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19 May 2023

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City of Newcastle
PO Box 489
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Via email: aryan@ncc.nsw.gov.au

Dear Amy,

RESPONSE TO REQUEST FOR INFORMATION - DA2022/01316 & DA2022/01317

1. INTRODUCTION AND OVERVIEW

This letter has been prepared in response to the Request for Information (**RFI**) issued by City of Newcastle (**CN**) by email on 4 May 2023 regarding the Development Application to DA2022/01316 & DA2022/01317 relating to Stage 1 and Stage 2 of the development at 711 Hunter Street, Newcastle West.

The RFI letter primarily relates to proposed staging, design excellence, acoustic impacts, contamination, heritage, food standards, engineering matters, groundwater management, mine subsidence, traffic comments and further matters for clarification.

The Proponent, Plus and consultant team met with Council officers on several occasions throughout 2021 to 2023 to discuss the proposed works. The below provides a summary of the key activities post lodgement:

- Both Development Applications were lodged on the Planning Portal and registered on 17 November 2022
- The Developments Applications were placed on exhibition between 25 November 2022 and 16 January 2023. In total, 5 public submissions received and have been responded to within this RFI letter.
- The Hunter and Central Coast Regional Planning Panel 'kick off briefing' was held on 21 February 2023.
- Design Integrity Panel (DIP) Session No. 2 occurred on 16 February 2023, where the DIP endorsed the lodgement of both Development Applications. DIP Session No. 3 is scheduled to occur on 22 May 2023 to closed out the outstanding design matters.



- Urban Design Review Panel (UDRP) Session No. 1 occurred on 22 February 2023. UDRP Session No. 2 is scheduled to occur on either 24 May or 31 May 2023 to closed out the outstanding design matters.
- A meeting with CN’s development planners and engineers was held on 27 April 2023 to discuss the contents of this RFI. This RFI was received from CN on 04 May 2023. A subsequent meeting between the Applicant’s engineers and CN’s engineers occurred on 10 May 2023.

CN have advised that they have scheduled both Development Applications to be reported to the July 2023 Hunter and Central Coast Regional Planning Panel meeting for determination. Given the timely response of this RFI, this will allow CN to maintain this commitment and progress to the July 2023 meeting without delay.

This letter is the applicant’s response to the matters raised by CN and is accompanied by the technical documents outlined in **Table 1** to support the RFI response. All matters have been adequately addressed and CN can continue its assessment and determination of the DA.

Table 1 – Amended technical documents

Document	Consultant
Amended Architectural Plans	Plus Architecture
Updated Architectural Design Report	Plus Architecture
Design Response Report (including landscape interim solution)	Plus Architecture
Updated Landscape Design Report	Urbis
Amended Traffic Report	BG&E
F&B Tenancy Acoustic Assessment	Acoustic Logic
Heritage Design Response	John Carr
Amended CPTED Report	Kristy Cianci
Amended Preliminary Construction Management Plan	St Hilliers Contracting
Amended Operational Waste Management Plan	Elephants Foot
Amended Access Assessment Report	BCA Access
Amended Staged Stratum Subdivision	CMS Surveyors
Amended Stage 2 Deposited Plan	CMS Surveyors



Document	Consultant
Retail Staging Approach	Bellringer
Mine Subsidence Peer Review Letter	Douglas Partners
Amended Mine Subsidence Numerical Modelling	Tetra Tech Coffey
Amended Stormwater Addendum (Soil and Water Management Strategy)	BG&E
Amended Stormwater Management Drawings	BG&E
Amended Clause 4.6 Variation Request – Building Separation	Urbis
Amended Clause 4.6 Variation Request – FSR	Urbis
Amended Public Art Plan	Art Pharmacy

This RFI is structure as follows:

- **Section 2 – Submission and Formal Response for RFI:** provides a high-level response to matters raised in CN's RFI including identification of where the matters are responded to.
- **Section 3 – Clarification Points:** provides a summary of key clarification points, which are reiterated due to some confusion points that has arisen from CN's review and public submissions:
- **Section 4 – RFI Responses:** provides a response to the items identified in CN's RFI, including a response to the public submissions.
- **Section 5 – Proposed Amendments:** provides a summary of the proposed amendments as a result of the RFI response pursuant to clause 113 of the *Environmental Planning and Assessment Regulation 2021*.
- **Section 6 – Conclusion.**

The additional information submitted provides a comprehensive response the matters raised by CN in the RFI received in May.



2. SUBMISSIONS AND FORMAL RESPONSE FOR ADDITIONAL INFORMATION SUMMARY

Table 2 – Summary of RFI Response

RFI Point	Response
<p>Point 1 Proposed Staging: The proposed staging is not supported in its current form which creates the separation of the overall development through the podium and results in unresolved elements between Stages 1 & 2.</p>	<p>Section 4.1 of this RFI provides a comprehensive response to the staging concerns outlined by CN.</p> <p>The Preliminary Construction Management Plan provides detail on how the staging approach can be achieved and managed. Also the amended Stormwater addendum and drawings to practically manage the flooding issues present at the site.</p> <p>A landscape design has been developed for Stage 2 as an interim solution following demolition of the current built form. This is detailed within the Updated Landscape Design Report and integrated within the Architectural Drawings that accompany this response.</p> <p>Amendments to the staging plan to include a generous interim park in lieu of hoarding around the Stage 2 site. Stage 1 will also include an extended facade treatment to the public art opportunity (mural) on the adjoining wall which is supported within the amended public art plan that accompanies this response.</p> <p>This proposed interim arrangement is also accompanied by detailed information demonstrating why it is not feasible to delivery the podium at once.</p>



RFI Point	Response
<p>Point 2 Design Excellence, DIP / UDRP, and CPTED: the submitted plans do not address the matters raised by the UDRP and DIP.</p>	<p>Section 4.2 of this RFI and supporting documentation including Plus' Design Response Report and the amended CPTED report respond to this point.</p> <p>The UDRP and DIP have generally been supportive of the proposal and have generally provided commentary as to where they see refinement can be made to improve the scheme.</p> <p>DIP Session No. 3 is scheduled to occur on 22 May 2023 and UDRP Session No. 2 is scheduled to occur on either 24 May or 31 May 2023 to closed out the outstanding design matters.</p> <p>The amended Access Report also resolves issues that were outlined in terms of the ground plane pedestrian access.</p>
<p>Point 3 Acoustic Impacts: the submitted acoustic report does not demonstrate that the proposed licensed tenancies, including the proposed roof-top bar, can operate during the evening and night-time criteria.</p>	<p>Section 4.3 of this RFI and F&B Tenancy Acoustic Assessment prepared by Acoustic Logic. Acoustic Logic concludes that provided the recommendations of Section 6 are adopted, noise emissions will comply with the NSW Liquor and Gaming criteria for licenced and entertainments venues as well as noise emission requirements of the NSW EPA's 'Noise Policy for Industry.'</p>
<p>Part 4 Contamination: requires the submission of a RAP.</p>	<p>Section 4.4 of this RFI details the response which is provided within the Interim Remediation Action Plan (RAP). The RAP has been prepared by Tetra Tech and determines the site can be made suitable for the proposed development.</p>

RFI Point	Response
<p>Part 5 Heritage: further clarification regarding the intended outcome of the mitigation approach and response to the LEC Planning Principle.</p>	<p>Section 4.5 of this RFI and the accompanying heritage addendum prepared by AMAC outlines that the site is not a contributory item within the Newcastle City Centre Heritage Conservation Area. The LEC planning principle applies only to contributory items in a conservation area, not to a listed heritage item (paragraph 43 of the judgement). Considering this, this Planning Principal is not relevant to this proposal. The SoHI does not recommend retention of the original façade and no retention is proposed.</p>
<p>Part 6 Food Standard: confirmation of the construction of the walls and ceiling in the tenancies described as food and drink will comply with the Australian Standard.</p>	<p>Section 4.6 of this RFI. The construction of walls and ceilings in retail and business tenancies can comply Australian Standard 4674-2004. A condition of consent is requested to enforce this at the Construction Certificate stage.</p>
<p>Part 7 Engineering Matters: request additional modelling and amended plans to respond to the traffic and parking requirements plus additional information regarding compliance with the Flood Planning Level (FPL).</p>	<p>Section 4.7 of this RFI and revised SIDRA modelling within the amended traffic report have responded to this matter. In addition, the architectural plans and stormwater addendum and amended drawings have been updated to illustrate splays, car park bays and aisle widths, and compliance with the FPL etc.</p>
<p>Point 8 Groundwater Management: awaiting referral back from Water NSW</p>	<p>Noted. Awaiting response.</p>
<p>Point 9 Mine Subsidence: peer review of the geotechnical report is required.</p>	<p>Section 4.9 of this RFI and the Amended Subsidence Numerical Modelling and Mine Subsidence Peer Review are to be submitted to</p>

RFI Point	Response
	Subsidence Advisory NSW for review and approval.
<p>Point 10 Clause 4.6 Variation: request for an updated 4.6 variation statement that justifies that there exists 'sufficient environmental planning grounds' for the variation.</p>	<p>Section 4.10 of this RFI and the revised Clause 4.6 variation request for FSR and Building separation has been provided to support the variance in the building separation and floor space ratio for the proposed development. It includes justification which includes negligible amenity or privacy issues, better outcome than a complying tower, the tower respects all other private and adjacent developments, and it was considered acceptable by the DIP and UDRP.</p> <p>Further, the Clause 4.6 Variation Statement for FSR has been updated for completeness to acknowledge the plans changed in May 2023. The assessment and conclusions of the Clause 4.6 Variation Statement for FSR have not changed.</p>
<p>Point 11 B3 Commercial Core Uses: Request for further information on the active street frontage, ensuring it only includes retail premises or business premises.</p>	<p>Section 4.11 the response confirms that the only uses that will be provided on the ground plane include retail premises and business premises, this is detailed on the Amended Architectural plans.</p>
<p>12 Submissions: Community submissions were received within the public exhibition period which was held in accordance with the CN Community Participation Plan.</p>	<p>Section 4.12 provides a response regarding additional detail to ensure that the communities say is considered within the proposed design and appropriate mitigation measures have been implemented for view loss, car parking levels and headlight impacts and historical façade.</p>



RFI Point	Response
<p>13 Transport for NSW: Additional testing and information is required as requested by Transport for NSW.</p>	<p>Section 4.13 The responses have been updated within the Traffic Report that accompanies this DA. It provides additional assessment of traffic impacts, SIDRA model testing and reporting and additional comments relating to pedestrian, network operation and council upgrade conditions. .</p>

3. CLARIFICATION POINTS

The below outlines key clarification points, which are reiterated due to some confusion points that has arisen from CN’s review and public submissions:

- St Hilliers have been transparent regarding their plans for staging and this direction was included in the Design Excellence Brief at the Design Excellence Competition stage. The Design Brief was endorsed by the Government Architect of NSW in conjunction with CN including Dr Philip Pollard (the Chair of the UDRP). The Jury and now Design Integrity Panel (DIP), have always had oversight to this design parameter.
- Adequate vehicle and pedestrian pathways will be allocated during the construction of Stage 2, vehicular and pedestrian access will be maintained from Little King Street. No interim arrangement is proposed from National Park Street.
- An Indigenous Design Strategy has been prepared by COLA Studio’s to present the Integration of Connecting with Country within the design. Engagement with Connecting with Country and how it is informing the design was guided by NSWGA’s Guidance on Country and Design. COLA Studio’s commenced engagement with local cultural knowledge holders in April 2022 with two yarning workshops, these workshops were with Wannangini Pty Ltd - Represented by Peter Leven
- Awabakal and Awabakal designer - Shellie Smith – Awabakal. The design principles informed design response.
- The site is not identified as a heritage contributory item in CN’s Technical Heritage Manual.
- The construction of walls and ceilings in retail and business tenancies can comply Australian Standard 4674-2004.
- The loading dock has been designed to accommodate a Heavy Rigid Vehicle (HRV). The access will allow for forward in and forward out movement for HRV. A 4.5m floor to ceiling is proposed to accompany this.
- The existing substation is not proposed to be retained. A new substation is proposed and will front Hunter Street within the two chambers identified as substation on the ground floor plans of Stage 1 and within the Electrical Capacity Report submitted with the DA. An application for a new load connection will have to be submitted with a maximum demand calculation. There is an existing chamber substation on the development site with underground connection. Significant testing went



into alternate options for the required substations. Ausgrid require direct street access. Driveways are not acceptable for compliance making the driveway and King Street inappropriate locations for the substations.

