

COUNCIL ASSESSMENT REPORT

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSHCC-160 – DA2022-01317
PROPOSAL	DA2022-01317 - Stage 2 involving demolition of existing structures and the erection of a mixed use development proposing 122 apartments, retail premises and associated parking, landscaping, services and associated two lot subdivision.
ADDRESS	Lot 1 DP 867617 - 711 Hunter Street Newcastle West
APPLICANT	Urbis Pty Ltd
OWNER	Hunter Street JV CO Pty Ltd
DA LODGEMENT DATE	17/11/2022
APPLICATION TYPE	Development Application
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19(1) and Clause 2 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 declares the proposal regionally significant development as: Development that has a capital investment value of more than \$30 million.
CIV	\$54,968,646.00 (excluding GST)
CLAUSE 4.6 REQUESTS	<ul style="list-style-type: none"> • CI4.4 – Floor Space Ratio NLEP 2012 • CI7.4 – Building Separation NLEP 2012
KEY SEPP/LEP	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i> • <i>State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development</i> • <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> • <i>Newcastle Local Environmental Plan 2012;</i> • <i>Newcastle Development Control plan 2012.</i>
TOTAL & UNIQUE SUBMISSIONS ISSUES SUBMISSIONS	Three unique submissions
DOCUMENTS SUBMITTED FOR CONSIDERATION	<u>Assessment report and associated documents:</u> <ul style="list-style-type: none"> • Attachment A: Draft Conditions of consent

	<ul style="list-style-type: none"> • Attachment B: Plans/Documents submitted with the application for assessment. • Attachment C: Clause 4.6 Request(s) for variation of cl4.4 – Floor Space Ratio and cl7.4 – Building Separation. <p><u>Documentation Submitted:</u></p> <ul style="list-style-type: none"> • Acid sulphate soil management plan • Amended access report • Amended architectural design report • Amended architectural plans • Amended Cl4.6 – FSR • Amended Cl4.6 – Building Separations • Amended CPTED report • Amended landscape design report • Amended waste management plan • Amended preliminary construction management plan • Amended public art plan • Amended stratum subdivision • Amended stormwater plans and report • Archaeological assessment report • Aviation impact assessment report • Acoustic assessment (Food and Beveridge tenancies) • Acoustic Report • Basix certificate & associated report/drawings • Building code of Australia report • Connecting with Country Indigenous Strategy • Construction management plan • Design response report • Detailed site investigation • DCP compliance table • ESD report • EV Charging report • Green travel plan • Heritage impact statement • Heritage design response • Landscape plan • NatHERs certificate • Preliminary Geotechnical report • Revised remediation action plan • Revised mine subsidence report • Retail staging response • Revised traffic impact assessment • SEPP 65 compliance table & design statement • Statement of Environmental Effects • Site specific flood study • Solar light reflectivity study • Stormwater management strategy • Subdivision plan & report • Survey plan • Wind study
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	None apply
RECOMMENDATION	Approval on a deferred commencement basis

DRAFT CONDITIONS TO APPLICANT	No
SCHEDULED MEETING DATE	27 July 2023
PREPARED BY	Damian Jaeger
DATE OF REPORT	20 July 2023

EXECUTIVE SUMMARY

This report details the City of Newcastle's ('CN') assessment of a development application (DA2022/01317) which seeks consent for the demolition of existing structures and the erection of a mixed use development proposing 122 apartments, retail premises and associated parking, landscaping, services and associated two lot subdivision.

The subject site is known as 711 Hunter Street Newcastle West (Lot 1 DP 867617) and has a total area of 4724 m2 and three street frontages to Hunter Street, National Park Street and King Streets respectively.

The land is site itself does not contain any vegetation and is currently occupied by two buildings and an associated above ground car park. The recent usage of the site has been predominately for retail premises and an indoor recreation facility. The site relatively flat and irregular in shape but generally rectangular.

The proposed use is permissible within the E2 Commercial Centre under the NLEP 2012 as combination of *commercial premises* and *shop top housing*.

