

PANEL REFERENCE & DA NUMBER	PPSHCC-137 DA2022/00538
LGA	City of Newcastle (CN)
PROPOSED DEVELOPMENT	Mixed Use Development - Shop top housing, comprising commercial premises (4), carparking (171), podium level, and residential (106) units.
STREET ADDRESS AND OWNER DETAILS	Lot: 1 DP:1166015 643 Hunter Street Newcastle West
APPLICANT	ADW
OWNER	Next Level Seven Pty Ltd
DATE OF DA LODGEMENT	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 2.19 and Clause (2) 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)
RECOMMENDATION	Approval

Background

The subject application for a mixed-use development, including shop top housing with 106 dwellings, ground floor commercial premises.

This supplementary report provides further information in response to matters raised during the determination meeting and provides associated amended conditions of consent. The supplementary assessment should read in conjunction with the original assessment report. A version of the amended conditions is provided at **Attachment A**.

Reasons For Deferral

"The Panel met to consider the supplementary report and amended documentation provided in response to the Panel's deferral of the determination on 12 April 2023. Prior to meeting, the Panel had heard from those submitters who wished to address the Panel on 19 April 2023.

The Panel secretariat had been contacted by the new owner of the Travelodge site that adjoins the development site to the south, requesting an opportunity to address the Panel. The adjoining owner was advised that the Panel would consider any written submission provided by Monday 26 June 2023.

A copy of any submission received will be forwarded to the applicant for an opportunity to respond.

The Panel will consider all submissions in its determination once received.

The Panel's review of the additional information and supplementary information identified the need for further clarification around:

- 1) View impacts.*
- 2) FSR Calculations.*
- 3) Compliance with Council carparking controls.*
- 4) Council's actual requirements in respect to loading and unloading, and the specific justification and reason for acceptance of on-street pick up.*
- 5) Conditions of consent."*

Terms of Deferral

"The Panel agreed to defer the determination of the matter to allow the:

- i) New owner of the Travelodge site to make a written submission by 26 June 2023;*
- ii) Applicant to respond to the submission within 7 days of receipt; and*
- iii) Council to provide a further assessment of the matters listed at points 1 to 5, any further submissions, and a consolidation set of conditions.*

When the information has been received, the Panel will determine the matter electronically, unless the number of submissions reaches a threshold that a public meeting is required. The Panel expects an addendum assessment report from Council responding to the material and the matters raised above.

The decision to defer the matter was unanimous."

Response to the Reasons for Deferral

View Impacts

Verve towers is approved as a 19-storey (66m) fan-shaped mixed use building orientated north-east, south-east, and southwest and address the cottage creek frontage. Many of the apartments benefit from dual aspect orientation due to the building's depth and floorplans. The subject application proposes a 66m height, which will impact on the current views enjoyed by several apartments within the Verve, which is the tallest constructed building that exists in the locality. The Verve benefits from distant views and outlook toward the city, Newcastle harbour, Nobby's headland, and the coastline.

The Hunter Regional Plan (HRP) 2036 identifies the city as the largest regional centre in NSW which serves as an economic, service, and administrative centre for the region. The HRP stipulates that the revitalisation of Newcastle City Centre is a regional priority and should provide for 6,000 additional dwellings. The HRP envisages a higher density than is currently provided. The proposed development will partially obscure existing views. The subject site can be seen in its context below.



Figure 1: Image of the subject site, the Verve towers can be clearly seen in the background facing north-east and south-east.



Figure 2: Image of The Verve towers facing west across the city.

The Verve is an existing mixed-use building which was approved around the same time as the initial 'Onyx' development (2017) on the site. The 'Onyx' mixed use development was approved on the subject site with a height of RL 50.60 (AHD) and is shown in context below. The 'Swift' commercial building which adjoins the subject site has an approved height set at RL of 32.50 (AHD) and is orientated toward Hunter Street. Figure 3 provides further context to the approved building heights in the direct vicinity of The Verve and the subject site.

