

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 addendum report should read in conjunction with the original assessment report. A version of the amended conditions is provided at **Attachment A**.

Matter Deferred

"The Panel had last deferred the matter in June 2023 to consider:

- *submission from the adjoining owner of the Travelodge and the applicant's response; and*
- *clarification around carparking numbers, floor space calculations, view impacts and waste management arrangements, and revised conditions.*

The Panel has considered the supplementary report dated 17 July 2023 which addresses these matters and the submissions. The Panel has reviewed all submissions made to the application.

The Panel requires future clarification of the GFA and Floor Space Ration (FSR) calculation

specifically in respect to the inclusion of waste storage and storage areas given they are not located in a basement. The calculation of FSR does not appear to be in accordance with the definition. This is a fundamental and essential element of the assessment of this application and needs to be factually correct".

Reasons for Deferral

"The Panel agreed to defer the determination of the matter for further information.

- (i) Revised plans showing the GFA and FSR calculation in accordance with the definition under NLEP 2012.*

The Panel expects the revised information to be submitted to Council within two (2) weeks from the date of this deferral record.

The Panel expects an addendum assessment report from Council responding to the material and the matters raised above. The Panel will determine the matter electronically.

The decision to defer the matter was unanimous".

Response to the Reasons for Deferral

Compliance with Council carparking controls

Carparking 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 28 small/ 30medium /48 large 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 (75m ² or 1 bedroom)	Maximum average of 1 car space per dwelling
Medium (75-100m ² or 2 bedroom)	
Large (>100m ² 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 **9** 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 **172** car parking spaces is provided and is compliant with the DCP – 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 (9) visitor spaces (Total 172)

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 DCP.

Please note that single change to carparking since the Panel were briefed on the 24 July 2023 has been to visitor parking only. The applicant previously proposed **8** visitor parking spaces, and this has increased to **9**, therefore the total has increase from **171** to **172** car spaces.

The carparking complies with Section 7.03 (Version 5) and is supported.

Clause 4.4 - Floor Space Ratio (FSR).

Overview of GFA & FSR Assessment

The subject site is identified on the Newcastle LEP 2012 Floor Space Ratio (FSR) Map as having a prescribed floor space ratio of 6:1.

The application originally specified a Gross Floor Area (GFA) of 11,419.8m², resulting in a FSR of 5.49:1.

As noted above, the proposed carparking was initially assessed under Version 4 (now superseded) of Section 7.03 - Traffic, Parking, Access, of the Newcastle Development Control Plan (NDCP) 2012. Further assessment was given to the exact calculation of parking requirements when CN sought to identify additional GFA contributed by excess carparking.

The Applicant's inclusion of balconies into the dwelling area calculations was not supported. After the determination briefing in April 2023 the Applicant sought the consideration of carparking under the current DCP (Version 5 of Section 7.03) rates.

The Applicant amended the area calculations to exclude unit balconies. The drawings were then amended to increase the internal areas of some apartments, this was accommodated by slightly reducing the external balcony areas of each apartment.

Additionally, there had been a revised carparking allocation in accordance with Version 5 of Section 7.03 of the NDCP.

Upon review, it was considered that issues remained with the calculation of GFA, this included the exclusion of the waste collection room, waste presentation area, the storage room located within the ground floor carpark and storage cages located within levels 1-3.

Subsequent meetings were held with the applicant to address the proposed GFA and overall compliance with the definition as defined within the NLEP 2012.

Proposed GFA and FSR:

In response to the concerns regarding GFA calculations, the applicant has provided an amended GFA plan (dated 26.09.2023).