This section of the RFI should be read in conjunction with submitted Design Response Report prepared by Plus, accompanying plans by Plus and Urbis and consultation reports and addendums identified in Table 1.

4. RFI RESPONSES

The following section outlines the items identified by CN for further information and the applicant's response.

4.1. PROPOSED STAGING

The proposed staging is not supported in its current form which creates the separation of the overall development through the podium and results in unresolved elements between Stages 1 & 2. Concern is raised in relation to the proposed staging of the development and the ability for the access driveway to continue to function unimpeded for Stage 1 during the construction of Stage 2. Furthermore, the maintenance of public (resident) safety together with minimising on-street congestion during the construction phase.

In addition, the staging creates further complexity with respect to the provision of infrastructure, such as stormwater design and operation. Concern remains regarding the provision of drainage and stormwater infrastructure and for Stage 2 has not been considered as part of the concept design for Stage 1.

As discussed, CNs preference is for the staging to be removed in its entirety, which has been discussed since pre-lodgement staged. Alternatively, it would be preferred for staging to be amended to facilitate the completion of the entire podium G, 1, 2, 3, & 4 levels across the site under Stage 1. The surplus parking resulting from this staged approach would enable use of these spaces by construction worker vehicles, thereby reducing the demand for on-street parking.

However, it is understood from our recent discussions, that this may not be feasible and therefore consideration will be given to an alternative approach in which Stage 1 results in a landscaped public domain outcome for the land subject to development under Stage 2 until such time that works for Stage 2 commence. To facilitate an assessment of this revised staging approach the following information is required:

A. Provide detailed justification outlining why the entire lower podium levels across the site (Stages 1 & 2) cannot be completed as part of the initial stage of development.

Response

A landscape design has been developed for Stage 2 as an interim solution following demolition of the current built form. Amendments to the staging plan to include a generous interim park in lieu of hoarding around the Stage 2 site. Stage 1 will also include an extended facade treatment to the public art opportunity (mural) on the adjoining wall.

This proposed interim arrangement is also accompanied by detailed information demonstrating prepared by St Hilliers to demonstrate why it is not feasible to deliver the podium at once, this is outlined below:

- Non fundable development staging: The significant increase in non-income producing capital expenditure would result in a development that does not achieve finance hurdle rates, meaning the site remains ‘as is’ until both developments could be sold.
- Non-compliant parking rates: Stage 1 would deliver twice the maximum parking rate required (exceedance of NDCP compliance by 127), with no guarantee that future stages would be viable (or acted upon) at a time when Newcastle is actively seeking to reduce reliance on parking. If the whole of podium was proposed, the DCP requirements for residential, residential visitors and business/retail would not comply. Stage 1 has proposed 165 car parking spaces including 13 accessible spaces for the residential and retail/business components, which complies with the NDCP maximum requirements. The Stage 2 development proposes 135 parking spaces including 7 accessible for the residential and retail/business components, which complies with the NDCP maximum requirements. If the podium was to be included within the proposed Stage 1 development, the existing parking spaces would exceed the requirements within the NDCP by 126.77 parking spaces.
- A poor ground plane experience with horded up shopfronts, and/or poor leasing opportunities.
- The entire lower podium construction being completed without a second tower would not be a positive design response, the proposed response is a more appealing and usable space.
- Non alignment with the staging in the design excellence endorsed Design Excellence Brief. By way on background, on 20 October 2021 a Design Brief was finalised for the two adjoining developments proposed for 711 Hunter Street, Newcastle West. On the same day a letter of endorsement was received from the Government Architects Office which noted the following:

“In assessing the request for endorsement we have reviewed the materials provided through a process of close collaboration with our colleagues at Newcastle City Council and their consultant and with regular consultation with yourselves. As the first design competition under Council’s governance we are pleased to advise the brief is deemed suitable to support the delivery of design excellence for the site and to promote improved quality and amenity for the public domain in the vicinity of the development. “

A key component of the design competition endorsed brief related to project staging. Importantly the brief makes a specific requirement that the project is designed as two sites that can be joined together should the site be built at the same time. The endorsed brief goes on to provide justification and guidance for the staging:

- The JV are wanting to have flexibility around the tower construction timeframes and the ability to build one tower should the market conditions change and both towers at the same time is not viable. The northern tower will form Stage 1, should the towers not be built concurrently.
- Each tower must have podium floor plates that can connect and form a seamless development. If the towers were to be built separately the northern tower would be built first and as such the essential services for both towers would be contained within this building. The design needs to allow for the southern tower to be constructed in Stage 2.
- The northern tower is to contain all the essential services for both towers including fire tanks and fire control room. Design of the upper podium is to be considered carefully to take into consideration constructability should the towers be built at different times.
- The JV is looking to submit a DA for each of the towers concurrently.

- The competitors should show 3D imagery for both a Stage 1 only development (needs to include the existing southern building remaining) and also when both towers were complete.
- The competitors are to consider the treatment of the southern edge of the Stage 1 podium should it be built independently to Stage 2. The competitors should also consider any public domain improvements required for Stage 2, should the stages process independently.

Flexibility in response to market conditions (as outlined in the endorsed Brief) is the fundamental driver behind the staging approach. If the market conditions are such that the apartment sales cannot be achieved for both stages, then the JV still has the ability to deliver design excellence and much needed housing in a single stage until such time as the market conditions improve. Given the current state of global markets and political turbulence the approach is cognisant that future market conditions could be volatile and provides commercial considerations for sensible risk mitigation.

Financiers of major developments require a minimum 15% development margin, known as the hurdle rate, in order to achieve finance for construction. The current staging approach formulated through the design excellence competition is capable of achieving that hurdle rate. However, the stage 2 podium area which includes 135 parking spaces, 12 residential apartments and 10 leasable shops would come at a significant additional cost which prevent the hurdle rate being achieved. If this cost were to be added to Stage 1 works, it would result in a development margin well below 0% and prevent Stage 1 occurring should market conditions sour. The site would likely remain 'as is' for an unknown period of time. Further:

- The 6 residential units in the Stage 2 area would have to be left boarded up and vacant as the lift cores would be needed for future construction and the apartments would be unsafe during works above, meaning Occupation Certificates could not be issued nor apartments settled.
- Glazing for the retail and residential units would be temporary or non-existent (likely hoarded) as they would be abortive works removed for construction of the future tower above.
- Notwithstanding the above point, if temporary abortive works were to proceed for the commercial spaces, leasing in line with the retail strategy would not be possible as lease terms could not be guaranteed for any period of time and incentives required for the types of tenants the strategy envisioned would not be viable. The result would be short term licences and likely high levels of vacancy. This would not only limit the success of the Stage 2 area but would negatively impact the leasing strategy of Stage 1, and potentially across the road at One National through the undesirable effect of non-aligned retailers or vacancy.

Considering the above, amendments to the staging plan to include a generous interim park in lieu of hoarding around the Stage 2 site are proposed.

B. In the event the lower podium is constructed across two stages, as proposed, a detailed analysis being provided outlining the proposed strategy for construction of Stage 2. Further details are to be provided, which address the development will continue the operation of the driveway to Stage 1 whilst also maintaining public (resident) safety and minimising on-street congestion. This is to be presented in a comprehensive staged construction management plan.

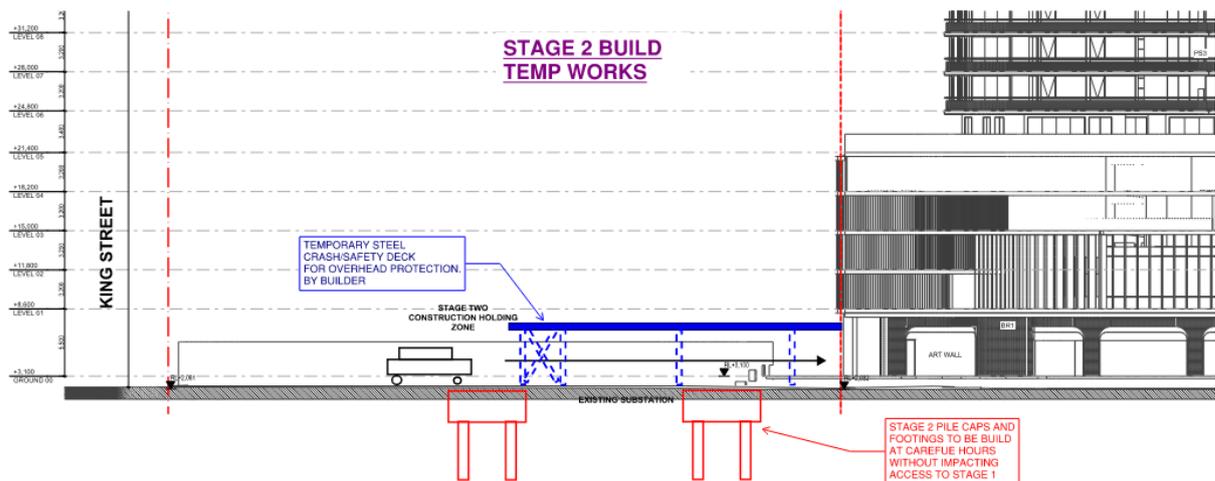
Response

The Preliminary Construction Management Plan has been revised by St Hilliers and appended to this response. It highlights the strategy for construction of Stage 2 which is explained as follows:

- Adequate vehicle and pedestrian pathways will be allocated during the construction of Stage 2 with safe operation of these access ways.