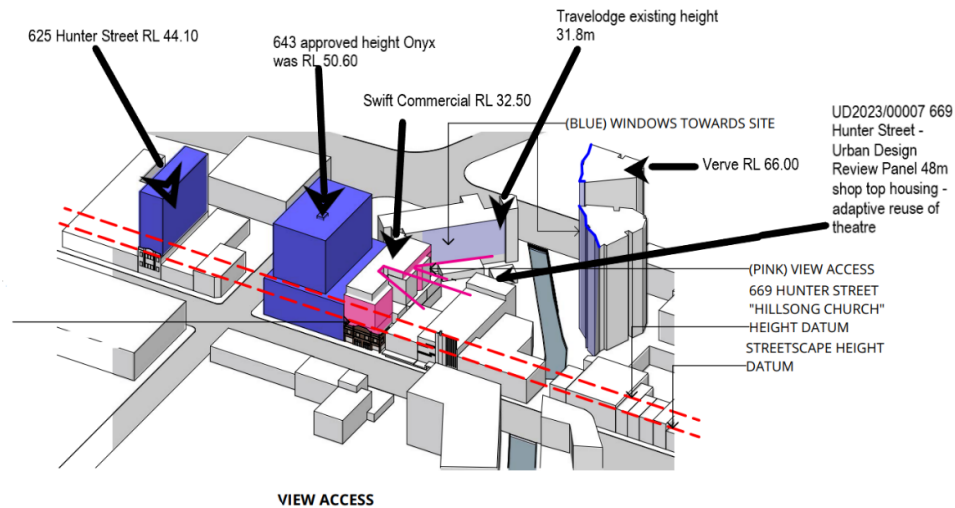


Figure 3: Image identifying view access and surrounding buildings existing, approved, and proposed UDRP heights.

The Verve building has its primary outlook to the north-east, south-east, and south-west. General outlook to the south-east and south-west will remain unaffected, however several upper-level apartments with north-easterly views toward the site will be impacted.

Newcastle West is an area in transition and on this basis, there are existing and surrounding sites that will likely have views lessened. The loss of views in this instance is considered to result from building elements that generally comply with the prescribed building height and setback controls. Overall, the building's design and form is well considered, in that the building's north-south orientation allows for increased opportunities for view retention to the adjoining Travelodge site. The proposed application exhibits a level of general compliance and its urban design outcomes are considered acceptable.

In relation to the views from the Verve, this assessment confirms that the proposed built form of the subject development will impact on the views toward the harbour, Nobbys Headland, and the city centre. However, it is noted that the height controls within the NLEP 2012, in combination with City Centre provisions under NDCP 2012 enable this built form, accordingly it is considered that the proposed height does not contribute to unexpected or unreasonable view loss impacts given the its location within the City centre.

When considered in the broader context of the Newcastle City Centre and the State Government targets for housing and employment, amendments to facilitate the retention of regional and distinct views are not considered to be reasonable.

Section 6.01 Newcastle City Centre of the DCP sets the desired future direction for the locality, and it is considered likely that in some form heights and density across the city will be increased in the future. Figure four identifies the prescribed building height under the Newcastle LEP 2012.