To achieve a GFA of 11,434m² the following changes have been made:

- The storage room GFA (located on the ground floor) has been reduced;
- Removal of storage cages that are not required to meet to ADG;
- Adjust carparking numbers by providing for 1 additional visitor car space;
- It is understood that the western wall of the residential corridor is required to be thicker than initially anticipated. As GFA is measured from the internal face of the external walls, the residential common corridor space on levels 4-19 is reduced in area by 9.4m² per level;
- The size of the residential waste rooms (level 1 and 3) has been reduced. The development requires a total of 20 x 1100L waste bins, this has been accommodated;
- The residential lobby has been reduced in size by moving the entry door south by 450mm;

- The residential mail room has been converted into a parcel locker zone (the mail room is considered an essential service);
- The corridors on all residential levels have been reduced by 170mm;
- Commercial waste room has been adjusted to be a waste cupboard;
- Reduce the size of storage cages such that they are closer to the minimum required by the ADG;
- Removal of storage cages that are not required to meet the ADG - Number of storage cages proposed at to the last briefing meeting was **115**. The number of storage cages proposed is now **104**. All dwellings are provided with storage that satisfies the minimum volumes required by the ADG with at least 50% of the required volume provided internally within each apartment;
- Reduce the size of storage cages such that they are closer to the minimum required by the ADG as follows:

Unit Type	Internal Storage	Storage Cage	Total	Required	Complies
1A	4.5m ³	1.5m ³	6m ³	6m	Yes
1B	3m ³	3m ²	6m ³	6m	Yes
2A	4.5m ³	3.5m ³	8m ³	8m	Yes
2B	4.5m ³	3.5m ³	8m ³	8m	Yes
2C	4m ³	4m ³	8m ³	8m	Yes
3A	5m ³	5m ³	10m ³	10m	Yes
3B	5.5m ³	4.5m ³	10m ³	10m	Yes
P1	10m ³	-	10m ³	10m	Yes
P2	12m ³	-	12m ³	10m	Yes

Accordingly, the following GFA calculations are provided.

Ground Floor	745.6m ²
Level 1 - P1	174.7m ²
Level 2 - P2	131.1m ²
Level 3 - P3	96.5m ²
Podium	648.4m ²
Level 5 - 18	658.8m ²
Level 19 - Penthouse	413.8m ²
Total GFA	11433.6m ²
Site Area	2079m ²
Max Allowable GFA and FSR	11434.5m ² and 5.5:1
Proposed FSR	5.5:1

All amendments to waste have been reviewed by CN's Waste and Commercial Collection Manager who considers the changes as adequate. Any increases in commercial waste volumes can be accommodated via an increase in collections, these services are provided under commercial terms of agreement, and if required more frequent collections can be proposed.

The above changes take into consideration the areas that Council asserted as GFA, this includes storage located within the carpark, the storage room located on the ground floor, waste collection areas, and waste rooms.

The resulting GFA is calculated as 11,434m². The site area is identified as 2,079m², therefore the proposed FSR is 5.5:1.

The drawings that have been updated include:

- DA011 - Planning GFA Rev H

- DA101 - Ground Floor - Rev I
- DA102 - Parking Level 1 - Rev G
- DA104 - Parking Level 3 - Rev F
- DA105 - Plan - Podium - Rev H
- DA106 - Plan - Typical Lower - Rev G
- DA107 - Plan - Typical Upper - Rev F

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 5.5:1, which does not exceed the maximum FSR prescribed for the site with the inclusion of the 10% design excellence provisions.

Additional Conditions:

A condition has been included in the consent which restricts the allowable GFA to 11,434m².

Condition 3 is detailed as follows:

"This consent permits a maximum gross floor area of 11,434m². Confirmation of this is to be included in documentation for a Construction Certificate application".

A condition has been included in the consent which ensures the proposal satisfies the minimum storage volume requirements of SEPP 65.

Condition 4 is detailed as follows:

"All proposed dwellings are to be provided with the required individual storage volume via combination of internal and external storage in accordance with the provisions of the Apartment Design Guide. All dwellings which are reliant on storage cages for all, or part of their storage volume are to be allocated specific storage cages in association with their dwelling entitlement. Full details are to be submitted with the required Construction Certificate demonstrating and certifying that all dwellings have their required storage volume and that any associated storage cages are allocated to the respective dwellings on the submitted plans".

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.