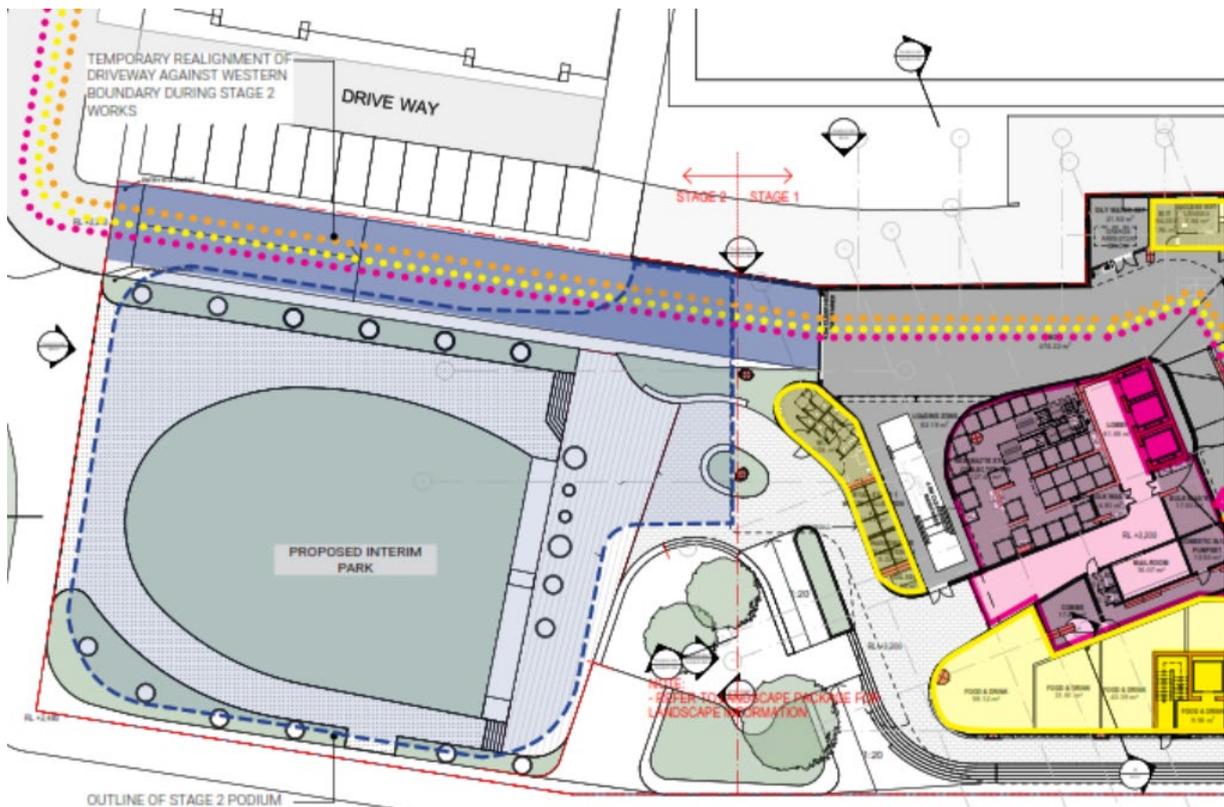
- To ensure safety for the residents, commercial and visitors when entering and exiting the site during the Stage 2 construction, installation of temporary steel crash/safety deck is proposed, refer to **Figure 1**.
- The path that residents, commercial and visitors will use to safely enter and exit the site during construction of the eastern awning for Stage 2 is as pictured in **Figure 2**. This will occur by diverting the driveway access temporarily to the boundary for clearance.
- Temporary hoarding zones that will be a maximum 1 metre will be created within the stage area of each of the parking levels and the podium that will allow for the construction zones at each level. A construction easement as noted within the Draft stratum plan will apply in these locations to facilitate the works. A surplus of three parking spaces is in the Stage 1 phase, these will be located against the hoarding and un-allocated to a unit. The DDA parking space has been assessed and is sufficient in regard to setback and clearance and will not be impacted. These are common construction methodologies utilised in urban environments.

Figure 1 – Temporary Steel Crash deck to protects resident vehicle entry during podium construction



Source: Plus Architecture

Figure 2 – Temporary driveway diversion during Stage 2 construction



Source: Plus Architecture

C. Amended architectural plans to reflect the amended staging and must include a detailed landscape design for 'stage 2' land consistent with the connecting to country work undertaken to inform the overall design. The architectural plans for both stage 1 & 2 must demonstrate that stage 1 can operate independently of stage 2, including during construction works for stage 2 occurring.

Response

A landscape design has been developed for Stage 2 as an interim solution following demolition of the current built form.

Amendments to the staging plan to include a generous interim park in lieu of hoarding around the Stage 2 site. Stage 1 will also include an extended facade treatment to the public art opportunity (mural) on the adjoining wall. The solution is a significant improvement to the ground plane response proposed in the original DA package in the event the market conditions do not allow for stage 2 works to commence simultaneously. This solution provides a number of benefits including alignment with:

- the Ground Plane and Activation Brief developed to inform the endorsed Design Competition Brief.
- CPTED principles.

- Designing with Country framework providing a green connection to Birdwood Park.
- Heritage considerations opening up lines of site to the listed Army Drill Hall.

The Design Response Report that accompanies this response also provides the amended staging details.

The landscaping strategy intends to provide an appropriate space on the Stage 2 land, ensuring Stage 1 can operate independently. This design has incorporated landscaping and design with native groundcovers, a licensed ice cream/coffee cart, flexible seating, citrus tree planters, free area to play and GRC planters (that will be relocated to the podium level of Stage 2). The design has been curated as a simple yet appealing response for the Stage 2 land to be utilised.

This response also provides the opportunity for public art to be integrated within the landscape design which can be inspired by Connecting with Country as identified in the amended Public Art report.

The landscape layout and street view are pictured below in **Figure 3** and **Figure 4**.

Figure 3 – Ground level interim open space plan



Source: Plus Architecture + Urbis

Figure 4 – Street view of the Stage 2 interim design



Source: Plus Architecture

D. The functionality of the stormwater design and operation requirements must be capable of being independently managed once the Stage 1 development is completed. Amended plans are to be provided, which satisfactorily demonstrated how the stormwater design interface between Stage 1 and Stage 2 will be developed and managed. A concept design is to be prepared that addresses this matter.

Response

A stormwater addendum report has been prepared by BG&E and accompanies this response. Detailed stormwater design is most often documented within future design development phase which incorporates multiple disciplines, including architectural, structural, hydraulic, civil, and other building services. However, an indicative layout has been provided that indicates drainage connections and how they could be achieved which is detailed in the Stormwater Drawings that accompany this DA.

E. An amended plan which clearly details any proposed drainage and associated easements (please ensure easement widths are correctly noted).

Response

An indicative downpipe layout is provided in the Stormwater Drawings that display how drainage connection may be achieved to connect the two stages. Stratum report has also been prepared by CMS surveyors and accompanies this DA. It provides a list of all the associated easements, which includes stormwater drainage in Stage 1.

F. As part of the assessment, CN is required to ensure that stormwater infrastructure including drainage and associated easements (if required), locations of rainwater tanks, pits and pipes and other water sensitive treatments can be appropriately managed and accommodated. Details including a maintenance schedule is to be addressed as part of the Stage 1 application.

Response

After discussion with Council it was evident that a full maintenance schedule is not required at this stage as it is difficult without a detailed design. The Stormwater addendum that accompanies this response has provided additional detail around the maintenance schedule.

It notes that majority of the site will be sealed pavement or landscaped therefore sediment generated by a mulched and watered landscape are expected to be minimal. Gross pollutants will be minimised from entering the stormwater drainage systems through installation of grates and Ocean guard baskets to stormwater inlets. Stormwater pipes will be fully sealed to avoid contaminants entering the stormwater system and regular inspections of control systems will be carried out. All stormwater treatment devices will also require to be inspected, maintained, rectified and reported in accordance with the NDCP and Technical Manual.

A further stormwater maintenance plan will be prepared to coincide with the completed construction works, comprising and addressing the stormwater elements.

G. Information relating to any proposal for a temporary landscaping treatment (such as a grassed area /park) to the Stage 2 development area, shall be addressed.

Response

As mentioned in the response to C above, the Stage 2 area will operate as a landscaped open space area with temporary landscaping treatment as pictured in **Figure 3** and **4**. The surface is grass which is permeable and will absorb water into the soil. Further additional stormwater will be stored under the timber decking.

H. Reciprocal rights access across the Stage 1 and 2 parking levels and the Level 5 Podium need to be demonstrated (this has only been provided within Stage 1 documentation).

Response

The reciprocal rights have been included within the Stage 2 area and are outlined within the Stratum Subdivision Report that accompanies this response. The Stage 2 Draft Stratum plan has also been amended to provide these updates.

I. Details of any proposed restrictions to occupation of Stage 1 that may be entertained prior to completion of Stage 2. This should include, a draft Building/Strata Management Statement, including a list of the proposed shared facilities.

Response

Discussion with Council on 12 May 2023 confirmed the approach to supply the information that was required through a building /strata management statement to be in the form of an amended stratum report which has been prepared and accompanies this DA. This came about due to not having engaged a strata management entity as ordinarily these negotiations would not occur prior to DA approval.

It is understood, CN seek details in the updated report of any proposed restrictions to occupation of Stage 1 that may be entertained prior to completion of Stage 2, including a list of the proposed shared facilities which has been provided within the revised Stratum Subdivision Report.

4.2. DESIGN EXCELLENCE, DIP / UDRP, AND CPTED

It is advised that the submission by Urbis (UDRP response matrix) does not resolve the matters raised by the UDRP. As discussed, both DAs were lodged prior to DIP written endorsement that the proposal satisfied design excellence provisions. Given the circumstances, it is confirmed that the applications can progress through UDRP endorsement and unless the Applicant wishes to, the development does not need final endorsement by DIP, so long as the matters raised by the UDRP are fully addressed.

Amended plans addressing the issues raised by the UDRP are provided and all matters raised are fully responded to, is not sufficient to indicate that an aspect was accepted by the DIP in response to these issues.

In this regard, the amended plans must incorporate the recommendations of any specialist report supporting the application. For example, the submitted CPTED report makes numerous recommendations regarding the layout and operation of the proposal which have not been incorporated into the architectural plans (e.g., lobbies to each tower and separation of commercial and residential elements (including parking and storage cages).

Response

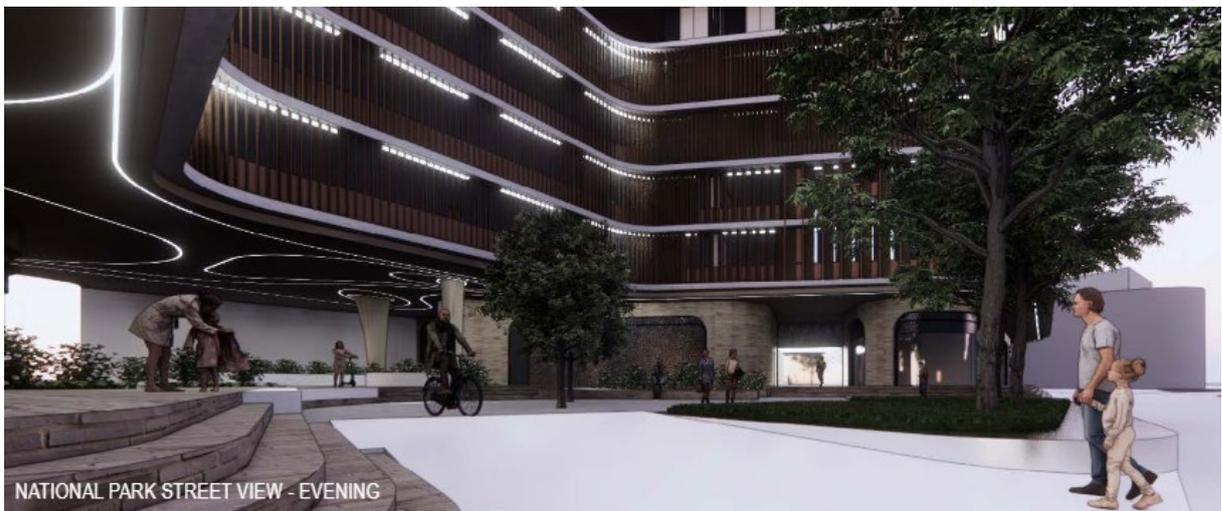
The UDRP and DIP have generally been supportive of the proposal and have generally provided commentary as to where they see refinement can be made to improve the scheme. DIP Session No. 3 is scheduled to occur on 22 May 2023 and UDRP Session No. 2 is scheduled to occur on either 24 May or 31 May 2023 to closed out the outstanding design matters.