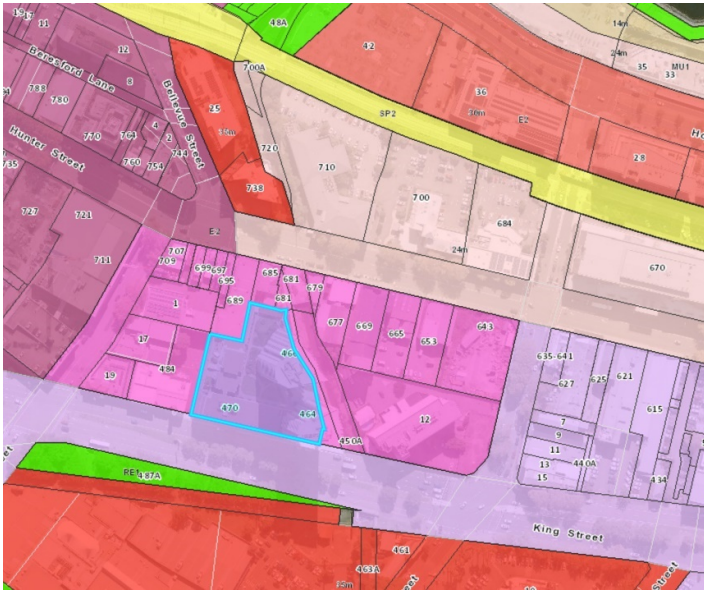


Figure 4: Newcastle LEP Land Use Map – Pink identifying the 60m height limit (The Verve site highlighted in blue).

Given the building's level of general compliance, the loss of views experienced by The Verve is a reasonable and expected outcome. Existing views from all surrounding properties are considered borrowed views and outlook, across the subject site which benefits from a prescribed 60m height. Both 'The Verve' and the subject application benefitted from Part 7 of the NLEP and the 10% design excellence uplift which permits a building height of 66m. The city centre is an area undergoing transition and the proposal in its current form achieves the desired future character for the area. Whilst the view impacts are noteworthy, this is an expected outcome for a locality progressing towards an anticipated and desired transition as a consequence of increasing density in a city centre. It is noted that the built form and height have been determined as a result of a detailed design process which has allowed for effective integration between the existing and proposed built form. It is considered that the development will have a positive impact upon the setting of the site and streetscape, the development achieves design excellence, and its construction will assist in rejuvenating the area.

Compliance with Council carparking controls

Assessment Background

- Parking was initially assessed under Version 4 (now superseded) of Section 7.03 of the NDCP. Residential parking requirements for the proposed apartment units was calculated based bedrooms:
 - 0.6 spaces per 1 bedroom "small" dwellings
 - 0.9 spaces per 2 bedroom "medium" dwellings
 - 1.4 spaces per 3+ bedroom "large" dwellings
- Based on bedroom counts, Revision B of the Architectural plans proposed 29 small, 45 medium, and 32 large dwellings, generating a total parking requirement of 103 car spaces.
- The development proposed 152 residential car parking spaces which was more than the minimum DCP requirement but was deficient in the required visitor as 8 parking spaces has been provided, however 21 was required. The commercial was compliant with 12 required and 12 provided.
- Council requested residential parking be reduced in line with CN's 2021-2030 "On the Street" parking strategy to a new allocation of 133 residential and 21 visitor parking.

