotment is affected by Ocean Flooding and Local Catchment Flooding during both the 1% Annual Exceedance Probability (AEP) and Probable Maximum Flood (PMF) events. The pertinent characteristics of this flooding are as follows:

Local Catchment Flooding:	
Is any part of the site a floodway?	No
Is any part of the site a flood storage area?	Yes – Whole Site
1% AEP Level / Velocity / Property Hazard	2.40m AHD / 0.10ms ⁻¹ / P1
PMF Level / Velocity / Life Hazard	4.20m AHD / 0.70ms ⁻¹ / L4 (H3)

Ocean Flooding:	
Is any part of the site a floodway?	No
Is any part of the site a flood storage area?	No
1% AEP Level / Velocity / Property Hazard	2.20m AHD / 0.14ms ⁻¹ / P1
PMF Level / Velocity / Life Hazard	3.40m AHD / 0.14ms ⁻¹ / L1 (H)

In accordance with Section 4.01 'Flood Management' of the Newcastle Development Control Plan (NDCP), development on this allotment is subject to the following requirements:

- "a) *Floor levels of any occupiable rooms in a new development on this site shall not be lower than the flood planning level (2.90m AHD).*
- b) *On-site car parking floor levels are set no lower than the 1% Annual Exceedance Probability flood level (2.40m AHD).*
- c) *On-site flood refuge is to be provided at or above the PMF level (4.20m AHD). This flood refuge shall cater for the number of people reasonably expected on the development site and be provided with emergency lighting.*
- d) *Not more than 20% of the area of any development site in a flood storage area is filled. The remaining 80% may be developed allowing for underfloor storage of floodwater by the use of suspended floor techniques such as pier and beam construction.*

The submitted development plans were reviewed against the above requirements and the following comments are provided:

- a) *The proposed ground floor commercial and ground floor parking areas are set at the flood planning level (2.90m AHD).*

- b) *The first floor, being situated at 5.90m AHD, may be suitable for on-site flood refuge during the PMF (4.20m AHD) provided the structure is designed and constructed to withstand hydraulic forces generated during such an event.*
- c) *The development does not address NDCP requirements for flood storage preservation. The submitted SEE acknowledges "the subject site is identified as a Flood Control Lot" but erroneously states that "the site is not affected by a floodway or a flood storage area."*

It is confirmed that the latest set of architectural plans is noted to propose the ground floor parking area at 2.6m AHD.

Flood Storage

Existing flood storage has been calculated using a cut/fill style calculation. The existing vacant site is estimated to contain up to 3220 cubic metres of floodwater during the Probable Maximum Flood event (flood level 4.2m AHD). Development on this site is permitted to fill up to 20% of this capacity (644 cubic metres).

A cut/fill diagram was also prepared for the proposed development measuring the fill necessary to achieve design levels on the ground floor. The development is estimated to fill 431.7 cubic metres on the ground floor.

The development is therefore considered to comply with flood storage preservation requirements set out in Section 4.01 of the NDCP.

Flood Evacuation Routes

Building occupants in the ground floor commercial tenancies and residential lobby must be provided with a self-evident route to on-site refuge elevated no lower than 4.20m AHD. The Applicant was requested to provide a brief outline of refuges available to each tenancy and indicate the route of evacuation to these refuges on development plans.

To facilitate access to the proposed commercial waste collection room, and also shorten evacuation routes, the Applicant may consider the provision of pedestrian access direct from each commercial tenancy to adjoining fire passageways.

Pedestrian routes to refuge for each ground floor commercial tenancy are set out in an indicative evacuation plan.

Tenancies 1 & 2 are proposed with mezzanines at approximately 5.9m AHD accessed via stairways in each tenancy. Occupants of these tenancies will be directed to seek refuge on these mezzanines.

It is proposed to evacuate occupants of Tenancies 3 & 4 to seek refuge in the 1st floor parking area. Occupants will leave each tenancy out into the covered colonnade, proceed south down some steps, enter a fire door, and travel along a fire passageway to "Stair A."

The proposed evacuation route of Tenancies 3 & 4 still raised some concerns:

- "a) *The route to refuge travels 40m through two doors and a long fire passageway. This route may not necessarily be self-evident to occupants of commercial tenancies, which may include guests, visitors, and customers not familiar with the building layout.*

- b) *The proposed route to refuge relies on access through one or more Fire Doors which typically cannot be accessed externally.*
- c) *The proposed route to refuge requires evacuees to descend to lower ground (from colonnade to fire door) which does not present as a self-evident route".*

It was subsequently requested that the Applicant address the above issues.

The ground floor plan had been amended further to provide internal access from Tenancies 3 and 4 to refuge on upper floors via fire stair A, thereby resolving issues b) and c) raised above.

This revised routes to refuge at Tenancies 3 and 4, which passes through two sets of doors and a long passageway, are still not self-evident or self-directing. This is to be addressed via the installation of signage as part of a Flood Evacuation Plan for the building. A condition of development consent will be recommended requiring a draft of this plan to be submitted along with documentation in a Construction Certificate application.

No further objections have been raised with regards to flood evacuation routes.