The Design Response Report prepared by Plus provides a robust response to the both the RFI and UDRP comments. The UDRP comments have been incorporated within the updated design response, these updates include:

- Amendments to the staging plan to include a generous interim park in lieu of hoarding around the Stage 2 site. Stage 1 will also include an extended facade treatment to the public art opportunity (mural) on the adjoining wall. The solution is a significant improvement to the ground plane response proposed in the original DA package in the event the market conditions do not allow for stage 2 works to commence simultaneously.
- The ground floor lobby entry for the northern tower is proposed to be relocated closer to the central area, as well as an additional window to its adjacent retail tenancy to improve its visibility from the street. Indicative street views are provided by Plus to illustrate how the combination of the ground plane, residential, retail frontages, as well as landscaping and lighting work together to create a highly activated ground plane. The CPTED recommendations have been clearly articulated within the supporting architectural drawings. The Architectural Plans have provided an indicative ground plane view as pictured in Figure 5 . It displays how the residential and retail frontages as well as landscaping will work together to activate the ground plane for improved safety.
- The design has also incorporated amendments to the commercial and residential elements which include separation of parking and storage cages. The storage cages have now been relocated to upper levels to maintain a good level of security and separation between the shared and private uses. Further CCTV is recommended to be implemented at a later stage of the project to further support this security for residence.

An updated CPTED response has been provided to accompany this response and provide the relevant recommendations as discussed at the UDRP meeting.

Figure 5 – Proposed amendment to northern lobby entrance



Source: Plus Architecture

Consideration must also be given to pedestrian and accessible pathways of travel; it is to be demonstrated that pathways are maintained clear and unobstructed. Details of grading changes between ground levels and the walkways on the raised ground level podium areas at the front of the retail tenancies, are to be provided. The design should ensure allowances are made for future outdoor dining etc. whilst maintaining suitable pedestrian accessibility.

Response

An access assessment has been undertaken which accompanies this response. The report outlines the accessibility of the paths complying with the 2.3m. Floor and ground floor surfaces on accessible paths and circulation spaces including the external areas will comply with Australian Standards.

This has come about as the design team worked on a solution to increase the upper-level footpath on the ground plane. The stairs are to be pushed to the boundary, using a unique paving pattern, more potted plants and seating. The design will introduce traversable bleachers with unique paving, increase potted plants and seating zones intertwined with fully compliant stairs which has allowed for increased footpath widths at the top of the stairs. The pavement pattern will change from the stairs to the bleachers to ensure it obvious. Tactiles will be provided as required.

Upon receipt of the amended / revised plans, the matter will be listed on the next available UDRP meeting.

Response

Noted. CN to confirm which UDRP meeting in May the development will go to.

4.3. ACOUSTIC IMPACTS

The SEE states that 'the Applicant is currently exploring the opportunity for the corner tenancy to be a three-storey food and beverage offer, operating from 7:00am to midnight, seven days per week'. In this regard it is noted that, the Acoustic Assessment prepared by Acoustic Logic dated October 2022 states at Section 5.2.2 that 'licensed tenancies (especially those which are propped to operate during the night-time period) will likely have a higher potential acoustic impact, pending their capacity and

sitting. Tenancies of this nature would require a noise impact assessment to be conducted to determine appropriate management controls and treatment in order to mitigate impacts to nearby residents of the development.'

There has been no acoustic assessment has been undertaken demonstrating that the proposed licensed tenancies, including the proposed roof-top bar, can operate during the evening and night-time criteria. An addendum to the acoustic assessment addressing the operation of the licensed premises (along with any other businesses) seeking consent to operate until midnight is to be provided and the recommendations of the assessment are to be incorporated into the amended plans.

Response

A Food and Beverage Tenancy Acoustic Assessment (Acoustic Assessment) has been prepared by Acoustic Logic and is appended to this response.

Acoustic Logic noted that at this stage, operators, capacities, and fit-out layout have not been finalised. Therefore, the assessment has been completed with an allowance of one person per square metre as per BCA requirements.

The primary noise emitting tenancy has been identified as the 3-level corner tenancy, which will be a licenced venue offering food and beverages. Predicted noise levels from this tenancy have been presented below for the closed sensitive receiver being 1 National Park Street (under construction to the east), refer to **Figure 6**. The tenancy will comply with the relevant noise criteria for 1 National Park Street.

In addition, the tenancy will not impact residential apartments internal to the site. The tenancy will comply with the relevant noise criteria for Level 05 receivers, refer to **Figure 7**.

To achieve compliance with the relevant noise criteria, the following key recommendations have been outlined by Acoustic Logic:

- Minimum 10.38mm laminated glazing (min Rw 35) to be installed in facades.
- Comply with the venue capacities.
- Ground floor dining to operate until midnight.

Section 6 of the Acoustic Assessment outlines further detailed recommendation. Acoustic Logic concludes that provided the recommendations of Section 6 are adopted, noise emissions will comply with the NSW Liquor and Gaming criteria for licenced and entertainments venues as well as noise emission requirements of the NSW EPA's 'Noise Policy for Industry.'



Figure 6 – Noise Assessment to 1 National Park Street Receivers

Time Period	Frequency	31Hz	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	A-wt
Day (7am-6pm)	Predicted Noise Levels dB L ₁₀	55	57	55	53	59	56	51	42	31	60
	Criteria dB L ₁₀	67	69	66	63	61	60	55	47	40	64
	Compliance	Yes									
Evening (6pm-10pm)	Predicted Noise Levels dB L ₁₀	57	59	55	51	54	53	48	39	29	57
	Criteria dB L ₁₀	60	62	59	56	54	53	48	40	33	57
	Compliance	Yes									
Night (10pm-12am)	Predicted Noise Levels dB L ₁₀	52	54	49	36	33	29	23	<10	<10	45
	Criteria dB L ₁₀	52	54	51	48	46	45	40	32	25	46
	Compliance	Yes									

Source: Acoustic Logic

Figure 7 – Noise Assessment to Level 05 Receivers

Time Period	Frequency	31Hz	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	A-wt
Day (7am-6pm)	Predicted Noise Levels dB L ₁₀	55	57	55	53	59	56	51	42	31	60
	Criteria dB L ₁₀	67	69	66	63	61	60	55	47	40	64
	Compliance	Yes									
Evening (6pm-10pm)	Predicted Noise Levels dB L ₁₀	57	59	55	51	54	53	48	39	29	57
	Criteria dB L ₁₀	60	62	59	56	54	53	48	40	33	57
	Compliance	Yes									
Night (10pm-12am)	Predicted Noise Levels dB L ₁₀	52	54	49	36	33	29	23	<10	<10	45
	Criteria dB L ₁₀	52	54	51	48	46	45	40	32	25	46
	Compliance	Yes									

Source: Acoustic Logic

4.4. CONTAMINATION

Clause 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021 is a statutory precondition for the determination of any development application. The land contamination assessment submitted with the application has recommended further investigation.

To satisfactorily address clause 4.6, it is recommended that further detailed investigations be undertaken. This further sampling should be focussed on addressing information gaps as outlined by the consultant. This may require cutting small holes through existing floors or slabs. This information should be focussed on addressing data gaps and known higher risk areas of the site as outlined by the consultant.

Alternatively, should you wish to address the identified data gaps onsite through the submission of a Remediation Action Plan (RAP), it is recommended that the nominated remedial strategy be to excavate and dispose all identified contaminated material (above the adopted guideline) to an offsite licensed facility. The RAP should also include a detailed sampling program which would allow for the full characterisation of the site.

Further information is requested to be submitted, preferably including the additional detailed investigations, together with a comprehensive RAP.

Response

An Interim Remediation Action Plan (RAP) has been prepared by Tetra Tech and is appended to this response. This RAP satisfies clause 4.6 of the *State Environmental Planning Policy (Resilience and Hazards) 2021* and determines the site can be made suitable for the proposed development.

4.5. HERITAGE

The submitted Statement of Heritage Impact recommends as a mitigation measure, that those sections of the detailed external decorative render of the Marcus Clark façade, be recovered and supported in metal frames. The following additional information to complete the heritage assessment of this application is requested:

A. Further clarification is sought regarding the intended outcome of the proposed mitigation approach. For example, additional information should clarify the extent of the original façade to be retained and how it is to be supported. Further, it is unclear if this form part of the external appearance of the building and thus affect the streetscape presentation or is this intended to be an internal interpretive display.

Response

An addendum to the Statement of Heritage Impact (SoHI) has been prepared by AMAC and is appended to this response.

The SoHI did not recommend retention of the original façade and no retention is proposed. The facade has been extensively damaged however had areas of small, detailed plasterwork that could be salvaged and placed in metal frames to hold them together given the façade is plaster on brickwork and the plaster is an example of the plastering trade that has now almost disappeared in Australia.

Further discussion during the design development phase included the available photographs of the building potentially forming a large window display (on Hunter Street) and the plastering examples placed on the floor in front of the photos with a stringline showing where they were located on the

facade photo. Therefore, it would be an "internal" interpretive display, viewed from the street (near the Bus Stop).

Further a heritage interpretive artwork is proposed at opportunity 6 and opportunity 1 Hunter Street in the Public Art Plan (refer to **Figure 8**) submitted with the DA. This art proposes to implement a curved edge of architecture with a circular shape and incorporate an open circle within the awning for people to gaze up at. This incorporates the identity of the iconic historical Marcus Clark building clock tower.

Figure 8 – Public art opportunity 6 and opportunity 1 – Marcus Clark Corner and Hunter Street



Source: Art Pharmacy

B. It is noted that the site is graded as non-contributory in CN's Heritage Technical Manual, however the remnant façade dates from the key period of significance of the HCA and therefore has contributory qualities. CN has regard for precedent case law established in the NSW Land and Environment Court (Helou v Strathfield Municipal Council [2006] NSWLEC 66) when considering applications proposing demolition in an HCA. It is requested that the applicant provide a discussion in response to the six questions in the linked planning principle. This can be in the form of a brief addendum letter to the Statement of Heritage Impact.



Response

An addendum to the Statement of Heritage Impact (SoHI) has been prepared by AMAC and is appended to this response.

The site is not a contributory item within the Newcastle City Centre Heritage Conservation Area. The LEC planning principle applies only to contributory items in a conservation area, not to a listed heritage item (paragraph 43 of the judgement). Considering this, this Planning Principal is not relevant to this proposal.

Nevertheless, the façade assessment in the SoHI addressed salient points in the LEC precedent as to repair the building required extensive reconstruction of the façade and the missing windows and upper parapet imposing unreasonable costs. The costs to rectify the damage to the façade including the reconstruction of missing windows, parapets, cupola would be significant considering over 75% of the building’s façade requires work.

For completeness, an assessment against the Planning Principal is provided below in **Table 3**.