The proposal has been the subject of an architectural design competition and this current design is the evolution of that winning entry, via further development through three Design Integrity Panel reviews and endorsement and two reviews by CN's UDRP.

The development meets the 90 metre height standard and has cl4.6 variations to the FSR and Building Separation standards.

The proposal was publicly notified and three unique submissions raised issues in relation to:

- View loss
- Air Quality
- Lighting/Headlight Glare Impacts
- Building Separation/Setbacks
- FSR Variation
- Design Excellence
- Street Interface
- Building Height
- Construction Impacts

Recommendation

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

Accordingly, pursuant to Section 4.16(1)(b) of the EP&A Act, DA2022/01317 is recommended for approval on a deferred commencement basis subject to the reasons contained at **Attachment A** of this report.

1. THE SITE AND LOCALITY

1.1 The Site

- The site is known as 711 Hunter Street Newcastle West (Lot 1 DP 867617) (See **Figure 1** below). It has a total area of 4724 m² and street frontages to Hunter Street (47.54 metres), National Park Street (120.84 metres) and King Street (42.315 metres).
- The site is relatively level and irregular in shape but generally rectangular.
- The site itself does not contain any vegetation and is currently occupied by two buildings and an associated above ground car park. The recent usage of the site has been predominately for retail premises and an indoor recreation facility.
- The site is located within the Newcastle Heritage Conservation area. Additionally there are heritage items within the vicinity including the Drill Hall adjacent (498 King Street) and Bank Corner opposite (744 Hunter Street) which are both Local heritage items under the Newcastle LEP 2012.
- The site is affected by acid sulphate soils, mine subsidence and flooding.

Figure 1 – Location Aerial – 711 Hunter Street, Newcastle West -Subject site highlighted in blue.



Source: City of Newcastle OneMap (April 2021)

1.2 The Locality

The surrounding area is located within the centre of the Newcastle Central Business District. The nearby development is a mixture of older existing commercial buildings and new developments reflecting the vision for the CBD. It is further notable that there are also other new developments approved/new commenced nearby (e.g. 1 National Park Street, 727 & 770 Hunter Streets). It is also advised that the Newcastle Interchange (i.e. bus, train and light rail transport hub) is located within 300 metres walking distance from the proposed site.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

It is noted that that overall proposal consists of two separate DAs (DA2022-01316 and DA2022-01317) which forms in effect Stage 1 and Stage 2 of the overall development .

Proposed development:

The applicant's summary of the proposals are included below:

Stage One

"The northern tower will include commercial and retail tenancies at ground level which will be accessible via National Park Street, Little King Street and Hunter Street. The podium levels will be situated above ground and contain car parking for both visitors and residents, accessed via Little King Street. Level 5 to Level 25 will contain a mixture of residential apartments ranging from 1 bedroom to 3 bedrooms. A numerical breakdown of Stage 1 is shown below:

- 136 apartments including: 35 one bedroom, 74 two bedroom, 27 three bedroom and four bedroom.
- Total GFA: 13, 811.18 sqm
- Floor space ratio: 5.51:1
- Total car parking spaces: 165 spaces over 4 podium levels"

Stage Two

The southern tower will include commercial and retail tenancies at ground level which will be accessible via National Park Street, Little King Street and Hunter Street. The podium levels will be situated above ground and contain car parking for both visitors and residents, accessed via Little King Street. Level 1 to Level 25 will contain a mixture of residential apartments ranging from 1 bedroom to 3 bedrooms.

- 122 apartments including: 35 one bedroom, 72 two bedroom, 15 three bedroom.
- Total GFA: 12,364 sqm
- Floor space ratio: 5.58:1
- Total car parking spaces: 135 spaces over 4 podium levels

It is further advised that the proposed development is inclusive of demolition of existing structures and a two lot subdivision on a Torrens title basis (with associated stratum subdivision)

The key development data is provided in **Table 1**.