Section 4.04 Safety and Security

The apartments have been designed to achieve a high level of design excellence and compliance with SEPP 65 and the ADG. The development provides passive surveillance of the streets and communal areas from residential balconies, living areas, podium level, commercial and retail tenancies.

At the time of assessment of the Urban Design Review Panel had reviewed the final set of plans and were satisfied with the interface between the building and public domain.

It is considered that the proposal provides an improved pedestrian and safety outcome, especially compared to the current state of the public domain.

The development satisfactorily has regard to Crime Prevention Through Environmental Design (CPTED) principles: surveillance, access control, territorial reinforcement, and space management. Lighting, signage, emergency access, fencing, and parking is considered to be appropriate to the nature of the proposal and has been incorporated into the development.

Section 4.05 Social Impact

The development provides for a mixture of residential accommodation and commercial/retail operations. The proposed development is likely to have a positive social impact through providing additional housing choice within proximity to services and will activate Steel Street and Hunter Street through the provision of retail /commercial spaces on the ground floor.

The proposed development will have a positive impact within the community by providing additional employment opportunities within the Newcastle City Centre both with the provision of additional commercial space and during the construction period.

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 Indesco 17 February 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 detailed under Chapter 4 Land Contamination of the Resilience and Hazards SEPP, the site is identified as being contaminated. The applicant has submitted a contamination report which identifies 2 options to remediate the identified asbestos fragments as being off-site disposal or capping under structures. As such a RAP was requested to clarify how asbestos was proposed to be managed noting that capping of contamination is category 1 remediation which requires development approval.

The applicant has confirmed that any asbestos identified during demolition/construction works is to be removed offsite, therefore a remediation action plan is not considered to be required.

The capping of asbestos on site and long-term management would require adequate justification and appropriate conditions applied to the approval should this remediation strategy be considered acceptable. Generally, fragments of asbestos encountered during demolition/construction works should be collected and disposed of at a licenced waste facility in accordance with procedures identified in an appropriate hazardous substances management plan, and/or asbestos removal control plan, or construction environmental management plan. The proposed development is considered satisfactory having regard to the SEPP and Section 5.01 of the DCP.

Section 5.03 Vegetation Management

The site is vacant of any permanent structures and vegetation.

Section 5.04 Aboriginal Heritage

Prior to European exploration and settlement, the region hosted the traditional nations of the Awabakal and Worimi Aboriginal people. The area of the subject site was in pre-colonial times on the edges of a swampy estuary, where a steady creek running from south met the harbours edge. Evidence of Aboriginal inhabitation of the area is well documented, with significant archaeological deposit of aboriginal artefacts uncovered adjacent to the current site as 700 Hunter Street in 2011.

In 2017 Aboriginal and historical archaeological assessments were prepared for the subject site as supporting documentation for archaeological approvals under the National Parks and Wildlife Act 1974 and the Heritage Act 1977.

The project area has been previously identified as a Potential Archaeological Deposit (PAD) and registered as an Aboriginal archaeological site (38-4-0832) on AHIMS. The Archaeological Summary report provided with the application recommends that an updated ACHA report is completed to determine whether the ground disturbance works will extend outside the footprint subject to test excavation under the previous AHIP.

This ACHA is to reference the results of test excavation conducted under AHIP C0003057 to inform recommendations regarding any requirements to obtain a new AHIP for the project.

Section 5.05 Heritage Items

5.05.06 Development in the vicinity of heritage items

The site is in the vicinity of two listed heritage items, 'Commandant's Farm' (NLEP Item A8) and 'Theatre Royale' (NLEP Item 498). It is considered that the proposed development will not result in any unacceptable adverse impact to the setting of the nearby Theatre Royale. The project area is located sufficiently away from the nearby heritage item to minimise impact to its setting. The development will appear in the skyline similar to recently constructed developments such as the Verve apartments. No significant landscaping will be impacted. The site is currently cleared.

The Newcastle City Centre Heritage Conservation Area is significant on many levels. The city area is known to have been a place of contact between colonists and the indigenous population, who owned the land on the southern shores of the Hunter River.

Following the disrepair and subsequent demolition of the former Empire Hotel building, the site retains no visible historic fabric above ground level. The significance of the history of the site and buildings, namely the former Hotel's cultural role in the lives of patrons and its representative portrayal of the urban development and decline of Newcastle's West End is now only captured by written histories and photographs.

Impacts to European archaeology on the site was considered as part of DA2016/00564. A Historical Archaeological Assessment was prepared for that application and subsequently an Excavation Permit was issued by OEH (now Heritage NSW). The Excavation Permit was later varied on account of the change of ownership (s144/2018/006) and is valid until 20 June 2023.

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".

The proposal is considered consistent with the principles and will not adversely impact Birdwood Park or Cottage Creek. The ground floor commercial spaces address Steel Street and Hunter Street and encourages activity, pedestrian movement, and incorporates measures to improved safety in the area.

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 16m, with the development above street wall height required to be set back by a minimum of 6m.

The development proposes a street wall that is 12.35m in height. The residential development above the street wall provides a 12.75m setback to Steel Street.