- The Applicant challenged Council's approach to impose a maximum parking limit when such a measure or definition did not exist in Version 4 of 7.03 of the DCP (Version 5, effective 01 November 2022 and savings provisions applied).
- In response to CN's concerns the Applicant made a slight adjustment to parking allocations to 146 residential, 12 commercial, and 14 visitor parking spaces.
- The Applicant maintained that the deficit in visitor parking spaces was in line with Council's parking strategy, which encourages the use of alternative modes of transport in the city centre.
- Moving forward with the assessment, Council did not pursue the issue further, as Version 4 of 7.03 did not impose a maximum car parking requirement.
- Further assessment was given to the exact calculation of parking requirements when CN sought to identify additional GFA contributed by excess parking. The chronological order of these events was as follows:
 - a) Council's calculation of requirements based on Version 4 of 7.03 was 103 residential, 12 commercial, 21 visitors based on 29 small, 45 medium, and 32 large dwellings. The development provided 146 residential 12 commercial and 14 visitors parking, which appeared to provide an excess of 36 car spaces.
 - b) The Applicant confirmed that only 15 excess car spaces had been included in the GFA calculations. Council requested further clarification as the parking / GFA calculations appeared to be inconsistent with the Applicant's calculations.
 - c) The Applicant provided their car parking calculation requirements under Version 4 of 7.03 which found 123 residential 12 commercial and 22 visitor car parking was required for 14 Small / 29 Medium / 63 Large dwellings, resulting in an excess of only 15 spaces. It was clarified by the Applicant that they were choosing to employ GFA-based parameters to define small/medium/large dwellings. Which was an uncommon approach to calculating car parking but was an acceptable approach as detailed under the then DCP.
 - d) Council recalculated parking requirements using Version 4 of 7.03 and dwelling floor areas measured off development plans. Council calculated the following 29 Small / 45 Medium / 32 Large dwellings which again appeared to be inconsistent with the Applicant's calculations.
 - e) Council recalculated parking requirements again but now including balconies in the GFA of dwellings. Council found 28S/30M/48L which was still well short of the Applicant's calculation.
 - f) The Applicant provided floor plans with area measurement annotations. It became apparent that the Applicant's calculation included the area of the unit balconies.
 - g) After discussions with the Applicant, Council did not raise further objections as Version 4 of 7.03 did not define how the area of dwellings were to be measured (i.e. GFA) for the purposes of calculating parking requirements.
 - h) The Applicant's inclusion of balconies into the dwelling area calculations was not supported by the HCCRPP. After the determination briefing in April the Applicant sought the consideration of car parking under the current DCP (Version 5 of 7.03) rates.
 - i) The Applicant provided Council with an amended plans detailing dwelling areas without the inclusion of balconies.
 - j) The dwelling distribution was found to be 29 Small, 30 Medium and 47 Large units, generating a requirement under Version 5 of 7.03 of 153 Residential, 12 Commercial there is no minimum requirement for visitor parking, however 8 is provided.

Carparking requirement

Carparking requirements provided in the latest set of plans by Stewart Architecture (Proj. 1833, *dwg. DA012, rv. C, dated 01/05/2023*) were calculated using parking rates in the current version (v5) of Section 7.03 'Traffic, Parking and Access' of the Newcastle Development Control Plan (NDCP). For residential development in Newcastle City Centre, the car parking rates are as follows:

Dwelling size/type	Rate
Small (75m2 or 1 bedroom)	Maximum average of 1 car space per dwelling
Medium (75-100m2 or 2 bedroom)	
Large (>100m2 or 3 bedrooms)	Maximum average of 2 car spaces dwelling.

The Applicant has amended the area calculations to exclude unit balconies associated with each of the dwellings. Additionally, the plans have been amended to increase the internal areas of some apartments, this has been accommodated by slightly reducing the external balcony areas of each apartment. The number of large, medium, and small dwellings have been amended as follows:

- i. Small Dwellings: **29** – An increase from the previous **14**
- ii. Medium Dwellings: **30** – An increased from the previous **29**
- iii. Large Dwellings: **47** – A reduction from the previous **63**

The maximum residential parking rate under Version 5 of Section 7.03 of the NDCP is calculated and broken down as follows:

153 residential car parking spaces is required, the development provides **151**.

It is noted that under Version 5 of Section 7.03 of the NDCP there is no maximum or minimum rate for visitor carparking. The proposal provides **8** visitor car parking spaces, and this is considered acceptable.

Commercial Parking remains unchanged at: **12** car parking spaces which remains compliant with the required **12** under the NDCP.

Therefore, a total of **171** car parking spaces is provided and is compliant with the NDCP – Version 5 of Section 7.03.

Table 1 details the previous DCP and current car parking requirements and what was previously submitted and is proposed. Table one has been provided to assist with comparing the previous parking rates with the current and proposed.

Table 1: Comparison of two separate DCP parking rates and the car parking allocation.