Table 3 – Assessment against Planning Principal

Planning Principal	Response
<p>What is the heritage significance of the conservation area?</p>	<p>The Newcastle City Centre Heritage Conservation Area holds heritage significance for various reasons including the mix of commercial, retail and civic buildings that are a reminder of the city’s past, its economic and social history. They had a high number built within the 19th and 20th century which further provides for their rich historic character which is notable and allows an understanding of the city’s importance. The historic buildings provide backdrop to a city of dramatic topography on the edge of the sea and harbour. It also holds the historic foundation of the discovery and exploitation of coal with good shipping access via a safe and navigable harbour.</p> <p>Surveyor General Henry Dangar’s town layout is still visible in city streets and hold historic value, particularly in the streets of Thorn, Keightley, Hunter and Market.</p> <p>Pre-1840’s buildings have State significance and share associations with the city’s convict origins. The archaeological record has national significance and is known to be a place of</p>

Planning Principal	Response
	<p>contact between colonists and the indigenous population.</p>
<p>2. What contribution does the individual building make to the significance of the conservation area?</p> <p>The starting point for these questions is the Statement of Significance of the conservation area. This may be in the relevant LEP or in the heritage study that led to its designation. If the contributory value of the building is not evident from these sources, expert opinion should be sought.</p>	<p>The site was graded as a non-contributory item in the Council's Heritage Technical Manual as it was covered over in the 1960s.</p> <p>Its existence was known, but the extent of its remains was not uncovered until later in the investigation stage after completion of the Design Competition. Once a few strategic sheets were removed based on earlier photographs, the full extent of damage was revealed and the SoHI expanded to include an assessment of the damage.</p> <p>The building does not contribute to the significance of the conservation area.</p>
<p>3. Is the building structurally unsafe?</p> <p>Although lack of structural safety will give weight to permitting demolition, there is still a need to consider the extent of the contribution the building makes to the heritage significance of the conservation area.</p>	<p>The decorative façade however was discovered underneath the extensive cladding installed in the 1960's. Some of the detail did survive on the corner of Hunter and National Park Street which has an original Victorian Italianate style designed around 1899-1902.</p> <p>Despite the lack of structural integrity of the façade, the façade has not contributed to the conservation area since 1960s and has not been considered in the development of the area and its integration of heritage through development. The façade has also changed from its original decoration.</p>
<p>4. If the building is or can be rendered structurally safe, is there any scope for extending or altering it to achieve the development aspirations of the applicant in a way that would have a lesser effect on the integrity of the conservation area than demolition?</p>	<p>The façade could be considered structurally safe with extensive works including a skilled hard wall plaster to repair and reconstruct. These works would be difficult to justify at this level of damage due to:</p> <ul style="list-style-type: none"> ▪ The façade having changed since its original decoration

Planning Principal	Response
<p>If the answer is yes, the cost of the necessary remediation/rectification works should be considered.</p>	<ul style="list-style-type: none"> ▪ The extent of the 1920's expansion and the new aesthetic to the façade ▪ The benefit of the project in preserving and repairing the whole façade as opposed to preserving a small area of detail for display. <p>Majority of damaged detailing is found between the top of the windows on the first floor which are now missing cornice and parapets. The pilasters on the façade appear to have been damaged by the timber grounds being let into them.</p> <p>If the extensive works to reconstruct the façade were undertaken the cost of works would be significant and not feasible.</p>
<p>5. Are these costs so high that they impose an unacceptable burden on the owner of the building? Is the cost of altering or extending or incorporating the contributory building into a development of the site (that is within the reasonable expectations for the use of the site under the applicable statutes and controls) so unreasonable that demolition should be permitted?</p> <p>If these costs are reasonable, then remediation/rectification (whether accompanied by alteration and/or extension or not) should be preferred to demolition and rebuilding.</p>	<p>The costs of the remediation and rectification extend beyond the monetary value. The cost could also include unsuccessful reconstruction which will negatively affect the design response, further the parts would not be in a good condition to be displayed as an art piece and it also has not been a piece within the street</p>
<p>6. Is the replacement of such quality that it will fit into the conservation area?</p>	<p>Yes. The replacement is a high quality design which appropriately responds to the HCA and contributes positively to the Newcastle skyline.</p>

4.6. FOOD STANDARDS

The ground floor will support five retail premises and a roof top food and beverage operation on Level 01 and 02.

The Australian Standards specifies all external and internal walls including partitioning walls are to be of solid construction, such as masonry construction (AS 4674-2004 (3.2.1)). It should be noted that cavity stud walls are not appropriate anywhere in the food premises. Refer to table 3.2 (AS 4674-2004) for suitable wall finishes.

Ceilings shall be non-perforated and finished free from open joints, cracks and crevices and shall be finished smooth (AS 4674-2004 (3.2.5)). Please note, drop in panels are not permitted where open food / beverages are handled.

Please confirm the construction of the walls and ceiling in the tenancies described as food and drink will comply with the Australian Standard.

Response

The construction of walls and ceilings in retail and business tenancies can comply Australian Standard 4674-2004. A condition of consent is requested to enforce this at Construction Certificate stage.

4.7. ENGINEERING MATTERS

A. SEPP (Transport and Infrastructure) 2021:

Sidra modelling is to be reviewed to accurately reflect traffic movements and provision is to be made for the upgrade of King and National Park signals to provide red arrow protection for pedestrians - refer TfNSW's letter dated 25 January 2023 for further clarification.

Response

BG&E have updated the SIDRA modelling. The modelling is appended to this response.

B. Traffic Generation:

A 10-year projection is required for further traffic modelling, please provide additional information which addresses the matter.

Response

BG&E have updated the SIDRA modelling, this includes the 10-year projection. The modelling is appended to this response.

C. Road Network:

The application proposes a short-term pick-up / drop-off area in National Park Street, which requires the in-principal support of the Newcastle City Traffic Committee prior to determination. It is noted that the proposed on-street pick-up/ drop-off has been scheduled as part of the next traffic committee agenda for the initial consultation. Please be advised that should the NCTC not support the proposed pick-up/drop-off location this matter would need to be resolved post DA.

Response

Noted. St Hilliers agree that referral to the traffic committee is required.

D. Splay:

Amended plans are required which detail a 3.0m x 3.0m splay, the splay is required at the corner of National Park Street and Hunter Street. The application should be amended to propose splay and dedication as future road reserve.

Response

The proposal has provided a 3m x 3m splay which has been detailed at the corner of National Park Street and Hunter Street in the floor plans of the Architectural Drawings that accompany this response. This is in accordance with the NDCP where the area has appropriately responded to the northern corner to improve driver and pedestrian sightlines. The area is larger than the existing condition and provides steps adjacent the splay which further improve sightlines and additional view space.

E. Car park layout:

Car park bays and aisle widths on plans are to be dimensioned to confirm compliance with AS 2890.1 – Off-street Parking Facilities. Further, disabled parking bays should be located and identified within proximity of proposed lifts and must be clearly illustrated on the submitted plans.

Response

The Architectural Drawings have updated levels 1-4 in the car park to display dimensions that show how vehicles manoeuvre into spaces. This includes distance of travel for disabled parking bays which will lift lobbies in accordance with the Australian Standards.

F. Public Utilities:

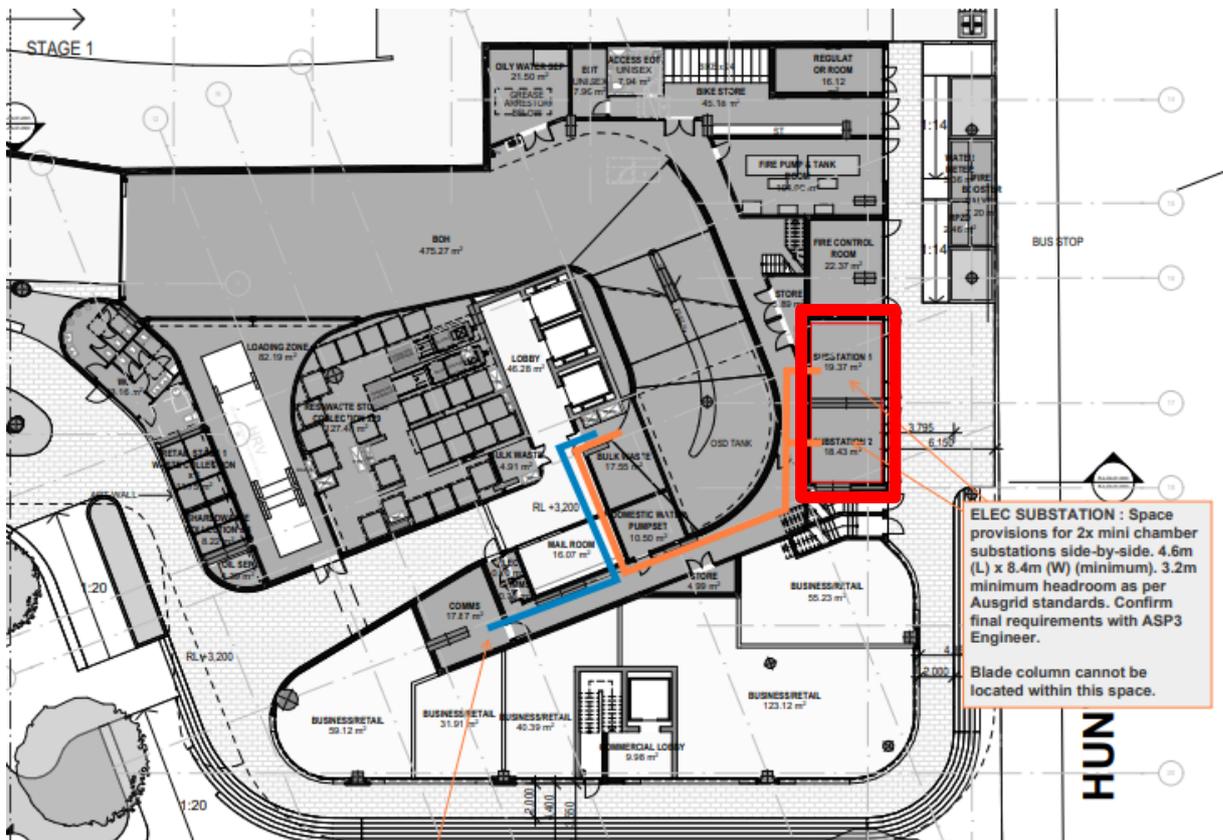
The location of on-site substations is to be confirmed and detailed on the submitted plans. It is noted that an existing substation is located within the proposed Stage 2 area. Further clarification is required concerning upgrades of the public utilities and proposed location for future services.

Response

The existing substation will not be retained, and a new substation is proposed facing Hunter Street. This will involve application for a new load connection which will have to be submitted with a maximum demand calculation. Significant testing went into alternate options for the required substations. Ausgrid require direct street access and driveways are not acceptable for compliance, making the driveway and King Street inappropriate locations for the substations.

The substation location was considered resolved at DIP Session No. 2 by the Panel and the location is shown in **Figure 9**, outlined in red.

Figure 9 - Substation location



Source: Epicentre (Electrical Capacity Report)

G. Site Access:

The proposed 6.5m wide access driveway for Little King Street appears to comply with AS 1890.1 & 2 respectively, however information is required to confirm that a minimum floor to ceiling height of 4.5m will be maintained to enable service vehicles to access the Stage 1 loading and service dock.

Response

The minimum floor to ceiling height of 4.5m has been achieved for the loading and service dock and is detailed on the architectural Drawings.