The above podium tower is setback by 1m with articulation setback to 1.5m to Hunter Street. This proposed setback responds to the development happening along Hunter Street with the adjoining approved development being an office building to the West which will have a 600mm setback.

The variation to the Newcastle DCP setback is considered appropriate as the building design of the residential tower ensures the built form does not dominate over the streetscape.

The proposed setbacks ensure that Hunter and Steel Street are not considerably overshadowed. The building has been designed to ensure that it is consistent with scale and building form, ensuring that they buildings are integrated into the streetscape.

The transition between the podium and the proposed towers will break up the bulk of the development.

A2. Building setbacks

The control specifies a front setback of 6m from the street wall height, and a 12m setback for any built form above 45m.

Whilst not compliant with the DCP the proposed building setbacks are considered to be appropriate for the site and are consistent with city centre character.

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 900m² per floor and a maximum building depth of 18m. The submitted Architectural Plans indicate complying floor plates and building depths are less than 18m.

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 notes the proposed material palette is attractive and elegant and the proposed development should be a positive contribution to the skyline and neighbourhood*". 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.

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 and Steel Street.

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. The parking has been designed to be internal to the development and is appropriately screened from Steel Street with architectural perforated mesh metal screens. 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 considered in the design of the ground floor commercial tenancies and lobby area, it is considered that this has been appropriately addressed.

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 and Steel 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.

It is considered that the development is acceptable having regard to the character, streetscape appearance, height, bulk, and scale. The development is of a type and scale that is allowed under the planning controls and the design of the building is considered aesthetically appropriate within the emerging built context of the area.

The impact on general outlook and overshadowing is acceptable, having regard to the site's context, the intended desired future character and built form for the area, and the nature of existing and approved development in the vicinity of the subject site. The floor space ratio, height and character of the development are considered acceptable, as previously discussed elsewhere in this report.

The setbacks provide an appropriate interface with the streetscape. The proposal promotes pedestrian activation of the public domain and is therefore considered an improved outcome to the current site conditions.

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 Theatre Royale and the archaeological site Commandant's Farm, 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 the KFC Palais, Ibis development, and the Verve apartments. 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 form, scale, materials, and detail of the 2-storey podium of the development responds effectively to the scale of contributory buildings nearby and maintains the historical two-storey streetscape character.

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 21st 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 7.02 Landscape, Open Space and Visual Amenity

Landscaping is located on the podium level. The plans indicate a large, landscaped area which provides acceptable amenity for future occupants. 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.

Section 7.03 Traffic, Parking and Access

Vehicular access location

The new driveway crossing in Steel Street has been proposed offset 5.85m from the south boundary and well within (<1.3m) the Tree Protection Zone of an existing established London Plane street tree (ID 70232). The close proximity of the crossing will likely require removal of the tree, which has not been supported by City Greening.

The Applicant was requested to investigate possible alternative ground floor parking and access designs maintaining a minimum 3.0m offset between the proposed driveway crossing future Street tree.

ADW response was that it is not possible to move the vehicle access location without significantly impacting on the design.

Alternative locations for the vehicular crossing on Steel Street would have increased impacts on existing street trees or would otherwise significantly reduce the provision of on-site parking at the development.

Access for servicing

Transport for NSW's Urban Freight Forecasting Model tool estimates that 4 commercial/servicing parking spaces for small vehicles (B99 or smaller) meets 90% of the servicing requirement for a 20-storey development comprising 106 apartments and 708m² of commercial floor area. The absence of on-site parking for large and medium servicing vehicles (SRV to HRV) results in the rejection of at least 1 large or medium vehicle per day.

Parking for up to 4 small servicing/commercial vehicles can be accommodated within the visitor car parking capacity at the development. Parking for large and medium service vehicles can be accommodated in existing short-stay (2P) parking in the Steel Street frontage or in the existing Loading Zone on the east side of Steel Street opposite the development.

The development is considered to provide sufficient parking accommodation for servicing.

7.2 Street awning

The proposed street awning will need to incorporate cut-outs to support the required new tree planting in the Hunter Street frontage. The Applicant shall amend development plans to include street tree planting in the Hunter Street frontage along with rectangular awning cut-outs to maintain a clear 3m x 3m headspace above new tree plantings.

The trees are planted 600mm offset from the face of kerb so awning cut-outs will need to be 0.9m into the awning and 3.0m in length (along the kerb).

The new trees are to be shown on plans generally in vacancy locations indicated by green tree symbols in the figure below. Cut-outs have been provided in the proposed awning along Hunter Street maintaining clear 3m x 3m headspace over the proposed street trees. No further objection is raised.



Figure 5: Indicative area.