Version 4 Section 7.03 (This calculation included the area of unit balconies).	Previous Design: Car parking generation and allocation.
Total car parking requirement under the DCP	(123) residential car spaces (12) commercial car spaces (22) visitor car spaces (Total: 157 car spaces)
The application previously proposed	(146) residential car spaces (12) commercial car spaces (14) visitor car spaces (Total: 172 car spaces) The application proposed an over generation of 15 residential car parking spaces (Please note that an excess of 15 car spaces had been included in the original GFA calculation).
Version 5 Section 7.03 (Not including balconies)	Current Application: Car parking generation and allocation.
Total car parking requirement under the DCP	The maximum residential car parking rate is (153)

	The maximum commercial car parking rate is (12) Visitor parking - No Maximum or Min for visitor parking under the DCP.
The application proposes	(151) residential car spaces (12) commercial spaces (8) visitor spaces (Total 171)

The amended plans have included minor design changes which increase the minimum internal unit sizes in response to the deferral comments and a revised car parking allocation in accordance with Version 5 of the NDCP. Additionally, to facilitate a bulk storage area the proposal required the removal of 1 tandem carpark from the previous design. The carparking complies with Section 7.03 (Version 5) and is supported.

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 application previously proposed a Gross Floor Area of 11,419.8m², resulting in a FSR of 5.49:1. The amended application proposes a GFA of 11,258m², resulting in a reduced FSR of 5.415:1, due to a number of design changes including unit sizes, car parking (which previously included additional GFA due to the exceedance of 15 car spaces as calculated under the previous Version 4 Section 7.03) and the removal of a tandem car parking space to include the bulky waste room.

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 remains compliant with an of 5.415:1, which does not exceed the maximum FSR prescribed for the site with the inclusion of the 10% design excellence provisions.

Council's requirements in respect to loading and unloading, and the specific justification and reason for acceptance of on-street pick up.

Subsection 4.1 of AS 2890.2:2018 stipulates *"the design of service areas should provide separation from areas for car parking, pedestrian activity, entrances and exits. Where separation of these areas is not possible service areas shall be designed to mitigate conflict between pedestrian movement and vehicles."* The development can achieve compliance with this requirement for an on-site servicing facility by:

- a) Providing a second vehicular access to Steel Street or Hunter Street for exclusive use by servicing vehicles connecting to an isolated loading/servicing area with an HRV-capable turntable. This option is not feasible as:
 - i. Council will not support additional vehicular crossings to the development in Steel Street due to conflicts with the West End Streetscape Plan, which identifies a shared path and bicycle ramp in the Steel Street frontage.

- ii. Council will not support an additional vehicular crossing off Hunter Street due to conflicts with the existing cycleway and the function of Hunter Street as a main east-west pedestrian thoroughfare.
- b) Providing a service area accessed off a common driveway access carrying intermingled residential/commercial/servicing traffic. This option is not supported by Council as:
 - i. The proposed driveway access off Steel Street would need to be widened to ensure an entering HRV will not conflict with a vehicle waiting to exit the site. This may double the width of the driveway access which would conflict with the West End Streetscape Plan.
 - ii. The HRV has a 12.5m radius turn circle. Accommodation of this movement within the internal parking area would require increases to the ceiling height and displacement of facilities (lifts, plant, waste storage) likely resulting in loss of Gross Leasable Floor Area on the ground floor.
 - iii. Loading and servicing activities (and any associated truck movements) will be in proximity to and will likely conflict with pedestrian activity within the ground floor parking area.
 - iv. A turntable may still be necessary to enable forward-in and forward-out truck movements. This has intrinsic long-term maintenance implications on the operator of the building. Access for Council's waste collection units will be negatively impacted if the turntable is not maintained in a functioning state for the design life (and beyond) of the building.

The on-site servicing options in (b) are considered to result in poor planning and public domain outcome and are not supportable by CN. As such, CN and the Applicant have proceeded with an on-street loading zone to meet servicing requirements at this development, this has been discussed at length with all relevant service units within CN and is supported approach to managing waste for this proposal.