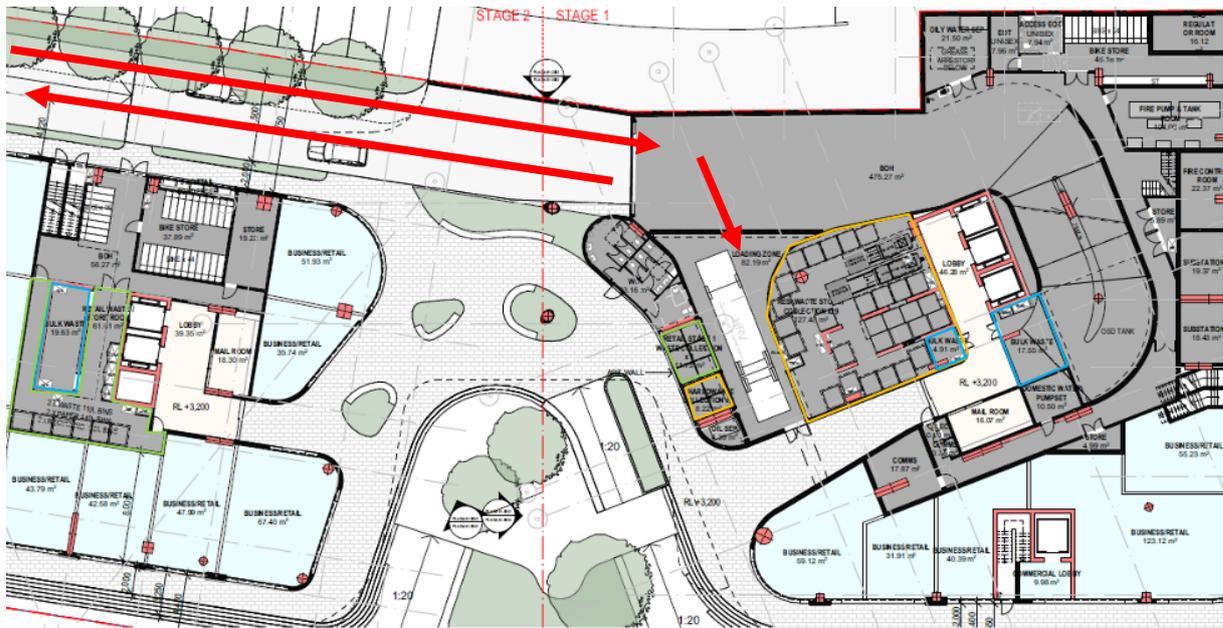
H. Servicing:

The 'Operational Waste Management Plan' states service vehicles will access Stage 1 from National Park Street. However, it appears that all service vehicles would be required to utilise the Little King Street access driveway. Please confirm the location for proposed servicing.

Response

The Operational Waste Management Plan has been updated to state that access to services is via Little King Street, which provides direct two-way access to the loading dock. This access point is the main and only access point for all vehicles. At **Figure 10** in red it identifies the direction in which the service vehicles will arrive from to access the loading dock.

Figure 10 – Ground floor plan with access driveway identified



Source: Plus Architecture, SK-0400 (20623), 6th October 2022.

- Key:
- Stage One Bin Collection Room/Chute Discharge Room
 - Bulky Waste Room
 - Retail Bin Room

Source: Elephant's Foot

I. Subdivision:

Appropriate loading /service facilities will be required for the residential apartments. Further clarification is sought in relation to nature of existing substation lease indicated on DP 867617. Splays 3.0 x 3.0m required at the corner of Hunter and National Park Streets and Little King and National Park Streets.

Response

Noted. The existing substation is not proposed to be retained. A new substation is proposed and will front Hunter Street. An application for a new load connection will have to be submitted with a maximum demand calculation. There is an existing chamber substation on the development site with underground connection. Significant testing went into alternate options for the required substations. Ausgrid require direct street access.

3.0 x 3.0m are proposed on Hunter and National Park Streets and Little King and National Park Streets.

J. Flood Planning Level:

The site is located within in a known high-risk area which is subject to flash flooding. The proposed flood planning level (FPL) for Stage 1 is acceptable, with the retail units designed at 3.2m AHD and vehicular entry 2.20m AHD.

However, it is noted that the architectural plans have not clearly indicated the FPL, amended architectural plans for both stages are to be provided which clearly indicates the FPL for the Ground Floor commercial areas, landscaped area, and driveway access levels.

Response

The architectural plans have been updated by Plus to illustrate the FPL; the plans are appended to this response.

K. Flood Risk Management and Refuge:

The site is noted to be within a high-risk area (L4). National Park Street functions as a floodway and sections of road reserve may not be accessible during flood events. To mitigate the risk to life, the Stage 1 development proposes to make available a flood refuge on higher levels.

i) Amended plans are to be provided that identify a flood refuge, the refuge must be accessible and cater for the expected number of users of the site.

ii) The flood refuge must be accessible and cater for the expected number of users of the site. The flood refuge areas must be indicated on the architectural plans.

iii) NOTE: A flood risk management plan will be required to be prepared prior to Construction Certificate stage for both stages.

Response

The proposal has identified a flood refuge to be provided at Level 05 of the Stage 1 proposal. The flood refuge has now been identified within the updated Architectural Plans which includes the expected user numbers at the site.

It is noted that a flood risk management plan will be required to be prepared prior to Construction Certificate stage for both stages.

L. Flood Storage:

The whole of the site is located within a flood storage area. The proposed building ground floor is to be designed as a suspended slab, which will allow for the unimpeded storage of flood water. A concept design for the ground floor is indicated within the flood report, and this needs to be illustrated through the submitted architectural plans.

Response

The proposed ground plane is raised through a series of generous steps and ramps which assist in overcoming flooding impacts. A flood storage area is outlined on the amended architectural drawings.

M. Newcastle West Flood & Drainage Mitigation:

It is noted that the Verve development at 470 King Street have regraded adjoining road levels and further works are anticipated in association with the development of 1 National Park Street is anticipated. In this respect it has been identified that regrading of frontages the Hunter Street and National Park Street will likely reduce flood impacts on the development and will be required to be undertaken to facilitate the development.

To facilitate the assessment the architectural plans must clearly indicate the FPL for the ground level, landscaped area, and driveway levels.

Response



The Architectural Drawings have now been updated to show the FPL at the ground level landscaped area and driveway levels.

N. Stormwater

It is noted that the use of BASIX component for stormwater reuse calculation purposes is not supported. Further, due to the proposed staging, the section of the driveway access areas within the Stage 2 development area will be open to the elements for an unknown period of time.

i) The development stormwater reuse aspect must be demonstrated and must be designed to the CN DCP 7.06. The roof area for both Stages must be confirmed and calculations for stormwater reuse is to be provided. reuse can be calculated based on the DA roof area. Stormwater reuse can be provided within the landscaped areas on the ground level and podium level, any car wash bays, and on ground floor commercial level toilets (if adequate reuse is available).

Response

Stormwater control will be located within Stage 1 and will include a ground level detention tank, rainwater tank and water quality chamber for treatment and attenuation of stormwater generated. These stormwater treatments have been designed in compliance with the NDCP. Stormwater re-use will be used both externally in irrigation of the podium and ground levels as well as toilets on the ground floor to exceed the BASIX requirements.

ii) The amended plans must clearly indicate the potential location of the rainwater tanks (the tanks could be located at different levels e.g., ground level and podium).

Response

A second rainwater tank is proposed on the plans for the Stage 2 tower, located on the podium level, the Stage 1 rainwater tank remains. The amended architectural plans clearly identify the updated locations.

iii) The stormwater reuse designed so that both Stage 1 and 2 can operate independently, to allow for independent management and maintenance of such infrastructure.

Response

The amended plans include a second rainwater tank for Stage 2 to enable draw down for podium level landscaping, in addition to Stage 1.

iv) The driveway area falls toward Little King Street, the stormwater run-off from the driveway area must be captured and treated to CN DCP requirements.

Response

A nominal area of drains is located along Little King Street that will comprise of grated trench drain across the top and toe of the vehicle ramp housing a single filter cartridge for treatment of run off from the driveway surface. This is adequate to achieve compliance with the NDCP.

v) A Stormwater discharge connection to King Street is required and must be illustrated on the submitted plans.

Response

Noted, this detailed is included within the revised plans. For the driveway, the remainder of Stage 2 discharges through Stage 1 onto Hunter Street as shown in the stormwater plans.

4.8. GROUNDWATER MANAGEMENT

The proposed development will likely affect the groundwater table through demolition of existing structures and proposed structure construction. The applications have been referred to Water NSW (Department of Planning and Environment) and a response is pending.

Note: As discharge of the groundwater is to be directed to the Council drainage system, a separate approval will be required from Council prior to CC for the proposed discharge of any groundwater. An Environmental Engineer or consultant will need to determine the method to treat the groundwater prior to discharge to Council drainage system.

Response

Noted. No response required as the referral from Water NSW is outstanding.

The proposed grouting, piling and foundation work may penetrate the water table, therefore may need an activity approval under section 91 (3) of the WM Act 2000 due to aquifer interference. Accordingly, the proposed development is classified as Integrated Development pursuant to section 4.46 of the EP&A Act. It is however noted that no basement levels are proposed therefore the impacts on the groundwater are expected to be minimal.

4.9. MINE SUBSIDENCE

As advised on 22 December 2022, the proposal has been assessed by Subsidence Advisory NSW. It is understood that a geotechnical consultant is being engaged to complete the required peer review and it is requested that this information be provided to CN for referral to Subsidence Advisory as soon as completed.

Response

A peer review has been completed on the geotechnical findings and the response is appended to this response, the response has already been issued to Subsidence Advisory NSW.

4.10. CLAUSE 4.6 – VARIATION (CL7.4 & CL7.10)

The clause 4.6 has been assessed and the following is advised that the CN does not accept that the 24-metre development standard has been abandoned and do not support the arguments within the clause 4.6 variation request made on this basis, it is recommended that revised clause 4.6 variation requests be submitted, noting that the strongest argument for the variation is made in relation to the development standard being 'unnecessary' based on the 1st limb element of Wehbe.

Further information is also required to be included within the requests to justify that there exists 'sufficient environmental planning grounds' for the variation, including reference to the Objects of the EPA Act 1979, relevant strategic planning documents and specific relevant controls (e.g., ADG).

Response

The Clause 4.6 Variation Statement in relation to building separation has been updated and attached to this response. Urbis have provided additional assessment of the environmental planning grounds to vary the development standard.

The proposed variation to the building separation standards demonstrates that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are

sufficient planning grounds to justify this variation. In summary, these circumstances can be summarised as follows:

- The proposed separation distance is generally consistent with the Apartment Design Guidelines (ADG) in terms of building separation. The northern tower carefully considers the adjacent commercial building by positioning the core along the western edge and designing the apartment in such a way that there are no visual privacy issues between these buildings. The site only has direct interface with the commercial building to the west and will not result in any privacy or amenity concerns, an equitable separation is provided. The shape and orientation of the buildings will ensure strong shared amenity between the two towers and maximize views towards both the rivers as well as the ocean towards the southeast. The building generally complies with the separation distance guidance in the ADG. The proposal provides an equitable share of the required setback and appropriate design solutions to enhance amenity.
- The proposed development results in a better outcome than a compliant tower form. The proposal responds to the unique site-specific provisions, specifically the commercial building sets the urban form which the northern tower responds to. The northern tower has been orientated to achieve the solar access controls of the ADG, if the proposal had to comply with the building separation requirements of the NLEP, the ADG solar access would not be achievable due to existing overshadowing. Further, if proposal had to provide 24 metres between the northern tower and adjacent commercial development the tower would be pushed toward National Park Street and Hunter Street and would overwhelm the public domain, as an equitable setback has not been provided by the adjacent commercial development.
- The proposed variation does not result in any unreasonable impacts to surrounding private and adjacent properties. The reduced building separation as per the LEP will not result in unreasonable impacts to public spaces or adjacent residential developments. The amenity of adjoining properties and within the site will not be compromised. The building separation distance resulting from the non-compliance does not result in any unreasonable impacts on adjoining properties and within the development, particularly with respect to overshadowing, loss of privacy and loss of views.
- The proposed variation has been considered from a design excellence perspective was selected and determined to be acceptable by the Design Integrity Panel and Urban Design Review Panel. The proposal has been determined to be capable of achieving design excellence and supportable from an amenity perspective by both the Design Integrity Panel (DIP) and Urban Design Review Panel (UDRP).