Public Domain Works and Local Area Traffic Management (LATM)

A number of public domain treatments were discussed at length and in consultation with internal Council stakeholders. The findings were:

- a) The section of Steel Street fronting the development is required by the City Centre Public Domain Technical Manual to be Pavement Type 4 which is a full-width bluestone paver design constructed in accordance with CN Specification A1405. This pavement type consists of 60mm thick bluestone pavers laid on a 30mm grout bed over a 125mm thick reinforced concrete slab w/ underlying crushed rock base. The excavation of up to 300mm depth is likely to sever shallow tree roots in the Steel Street footpath and compromise the stability/health of the existing London Plane street trees.
- b) Alternate full asphalt (A1403) or brown paver banded asphalt (A1410) footway designs could potentially allow retention of the existing trees however at a cost to pedestrian amenity (asphalt presents an uneven surface and is susceptible to uplift) and visual value.
- c) A raised boardwalk style design (similar to that at 124 Parry St) was considered to allow implementation of A1405 while retaining existing street trees. This solution was universally rejected by internal stakeholders as it would be detrimental to parking, pedestrian amenity (ramping up and down), and tree health.

- d) The footway design A1405 may potentially be implemented without an underlying concrete slab however this will leave the pavers vulnerable to root uplift, generating tripping hazards and frequent maintenance requirements. This solution was not considered viable.
- e) The Applicant was unable to provide information on the location and scope of likely utility (sewer/gas/water/power) upgrades at the development. It is, at this stage, uncertain whether the existing trees may become compromised by utility upgrades later in the development.

The above was considered in consultation with City Planners and it was determined that the standard A1405 full-width bluestone paver design would be implemented in Steel Street at the cost of all 5 existing London Plane trees.

To offset the loss of these significant trees, 6 new 500L street trees are to be planted in the Steel Street and Hunter Street frontages of the development.

Parking

Table 5: Parking calculations

Use	Parking Rate	Relevant Quantity	Parking Requirement
High density residential flat buildings (metropolitan sub-regional)	DCP 0.6 car spaces <75m ²	14 unit <75m ²	8.4 car spaces
	0.9 car spaces per 75m ² -100m ²	29 Units between 75m ² and 100m ²	26.1 car spaces
	1.4 car spaces for units >100m ² .	63 units >100m ²	88.2 car spaces
	1 visitor car space for the first three dwellings and 1 + for every 5 thereafter.	106 units	21.6 visitor car spaces
Commercial	(NDCP) 1 car space per 60m ² GFA	708m ²	11.8 car spaces
All Uses	(NDCP) 1 motorcycle space per 20 required car spaces	157 car spaces	8 motorcycle spaces
Total Requirement:		(123) residential car spaces (12) commercial car spaces (22) visitor car spaces (Total: 157 car spaces)	
Provided:		146 residential car spaces 12 commercial car spaces 14 visitor car spaces (Total: 172 car spaces) Over generation 15 spaces (included in GFA).	

Based on the above table, 15 car parking space have been provided in excess of the minimum requirement for the development.

It is acknowledged that maximum parking standards are not present in the current version of the Section 7.03. The minor exceedance in parking allocation is accepted and the issue is not pursued further.

Section 7.04 Movement Networks

Traffic Generation

The submitted Traffic Impact Assessment estimates that, based on RTA's GTGD & associated technical direction amendment TDT 2013/04a, the development will generate up to 70 peak hour vehicle trips and a total of 556 daily vehicle trips. The level of traffic generation is similar to a 128-unit residential shop-top housing development (DA2016/00564) previously approved at this allotment.

SIDRA analysis of nearby signalised intersections was carried out at the request of TfNSW. The results of this modelling, which incorporated traffic growth rates of 1.44% - 1.87% out to 2034, demonstrated traffic generated by the development will likely effect no changes to the existing performance of the Hunter/Steel and King/Steel signals.

TfNSW has reviewed the SIDRA modelling outcomes and have raised no objections.

Conclusions drawn in the TIA regarding development traffic generation and impacts on the local road network can be supported.

Section 7.06 Stormwater

Stormwater Management

The development proposes the construction of a mixed use multistorey building including ground floor commercial, multistorey parking, and 16 storeys of residential units comprising 106 apartments. Roof rainwater is conveyed to a 27,000 L retention and reuse tank which will overflow to an existing kerb inlet pit (SW0023504) in Hunter Street.

The proposed mixed use building occupies the full allotment area, generating a requirement under Section 7.06 of the NDCP for the storage of at least 25mm over all impervious areas. The development was therefore required to provide a total 52kL of on-site stormwater storage.

The stormwater management plan has been amended to address Council's RFI. The stormwater reuse tank has been enlarged to a volume of 56kL and will drain via a restricted 180mm diameter orifice.

Green Roof Design

Calculations included in the submitted stormwater management plan indicate the development will be only 55% impervious despite the proposed building occupying 100% of the allotment area. It appears the proposed podium landscaping areas have been counted as being permeable.

Green roof and podium landscaping designs are not generally considered "permeable" for the purposes of on-site storage calculations as these have no connection to the ground surface

thus any retained water that is not lost to evapotranspiration must ultimately be disposed as development stormwater discharge to the public drainage system.

It is recognised that green roofs absorb and retain incident rainfall, which has the effect of delaying and reducing peak discharge of runoff (Department of Environment & Primary Industries 2014). However, this absorption rate is limited and can become overwhelmed during heavier (>6mm) rain events (Van Woert et al. 2005).