Travelodge Submission

The submission notes that the application proposes a non-complying ADG setback to the southern boundary. The submission provides a hypothetical building bulk form or development scenario to demonstrate the non-compliance and the suggested impacts to development potential on the subject site. Recommendations are provided by the submitter for Council's consideration, which are detailed as follows:

- "1. It is recommended there is a more even share and balancing of building separation requirements between the subject site and the adjoining Mercure site. At a minimum, the 6.5m setback as previously approved should be maintained in relation to the subject DA.*
- 2. Council acknowledges that is unreasonable in the future for the Mercure site to achieve the 24m LEP building separation requirement.*
- 3. That suitable merit-based relaxation is granted to Salter Brothers future plans in terms of building separation and setbacks."*

Assessing Officer Response:

The 7-storey Travelodge building is setback 6m from the common boundary.

The proposed development does not result in any significant constraints, or adverse impacts for the future development potential of the Travelodge site. In the absence of any proposed, or approved detailed design for the Travelodge site, the applicant has provided a concept scheme to demonstrate that if further development were to occur, the subject application would not impact the overall development potential of the Travelodge site. The application has proposed a podium level design with two residential towers, one tower located toward the western portion of the site facing northeast and the other setback towards the most southern portion of the site (above the existing car parking and driveway area).

The proposal has sought to improve the outcome for the Travelodge site in terms of shadowing and general open corridors to the north by positioning the proposed building north south. Encroaching onto the southern boundary of the Travelodge site allows for this setting. The impact of the extent of encroachment within the southern setback has been lessened through building placement and north / south orientation of the residential tower.

An alternative design to increase the setback from the southern boundary to achieve technical compliance with the ADG would likely result in the building extending from east to west. Positioning the building in this manner would have the effect of blocking the northern aspect, reducing optimal solar access, and the overall city and harbour outlook for the Travelodge site.

Overall, it is considered that the proposed design is considerate of the adjoining development, future built form, and emerging neighbourhood context. If strict compliance with the ADG setbacks were enforced, it is uncertain that the proposed design would achieve the same level of design excellence, with the orientation and built form likely to be significantly impacted.

Whilst the submission has detailed the concerns around the non-complying southern setback, it can be considered that the proposed orientation and setbacks have been both sympathetic and respectful to the development potential on the adjoining site. The reduced southern setback is assessed as being an acceptable design response in ADG terms when balancing the benefits of achieving solar access and views and maintaining privacy to the adjoining property.

The setbacks have been determined based on extensive site analysis and through multiple design reviews and consultation with CN's Design Review Panel.

In response to the submission's recommendations, CN advises that any future proposal on the site will be assessed on merit, having regard to site specific constraints and surrounding development. Further, an in depth-assessment of any proposal, including setbacks, will be required and the design approach will be subject to assessment by CN's Design Review Panel. The design and justification for any departures to the ADG will need to be considered to ensure a suitable outcome is achieved.

In conclusion, it is considered that the proposed setbacks are an appropriate outcome for the site as the built form and massing have been well considered, ensuring privacy impacts are reduced and allowing for a considered level of sunlight access to be obtained by the Travelodge site. On balance, the development is considered to be an acceptable outcome for the site and adjoining properties.

Conclusion

The above supplementary report, in combination with the revisions to the draft conditions by the Regional Planning Panel and the City of Newcastle, comprehensively addresses the concerns and issues arising from the determination meeting.

Suitable investigations and documentation have been provided to demonstrate that the site can be made suitable for the proposed development. Additionally, the proposal is consistent with the land use planning framework for the locality.

Having regard to the assessment of the proposal from a merit perspective, Council officers are satisfied that the development has been responsibly designed and provides for acceptable levels of amenity for future residents. It is considered that the proposal successfully minimises adverse impacts on the amenity of neighbouring properties. The development is consistent with the intentions of the relevant planning controls and represents a form of development contemplated by the relevant statutory and non-statutory controls applying to the land.

The application is recommended for approval subject to the imposition of appropriate conditions.

It is recommended that the application be supported on the combined basis of the 'Council

Assessment Report' and this Supplementary Report subject to the revised draft conditions of consent.

Attachment A – Amended conditions are highlighted in red.

Attachment B – Amended Plans