Overall, the reduced building separation (internal and external to the site) is considered justifiable from an environmental planning perspective as it delivers a significant public benefit. Furthermore, there is substantial precedence for varying the building separation control in the Newcastle City Centre with flexibility being demonstrated by CN in the determination of 1 National Park Street, Verve and The Store.

4.11. B3 COMMERCIAL CORE USES

In accordance with cl.7.6 of the Newcastle 2012, the ground floor of the proposal must have an active street frontage which, by definition, must only include business or retail premises. Please confirm that the tenancies will solely be retail premises or business premises, noting that this will form part of conditions of consent on any determination issued.

Response

All tenancies will be solely retail premises and business premises. The proposal has been designed to incorporate business and retail land uses at ground floor to encourage pedestrian traffic and active street frontages. The proposal intends to act as a landmark for Newcastle West with a curated mix of eclectic and creative retail, F&B and business opportunities activating the ground levels. A condition of consent noting this restriction on use to retail premises and business premises is acceptable.

4.12. SUBMISSIONS

The proposal was notified in accordance with the CN Community Participation Plan and five submissions have been received. These submissions identified key matters of concern which can be grouped as follows:

- View loss from the rooftop facilitate at Aero Apartments. Currently the rooftop has views to Merewether, and the development will block these views.
- Above ground car park and light spill to residential properties.
- Privacy and sun exposure impacts to 741 Hunter Street because of the DCP variation
- Historical façade

These matters have been addressed below in a consolidated manner, grouped in key themes rather than responding to each individual submission.

View Loss from the rooftop of Aero Apartments

A summary of the key points raised in the submissions are outlined below:

- *The application has not been accompanied by a View Impact Study or assessment.*
- *Due to the scale of the building, several view corridors will likely be impacted. One of the objectives of the B3 zone is to: "provide for the retention and creation of view corridors." The application has not adequately addressed the issues of view sharing as provided for Tenacity Consulting v Warringah Council [2004] NSWLEC 140. This Land and Environment Court case provides a four-step assessment process to be used when making planning decisions with respect to view sharing. It is contended that the proposal in its current form would not adequately address the concept of "view sharing".*
- *The view loss impacts are likely to result in significant reduction in amenity and enjoyment of the use of existing rooftop facility at Aero Apartments. The rooftop at Aero Apartments has views to Merewether, with view corridors blocked should the development go ahead in its currently submitted form and height.*

Response

The scale of the building is appropriate considering the siting within the Newcastle City Centre. The proposed development complies with the allowable height provisions and has been designed to optimise views. In addition, the site is not near any view corridors identified in the Newcastle City Development Control Plan 2012.

The tower forms and setbacks provide a sense of relief over the podium and result in slender building forms as seen from various view angles. The composition and scale transition respond to the various contextual conditions including lines of site within an urban setting. Within the context of the height

limits and massing as determined by the NLEP, the slender tower forms and positioning maximise views both from and through the site from various view angles.

Aero Apartments roof top enjoys views that extend to the Newcastle foreshore/river to the north and east and Newcastle’s beaches/ocean along the east, see **Figure 11**. The proposal does not completely take out the views for any surrounding development and has considered this in their tower orientation approach. The site sits along the south and west of many developments which provide opportunity for many aspects of views not to be disturbed, whilst ensuring the proposed development provides appropriate views for the future residences.

Figure 11 – Views from Aero Apartments



Source: Walkom



Source: Walkom

The views enjoyed by Aero Apartments to Merewether Beach were taken into consideration during the design development phase and contributed to the determining the orientation and angling of the northern tower, refer to **Figure 12**.

The proposed development results in a better outcome than a compliant tower form when considering views to Merewether from the Aero Apartment. The proposal responds to the unique site-specific provisions, specifically the commercial building sets the urban form which the northern tower responds to. If proposal had to provide 24 metres between the northern tower and adjacent commercial development the tower would be pushed toward National Park Street and Hunter Street and would overwhelm the public domain and impact views from the Aero Apartments.

Nevertheless, the location of 1 National Park Street (approved and under construction) will impact the views Aero residents can experience from the rooftop to Merewether Street. The panoramic views from the rooftop to the north and north-west will be retained.

Figure 12 – Views from Aero Apartments to Merewether



Source: Plus

Car Parking levels and headlight impact on neighbouring apartments.

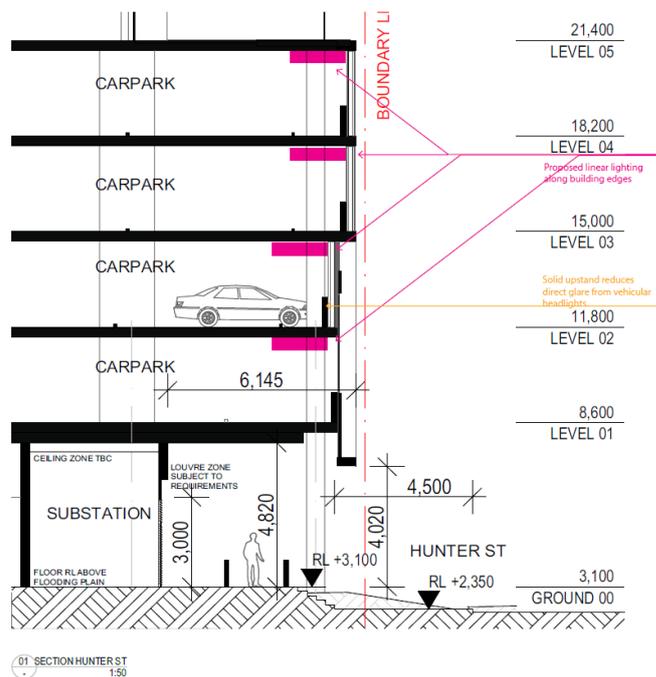
A summary of the key points raised in the submissions are outlined below:

- *The proposed development should not add to and exacerbate the issues created by the development of the adjacent office tower and the impact on existing residents due to the unsuitable cladding/design of the above-ground car park and light trespass it has created for residents.*
- *It is understood that the proposed development will include above ground car-parking up to approximately level 5, which would mirror the adjacent office building car park and face the existing residential apartments*
- *Light passes unimpeded from the car park to the living rooms and bedrooms of residents in the apartments on It's very unpleasant and I'm sure no one would be happy to have such bright lights coming into their homes at all hours, especially when this issue can be avoided through smart design.*
- *Consider the external cladding on the carpark space on the ground level up, so that the car headlights at morning and night don't impact the residents living across the road.*

Response

In response to the headlight, a spill solid upstand at the car park edges has been implemented to mitigate direct glare from vehicles as they manoeuvre through the car park, refer to **Figure 13**. This will provide filtering of artificial light that will appear in an interesting and less impactful way.

Figure 13 – Carpark headlight spill



Source: Plus Architecture

Lighting will also be provided in the car park that will be censored, to ensure the car park is still safe but reduce lighting and the amount of energy, light pollution, and impact on light spill. The lights will be motion sensed to reduce energy, light pollution and light spill when not required.

Further, the car park will be illuminated will allow for safer drivers and pedestrians that vehicles will visibly see including road markings, signs, paths of egress. Minimising the need for drivers to use their headlights.

These resolutions were presented at DIP Session no. 2 and considered resolved by the Dip.

Privacy and sun exposure impacts to 741 Hunter Street because of the DCP variation

A summary of the key points raised in the submissions are outlined below:

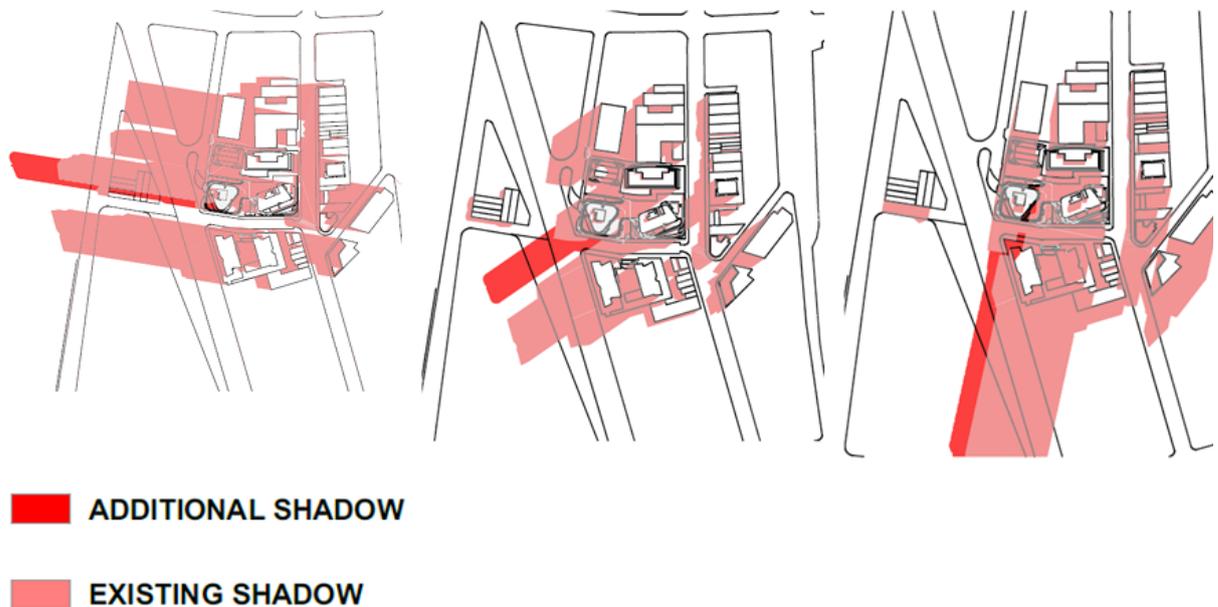
- *The 2 staged development proposal is going to affect my privacy and sun exposure for my unit.*
- *Due to the increase development activity in my area, my unit is being enclosed and my views and sun exposure into my unit is being reduced. In addition to this, I will not get a sense of privacy as there are two additional buildings that have been built in the last 3 years which units can look straight into my unit.*

Response

741 Hunter Street is located to the west of the site, however, does not have a direct interface with 711 Hunter Street. The recently constructed commercial building sits between the 741 and 711 Hunter Street. From boundary to boundary, the sites are approximately 40 metres apart considering this the privacy and sun impacts are negligible.