To account for the retention benefit of green roofs during minor storm events, NDCP controls can be relaxed to require the on-site storage of stormwater for only 12mm of rainfall over all green roof areas, and 25mm (for 100% impervious development) over all other impervious areas.

The Applicant was requested to provide a catchment map of the development identifying all roof, unroofed impervious and green roof areas. Typical cross-sections are to be provided for the proposed green roof areas. Additional on-site storage will likely be required in the form of a retention tank.

It is generally understood that stormwater passing through green roof systems can increase the level of total phosphorous and total nitrogen in stormwater (Alim et al. 2021). This increase is dependent on the use of fertilisers, substrate materials, and selection of planting. As such, any on-site retention system must include a sand filter sized 0.8m² per 100m² of unroofed impervious and green roof areas to manage pollutant load discharged to the public stormwater system.

After review of the amended stormwater plan the green roof areas are now considered impermeable in the stormwater management plan. Accordingly, a larger rainwater retention and reuse tank (52kL) is now proposed at the development.

A MUSIC model file has been submitted demonstrating a proposed treatment train consisting of gross pollutant traps and an end-of-line cartridge filtration system (PSorb Stormfilters). The modelled train far exceeds (94.5% TSS, 81.3% TP, 81.5% TN, 100% GP) water quality targets set out in Section 7.06 of the NDCP.

The proposed filter cartridge treatment system is likely not required to achieve NDCP targets for discharge quality. No further objection is raised with regards to this issue.

Proximity to Cottage Creek

Both the SEE and Stormwater Management Plan indicate no on-site stormwater detention (OSD) has been provided at the proposed development due to its proximity to a natural water course.

It is understood this proposition is accepted on occasion for developments in close proximity to Newcastle Harbour on the basis that the provision of on-site discharge controls may delay the peak development discharge to coincide with the catchment peak. Undelayed development discharge can potentially "beat the peak" to the catchment outlet (harbour outfall) and reduce the overall development impact on the peak load in the public stormwater system.

Consideration must, however, be given to the public drainage system to which the development will connect. Development stormwater is proposed to be disposed to a kerb inlet pit connecting to a 450mm diameter RCP (SW000364) under the Hunter Street kerb which drains to the west to Cottage Creek. This stormwater pipe services an estimated 13,000m² of adjacent development area and 5,300m² of public road, and is not likely capable of accommodating uncontrolled discharge from any connecting developments.

The development must therefore provide on-site stormwater retention discharging a maximum of 7.2L/s per 100m² of contributing catchment to the public drainage system.

A DRAINS model has subsequently been submitted demonstrating an on-site retention volume of 56kL w/ 180mm orifice will be required to control post-development discharge to achieve the target site discharge of 7.2L/s/100m². No further objection has been raised with regard to this issue.

Rainwater Reuse

The stormwater management plan has been further amended to consider the cost of reticulation to the upper floors of the development. Reuse will now only be provided up to level 4 only which will include 4 commercial tenancies, 6 residential dwellings, and podium landscaping.

Despite the reduced scope of residential reuse, total reuse storage has increased to now provide up to 11.8kL for podium landscaping irrigation. The remaining 10.1kL of reuse storage provides for commercial and residential demands.

Overall, a total of 54m³ of on-site storage will be provided in a hybrid below-ground stormwater tank composed of a 26m³ reuse chamber, a 28m³ retention chamber, and a 16.675m² sand filter. Each of the chambers are separated by simple weir overflows. No further concerns are raised.

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. CN's waste servicing collection occurs within the Sites frontage.

CN requires that the residential component of the bin storage areas is designed to be suitable for CN to provide waste collection service for the residential waste collection.

CN service trucks are able to 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.

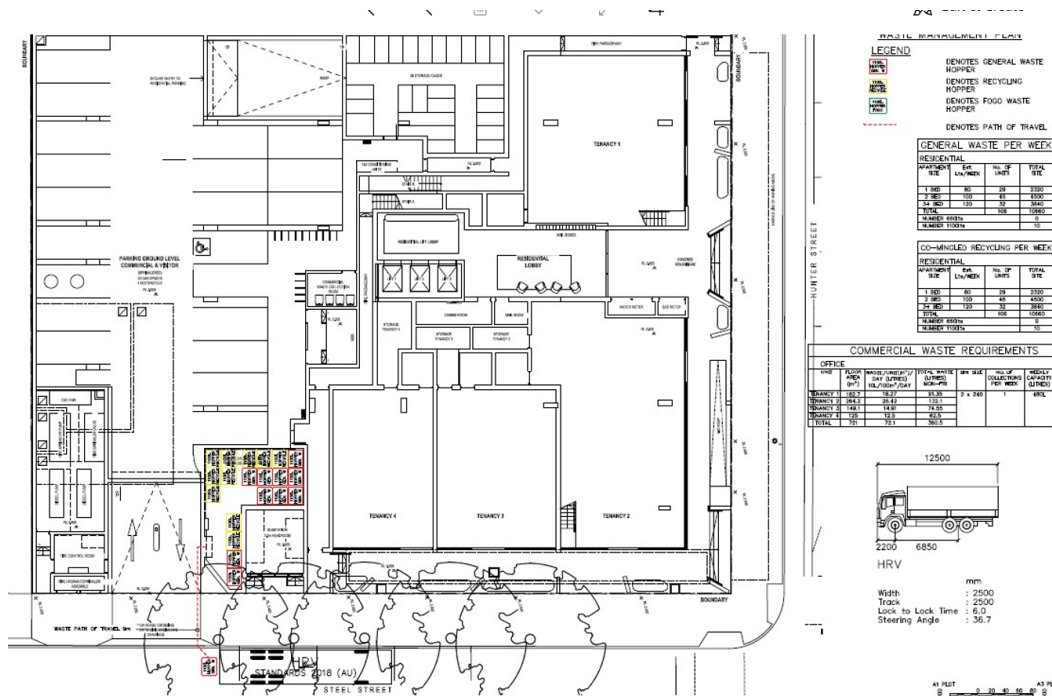


Figure 6 – Onsite Waste Management

It should be noted on the record and for future reference, that each separately residentially-rated property is entitled to a bulk waste collection service, which typically includes kerbside collection of bulk waste and / or a self-haul bulk waste service. It does not seem that the site has allowed for sufficient storage space or sufficient verge space to present the material for a kerbside collection service of bulk waste, and as such they (future residents) can arrange to utilise the self-haul vouchers only.

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

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

Description Contribution

TOTAL: \$1,313,896,56

(d) 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.

(e) 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).

3.3 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 Key Issues section below.

- Public Domain & Landscaping

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

With respect to the proposed landscaping component, it is confirmed that landscaping is well integrated into the common areas and public domain. Street tree planting is intended along Steel Street. The landscaping proposed 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 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 Qualitative Wind Assessment. The result of the study indicated that the development is not expected to have any significant effects on the wind conditions in the public domain at ground level. Consequently, wind conditions around the development are expected to remain the same from a pedestrian comfort and safety perspective. The reports wind mitigation measures will be included in the draft conditions of consent.
- Acoustic Impacts: The application includes the submission of an Acoustic 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.

This assessment considered noise intrusion from external sources such as road traffic as well as onsite activities including plant and commercial uses within the development. Background noise monitoring was conducted which identified road traffic noise to be the dominant noise source. Noise from the adjacent pub at 635-641 Hunter Street was not specifically addressed by the acoustic report. However, noise from the pub is not considered to be a high risk as the building design elements will effectively attenuate noise as a result of the following:

- Double glazing of 6mm float/12mm airgap/6mm float is required facing Hunter and Steel Streets to address energy efficiency.
- Residential apartments are above 4 levels of non-residential floors and are substantially set back from Steel Street meaning no line of sight for lower-level residents to the pub.

A number of acoustic attenuation actions are recommended in section 7 of the report which if implemented should help ensure the proposal complies with appropriate noise guidelines and standards. 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.

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

3.4 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.

3.5 Section 4.15(1)(d) - Public Submissions

These submissions are considered in Section 4 of this report.

3.6 Section 4.15(1)(e) - Public interest

The proposed mixed-use development comprising 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 and Steel Street frontage and provide an improved through connection between King Street and Hunter Street. 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 6: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Referral/Consultation Agencies			
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.	The referral comments from TfNSW have been provided, no objection has been raised.	Y
Ausgrid	Clause 2.48 of the <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> in relation to development likely to affect an electricity transmission or distribution network.	The referral comments from Ausgrid have been provided, no objection has been raised.	Y
Urban Design Review Panel	CI 28(2)(a) – SEPP 65 Advice of the Urban Design Review Panel ('UDRP')	The advice of the UDRP has been considered in the proposal and is further discussed in the SEPP 65 assessment a section of this report.	Y

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 7**.

Table 7: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering – Stormwater, Flooding, Traffic, Access, Parking.	Council's Engineering Officer reviewed the submitted stormwater concept plan and traffic impact assessment and considered that there were no objections subject to conditions.	Yes
Environment	Council's Senior Environmental Officer has reviewed the contamination investigation report by Qualtest and considers that the proposal can be supported subject to conditions of consent.	Yes

Waste	<p>Council's Waste & Commercial Collection Manager has reviewed the alternate design Waste Management Plan (attached FYI), which addresses the most important aspects of the waste service.</p> <p>It should be noted on the record and for future reference, that each separately residentially rated property is entitled to a bulk waste collection service, which typically includes kerbside collection of bulk waste and / or a self-haul bulk waste service.</p> <p>It does not appear that the site has allowed for sufficient storage space or sufficient verge space to present the material for a kerbside collection service of bulk waste, and as such they (future residents) can arrange to utilise the self-haul vouchers only.</p>	Yes
Public Domain/ Assets	<u>Outcome:</u> Public domain upgrades are proposed including upgrades in footpath treatment and replacement of street trees with non-standard mature tree species.	Yes
Heritage	<u>Outcome:</u> Satisfactory subject to standard conditions being imposed on any consent granted (refer to Schedule 1).	Yes

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

4.3 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan from **26 May 2023** until **9 June 2023**. The notification included the following:

The Council received a total of four submissions were received during the notification period, and a total of six late submission were received after the notification had been finalised. Therefore, a total of ten submission have been received objecting to the proposal.