- **Privacy:** considering the significant setback, Stage 2 will not result in any direct overlooking to 741 Hunter Street.
- **Solar:** The proposal has undergone extensive design assessment to consider the planning parameters which include view impacts and solar access impacts on the surrounding properties that are in the surrounding vicinity of the site. A Shadow Analysis has been prepared by Plus Architecture within the Architectural Design Report which accompanies this DA. The diagrams show how the built form of the podium and orientation of Stage 1 and Stage 2 towers has been carefully considered. The proposal will not result in additional overshadowing to 741 Hunter Street.
- As pictured below in **Figure 14**, the majority of overshadowing is over the existing overshadowed King Street to the south. The diagrams reveal Birdwood Park will not receive any overshadowing from midday onwards, ensuring the park remains a pleasant place for the community during mid-winter. 741 Hunter Street is already overshadowed by existing buildings and proposed development will not result in additional impacts.

Figure 14 – Comparison between Competition Scheme and Proposed Scheme



Source: Plus Architecture

In summary, the privacy and solar impacts of the development are minimal, suitable, and consistent with the anticipated level of development envisaged by the NLEP.

Historical Façade

A summary of the key points raised in the submissions are outlined below:

- *Object strongly to the plan to demolish the existing historical facade.*
- *Encourage CN to request that the developer further investigate how the existing facade could be restored and incorporated into the design of the building. Given the scale of the development, it is hard to see how the potential cost of performing this restoration could be prohibitive.*
- *The benefit of retention be profound, as it offers an opportunity to have a localised area around the intersection of Hunter, National Park and Bellevue streets with a continuous heritage fabric.*

Response

In order to understand the potential façade behind the metal cladding, a portion of cladding was removed in multiple locations on 8 September 2022, in the presence of John Carr the Heritage consultant and CN's Heritage Advisor, Isabelle Rowlett.

The DA's have been accompanied by a detailed Statement of Heritage Impact, which concludes:

- The façade investigation revealed that timber ground support the metal cladding was cut into the decorative façade causing extensive damage. Very little survives the original small corner shop and warehousing building. The internal wall linings were removed for approximately three metres on either side of the north-eastern corner of the building. Of the windows exposed, most had their sashes removed however one top sash remained for use in obtaining detail for reinstatement of the window.
- None of the original façade has been recommended for retention by the heritage advisor. The façade had areas of small, detailed plasterwork that could be salvaged and placed in metal frames to hold them together given the façade is plaster on brickwork and the plaster is an example of the plastering trade that has now almost disappeared in Australia.
- The existing structure is not a heritage item and not considered a contributory building as mentioned above.

The significance of the historical façade is not intended to be retained but opportunities for interpretation will be explored during the design development façade. These opportunities include:

- Available photographs of the building potentially forming a large window display (on Hunter Street) and the plastering examples placed on the floor in front of the photos with a stringline showing where they were located on the facade photo.
- Heritage interpretive artwork as identified as opportunity 6 in the public art plan submitted with the DA. This art proposes to implement a curved edge of architecture with a circular shape and incorporate an open circle within the awning for people to gaze up at. This incorporates the identity of the iconic historical Marcus Clark building clock tower.

The costs to rectify the damage to the façade including the reconstruction of missing windows, parapets, cupola would be significant considering over 75% of the building's façade requires work.

4.13. TRANSPORT FOR NSW

4.13.1. From the TIA

Trip distributions on page 20 show movements that cannot be currently performed:

- *Right turn E/B on Hunter St at Stewart Ave. This is a no right turn currently. Report shows 20% motorists doing this movement in AM peak*
- *U-turn W/B on King St at Stewart Ave. U-turns not permitted at signals. Report shows 5% doing this in AM peak*
- *U-turn S/B on Stewart Ave at King. U-turns not permitted at signals. Report shows 20% using this in PM peak.*

Response

The configuration for the intersection of King Street and National Park Street has been updated and U-turn movements removed in accordance with the TfNSW comments. This has been addressed in detailed in the amended Traffic Impact Assessment prepared by BG&E.

4.13.2. From the SIDRA model

- *King/Stewart and King/National Park traffic control signals both show u-turn phases. They are currently not on site and are not permitted in NSW and should be removed from the model.*
- *King/National Park intersection shows a kerbside through/left lane E/B. While there is no exclusive left arrow in this lane it is used as such (no through traffic) and should be reflected in the model. SIDRA is showing 22% through motorists in this lane.*

Council should ensure that this information is updated to reflect current traffic movements to ensure the modelling is correct, that being noted, TfNSW has no objections to the proposed development as it is considered there will be no significant impact on the nearby classified (State) road network.

Response

The configuration for the intersection of King Street and National Park Street has been updated and U-turn movements removed in accordance with the TfNSW comments. This has been addressed in detailed in the amended Traffic Impact Assessment prepared by BG&E. The conclusions are summarised as:

- The intersections of Stewart Avenue & King Street and King Street & National Park Street are expected to operate above acceptable limits in the pre-development scenario.
- As traffic from the development is added, results get slightly worse. This is because in the SIDRA environment, congested intersections are particularly sensitive to added volumes even though they are not considered substantial.
- It is important to note that the development volumes are not the difference between the pass/failure of these intersections.
- Being a SIDRA network analysis, congestion/delays from adjacent intersections are felt through the network. In this case, the main driver is the King Street & National Park Street changes (as specified by TfNSW) which has knock on effects to Stewart Avenue.

However, all other intersections will operate acceptably in the post-development analysed scenarios.

4.13.3. Additional comments

The development will likely increase pedestrian activity at the intersection of King and National Park Streets. It is recommended that Council considers conditioning the upgrade of these facilities to provide additional red arrow protection at the intersection.

Currently there is red arrow protection for right turn movements into both legs of National Park Street only, all other turning movements from National Park Street and left turn movements on King Street do not have this signal group.

TfNSW Network Operations can provide advice on requirements for the upgrades. The proponent can initiate this process by contacting Development Services North by email: development.north@transport.nsw.gov.au

If Council conditions these upgrades, changes to the traffic signals will require the developer to enter a Works Authorisation Deed (WAD) with TfNSW. TfNSW would exercise its powers and functions of the road authority, to undertake road works in accordance with Sections 64, 71, 72 and 73 of the Roads Act, as applicable, for all works under the WAD.

If Council conditions these upgrades, changes to the traffic signals will require the developer to enter a Works Authorisation Deed (WAD) with TfNSW. TfNSW would exercise its powers and functions of the road authority, to undertake road works in accordance with Sections 64, 71, 72 and 73 of the Roads Act, as applicable, for all works under the WAD.

All works associated with the subject development shall be undertaken at full cost to the developer and at no cost to TfNSW or Council, and to Council's requirements.

Response

The suggestion by TfNSW regarding the upgrade is on the basis of on pedestrian increase. No data was supplied to support the statement, however presumably it would be pedestrian activity to access Marketown and Parry Street. The proposal is only one of a number of new developments that would use the intersection as the primary crossing to access those services.

This suggestion does not consider the broader development occurring within the vicinity of the intersection in Newcastle West and placed the burden on St Hilliers, rather than sharing the requirement to upgrade more equitability.

711 Hunter Street comprises of 258 apartments, which forms a small proportion all residential development in proximity of the intersection.

Those development in the immediate vicinity that have recently been approved include:

- **1 National Park Street:** mixed use (demolition of buildings and erection of 22 storey top shop housing), comprising 193 dwellings.
- **Verve:** a mixed-use development with 2 residential towers.
- **727 Hunter Street:** 16-storey commercial development catering to a large number of workers.
- **'Aero':** mixed-use development with 4 levels of parking and two commercial tenancies fronting Hunter Street which is approximately 14-storeys in height.

This analysis demonstrates that in the context of the surrounding developments and their residents and worker population and the population of 711 Hunter Street, TfNSW and CN cannot expect St Hilliers to bear the cost of cumulative pedestrian increase of which this development only contributes a small portion.

It is unreasonable that the cumulative increase in pedestrian traffic of all of these developments is a cost burden.

5. PROPOSED AMENDMENTS

Pursuant to section 113 of the *Environmental Planning and Assessment Regulation 2021* (refer below) this letter seeks to amend development applications: DA2022/01316 and DA2022/01317, to respond to the RFI matters outlined above.

113 Amendment of modification application

(1) An applicant may, at any time before a modification application is determined, apply to the consent authority for an amendment to the modification application.

(2) The application must be made on the NSW planning portal.

(3) If the amendment will result in a change to the proposed modification, the application must contain details of the change, including the name, number and date of any plans that have changed, to enable the consent authority to compare the development with the modification originally proposed.

(4) The consent authority may, through the NSW planning portal, approve or reject the application.

(5) If the consent authority approves the amendment, the modification application is taken to be lodged on the day on which the applicant applied for the amendment if the consent authority

(a) considers the amendment not to be minor, and

(b) notifies the applicant, by the NSW planning portal, that the later day applies.

(6) A requirement to use the NSW planning portal under this section does not apply if the modification application is subject to proceedings in the Court.

This request for amendment is made on the NSW Planning Proposal and contains the relevant information as specified in section 113 (3). The amendments are considered minor and respond to the queries raised in the Request for Additional Information.

The proposed amendments include:

- Amendments to the staging plan to include a generous interim park in lieu of hoarding around the Stage 2 site. Stage 1 will also include an extended facade treatment to the public art opportunity (mural) on the adjoining wall. The solution is a significant improvement to the ground plane response proposed in the original DA package in the event the market conditions do not allow for stage 2 works to commence simultaneously. This solution provides a number of benefits including alignment with:
 - the Ground Plane and Activation Brief developed to inform the endorsed Design Competition Brief.
 - CPTED principles.

- Designing with Country framework providing a green connection to Birdwood Park.
- Heritage considerations opening up lines of site to the listed Army Drill Hall.
- Amended architectural drawings include the location and extent of the flood storage on ground floor, rainwater tank and flood refuge on Level 05. A rainwater tank location is proposed on level 5 integrated with a landscape scheme which will help to screen the tank and maintain a high quality of amenity to the residents using the communal open spaces.
- The ground floor lobby entry for the northern tower is proposed to be relocated closer to the central area, as well as an additional window to its adjacent retail tenancy to improve its visibility from the street. Indicative street views are provided by Plus to illustrate how the combination of the ground plane, residential, retail frontages, as well as landscaping and lighting work together to create a highly activated ground plane.
- Commercial and residential parking and storage cages are proposed to be separated via a security gate between Level and the upper levels. Diagrams are provided by Plus to illustrate that Level 01 is a shared car parking space with designated areas for commercial that are separate to residential visitor car parking. All access to private residential areas is secured. All private residential storage has been relocated into the secured Level 02 and above.
- A 3.0m x 3.0m splay has been detailed at the corner of National Part Street and Hunter Street on the architectural floor plans.
- Studies have been removed where access to natural light cannot be achieved. The study nooks are very valuable to apartment purchasers and the interiors team have been working through options with the JV to ensure they make a positive contribution to the apartment spaces.
- The design has been amended to achieve an increased footpath width at the top of the stairs to ensure the objectives of retail and ground plane brief can still be achieved, primarily that the retailers can interact with the street through outdoor dining etc whilst ensuring adequate clearances for pedestrian and user activity. An amended ground level step arrangement is also proposed to improve functionality.

This section of the RFI should be read in conjunction with submitted Design Response Report prepared by Plus and accompanying plans and reports identified in Table 1.



6. CONCLUSION

We trust the additional information submitted addresses the matters raised by CN in the RFI received in May and enable both DA's to progress to the July 2023 Planning Panel determination meeting.

Should you wish to discuss any matter further, please do not hesitate to contact the undersigned.

Yours sincerely,

A handwritten signature in black ink, appearing to be "NR" with a long, sweeping tail that extends to the right.

Naomi Ryan
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