- o 4 submissions were made by 7 individuals which supported an objection made by another individual.
- o 1 submission was made by 2 individuals which supported an objection made by another individual.
- o 4 submissions were unique, stand alone objections made by 6 individuals (2 of the submissions were signed by 2 individuals).

The issues raised in this submission is considered in Table 8.

Table 8: Community Submissions

Issue	Council Comments
<p><u>West End Character</u></p> <p>1. The Cottage Creek development along the Verve Residences will have its solar access severely diminished; and</p> <p>2. Negative effects on the principles of encouraging activity, pedestrian and cycleway movement, and improvement of safety.</p>	<p>1. The submitted shadow diagrams demonstrate that the proposal will only cause minor overshadowing to a small portion of cottage creek development near the King Street frontage at 9am on 21 June. It appears that no overshadowing will occur from 12pm -3pm on the 21 June. It is considered that the solar access impacts are negligible.</p> <p>2. The proposed development provides four ground floor commercial tenancies with glazed facades, this increases street surveillance. The proposed awning and footpath treatments will improve the immediate public domain which has been in a poor condition for some time. It is hoped that the developments public domain improvements will improve the streetscape and safety and encourage pedestrian activity and cycleway movements.</p> <p>It is noted that West End Principal No. 4 relates to development along the rail corridor, cottage creek, lanes, and through site links – This principal does not apply to the subject site.</p>
<p><u>Building Bulk and Scale</u></p> <p>1. The proposal will create scale issues.</p> <p>2. The proposed height will fail to ensure a consistent building scale in a street that has heritage items.</p>	<p>1. The buildings massing, scale, and height is consistent with the surrounding building morphology. It is noted that the proposal has undertaken thorough site analysis and ensured that the design had been reviewed by the Urban Design Review Panel on numerous occasions.</p> <p>The four storey podium and associated residential tower structure is configured in a way that ensures the built form is of a bulk and scale that is appropriate and considered.</p> <p>The proposal responds to the desired streetscape characteristics of the west end area. The four storey podium level applies a zero setback which is encouraged under the DCP, the residential tower is setback from Steel Street and ensure that the buildings bulk and scale is reduced from the perspective of the public domain.</p> <p>2. The four storey podium level provides a zero setback, the residential tower is appropriately positioned above the tower and is setback. This responds to the heritage item located to the west of the site. It is noted that an 8 storey commercial</p>

	building will be constructed between the subject site and the heritage item.
<p><u>Solar, Views, and Privacy.</u></p> <p>1.The proposal has not properly addressed views and vistas to neighbouring developments.</p> <p>2.Overshadowing is inconsistent with the Newcastle DCP provisions and principles.</p> <p>3.Shadow diagrams are deficient as they do not show the full extent of overshadowing beyond Cottage Creek;</p> <p>4.This application fails to provide a shadow diagram for each hour between 9am – 3pm as required.</p> <p>5.Verve Residents will ultimately lose their current amenity, privacy, and outlook.</p> <p>6.The proposal would substantially reduce solar access to Verve residences and potentially remove solar access to the Level 3 Podium communal gardens and the public accessible common area/pathway along Cottage Creek.</p>	<p>1. The proposal will not impact on any of the nominated views identified under the DCP. The proposed development provides adequate setbacks to the Steel Street, above the street wall height to ensure views and vistas from the public domain are retained and enhanced. There is sufficient building separation between the proposed development and surrounding buildings above 45m, which ensures that any potential impacts on views is mitigated.</p> <p>2.The Shadow diagrams submitted with the Development Application show that the proposal will not overshadow any significant public spaces listed in Section 6.01(B6) of DCP 2012.</p> <p>3. As noted, the Shadow Diagrams demonstrate that the proposal will cause minor overshadowing to a small portion of public domain beyond Cottage Creek and King Street at 9am on 21 June. No overshadowing will occur on 21 June at 12pm or 3pm. As such, the solar access impacts are considered minimal.</p> <p>4. The Architectural Plans submitted with the DA include Shadow Diagrams for 9am, 12pm, and 3pm for both 21 June and 21 December, which demonstrate the full extent of overshadowing.</p> <p>5. The proposed development will not have an adverse impact on Verve residents' amenity, privacy, and outlook. The subject site is located over 70m from the Verve site and therefore no privacy impacts are anticipated. Although the proposed residential tower will be in east-facing Verve residents' line of site, this distance between the sites, as well as the extensive panoramic views already provided to these residents, ensures that the residents' amenity and outlook will not be adversely impacted, and the proposal provides an appropriate level of view sharing.</p> <p>6. The proposal will not cause any overshadowing to apartments or common areas within the Verve development and will only have very minor solar impacts on the Cottage Creek pathway at 9am on 21 June.</p>
<p><u>Public Amenity</u></p>	<p>1.The proposal will contribute to the emerging character of the West End through the provision of a</p>

<p>1.The urban landscape of Newcastle West will be greatly diminished and the visual sight lines from Newcastle East will effectively destroy the iconic gateway to the western end of the city.</p> <p>2.Most other developments in the locality have been subject to stringent and competitive design criteria whereas this proposal has been exempt in this regard.</p> <p>3.The proposal does not fit within the surrounding urban landscape.</p>	<p>mixed use development that exhibits design excellence. No significant views from Newcastle East will be diminished as a result of the proposal.</p> <p>2. Due to the significant consultation process a design competition waiver was considered appropriate in this instance. Whilst a design waiver has been granted, the requirement to achieve design excellence remains valid and a significant process has been undertaken to achieve this for the proposal.</p> <p>The proposed development has therefore been waived from the requirement of a design competition only. The proposal has still been subject to the stringent design excellence process in accordance with the NLEP 2012, which has included multiple reviews of the design by Council's UDRP. The Panel outlined in the July 2022 meeting minutes that the development can be considered to exhibit a high level of design quality, and the completed proposal can be expected make a very positive contribution to the area.</p> <p>Within the vicinity of the subject site (Hunter Street, National Park Street, King Street, and Steel Street) the area is subject to a maximum building height of 60m under the NLEP 2012.</p> <p>Land to the west of this block (Spotlight) is subject to a maximum building height of 90m. Accordingly, the proposed building scale is consistent with the established and desired building heights in the West End Precinct. The UDRP is satisfied that the proposed development is appropriate within the urban landscape</p>
<p><u>Traffic</u></p> <p>1. Object to the validity and methodology used in this Traffic Impact Assessment report and reject the claim there will be an improved traffic situation by increasing parking spaces by 10%.</p> <p>2.With nowhere else for vehicles to go upon exiting the site, it can be anticipated that severe traffic blockages will occur, especially in peak periods. The traffic assessment does not include</p>	<p>1.The proposed development comprises 14 fewer units than the approved development on the site, which in turn results in 30 fewer daily trips. Therefore, the proposed development provides an improved traffic situation compared to the approved DA for the site.</p> <p>2. A Traffic Impact Assessment has been prepared by TTPP to accompany the development application. The report was detailed that compared to the development under the approved DA, the proposal would generate relatively the same number of trips in</p>

<p>suitable numerical analysis of traffic volumes and consideration of the suitability of access or egress.</p>	<p>the respective peak hours, however, considerably fewer daily trips i.e., a reduction of 30 trips per day.</p> <p>Additionally, the assessment concluded that the proposed development would result in minimal traffic and parking impacts on the local road network.</p> <p>Council's Engineers have reviewed the proposed trip generation as part of Council's assessment of the application and have raised no issue with trip generation rates.</p>
<p>Heritage</p> <p>1. The Theatre Royal at 669 Hunter St is a listed heritage item with a distinct facade. The adjoining Swift construction is maintaining the distinct Heritage style façade. To build a 60m modern tower directly adjoining blocks with buildings at 30metres, and in a street that contains a Heritage Listed Building (3 doors down) does not meet the principles & provisions of this section of the Newcastle DCP.</p> <p>2. The area surrounding the site may also contain remains of ancestors of the Awabakal people and that further in-depth investigation be conducted by the council regarding this aspect.</p>	<p>1. As outlined above, the proposed 4-storey podium will ensure a consistent streetscape is provided between the heritage item to the west of the site and the proposed development, noting that the site is physically separated from this heritage item by an approved 8-storey commercial tower with a podium. The proposed scale therefore provides a balance between the existing heritage fabric of the area and the emerging high- density nature of the West End.</p> <p>2. The site has been the subject of number of Aboriginal heritage investigations and assessments. An updated AHIP application will be submitted to Heritage NSW in accordance with the relevant condition of consent once issued.</p>
<p>Floor Plans –</p> <p>The floor plan layouts of the proposed units have not been provided; hence privacy issues have not been considered or addressed.</p>	<p>1. The floor plan layouts have been provided to Council and the URDP for consideration as part of their assessment of the application.</p>
<p>Visual Impact – No visual impact assessment provided.</p>	<p>1. The proposed development will have no impact on the views identified within the Views and Vistas Map figure within the DCP. As such, a Visual Impact Assessment is not a requirement for the proposal under the DCP.</p>

Notification – It is requested that a secondary exhibition period is created where affected property owners, including 466 King Street, Newcastle West are appropriately notified.	1.The Development Application has been exhibited in accordance with the Community Participation Plan. Further notification is therefore not considered necessary.
--	---

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 delivers a built form outcome which closely aligns with the scale and height of surrounding and anticipated development.

The proposal has a number of benefits including commercial and retail, a podium level amenity area and proximity to transport services and employment areas. The design is a result of an accepted alternative design excellence process with collaboration with Stewart Architecture.

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 DA2022/00538 for a Mixed-use development including shop top housing, commercial units, and car parking, at be Lot 1 DP1166015 No 643 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 attached to this report at Attachment A.

The following attachments are provided:

- **Attachment A:** Draft Conditions of consent
- **Attachment B:** Architectural Plans
- **Attachment C:** Agency Advice – Ausgrid & Transport for NSW
- **Attachment D:** Apartment Design Guide Table