Table 1: Key Development Data

Control	Proposal
Site area	4724 m2
GFA	<ul style="list-style-type: none"> • Stage 1 – 13,811 m2 • Stage 2 – 12,364 m2
FSR (retail/residential)	<ul style="list-style-type: none"> • Stage 1 -5.51:1 • Stage 2 – 5.58:1
Clause 4.6 Requests	<ul style="list-style-type: none"> • CI4.4 – Floor Space Ratio NLEP 2012 • CI7.4 – Building Separation
No of apartments	<ul style="list-style-type: none"> • Stage 1 – 136 apartments including: 35 one bedroom, 74 two bedroom, 27 three bedroom and four bedroom. • Stage 2 – 122 apartments including: 35 one bedroom, 72 two bedroom, 15 three bedroom.
Max Height	89.9 metres
Setbacks	<ul style="list-style-type: none"> • Variable
Car Parking spaces	<ul style="list-style-type: none"> • Stage 1 – 165 • Stage 2 – 135

The figures below (**Figures 2- 6**) provide a general outline of the proposed development.

Figure 2 – View towards corner north-western corner of King and National Park Streets (NB: Stage 1 in the background)



Source: Plus Architecture plans (19 May 2023)

Figure 3 – View towards corner south-western corner of Hunter and National Park Streets (Stage 1 in the foreground & Stage 2 in the background)



Source: Plus Architecture plans (19 May 2023)

Figure 4 – Mid-block view south-westerly along western side of National Park Street.



Source: Plus Architecture plans (19 May 2023)

Figure 5 – Mid-block view north-easterly along western side of National Park Street.



Source: Plus Architecture plans (19 May 2023)

Figure 6 – View looking across Birdwood Park towards the north-western corner of King and National Park Streets. (NB: The Drill Hall heritage item to the left within the foreground)



Source: Plus Architecture plans (19 May 2023)

2.2 Background

The development application was lodged on 17 November 2022. A chronology of the development application since lodgement is outlined in Table 2.

Table 2: Chronology of the DA

Date	Event
24 November 2023	DA referred to external agencies
25 November 2022	Exhibition of the application
23 February 2023	Initial Panel briefing
4 May 2023	Request for Information from Council to applicant
19 May 2023	Amended plans and reports submitted in response to the request for further information.
21 June 2023	Update Assessment Briefing

2.3 Site History

The proposal has been the subject of a previous Pre-DA applications (PR2021/00059 & PR2022/00049) with CN's advice confirmed in letters dated 26 August 2021 and 22 May 2022 respectively.

The proposal, and associated design, were the successful entry of an architectural design competition undertaken in accordance with the provisions of Part 7 of the Newcastle LEP 2012. In addition to the initial selection of the proposal as the winning entry in the limited design competition, the Design Integrity Panel (DIP- the competition Jury) considered developing design and other amendments to the proposal on three occasions to date. The most recent consideration was specifically for the DIP to address issues around the proposed staging of the development, and how the area that constitutes the footprint of Stage 2 will be managed until such time that Stage 2 proceeds.

3. STATUTORY CONSIDERATIONS

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

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

- (iii) *any development control plan, and*
- (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (b) *that apply to the land to which the development application relates, the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

It is noted that the proposal is considered to be (which are addressed further in this report):

- Integrated Development (s4.46)
- Requiring concurrence/referral (s4.13)

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

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

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

The following Environmental Planning Instruments are relevant to this application:

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

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

Table 3: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
SEPP 65	<p>Clause 30(2) - Design Quality Principles - The proposal has been the subject of an architectural design competition plus the review and endorsement of the associated Design Integrity Panel.</p> <p>The proposal has also been reviewed by CN's Urban Design Review Panel. The proposal is acceptable having regard to the design quality principles and the Apartment Design Guidelines (ADG).</p>	Yes
State Environmental Planning Policy (Planning Systems) 2021	<p>Chapter 2: State and Regional Development</p> <ul style="list-style-type: none"> Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6. 	Yes
SEPP (Resilience & Hazards) – SEPP (R&H)	<p>Chapter 2: Coastal Management</p> <ul style="list-style-type: none"> Section 2.10(1) & (2) - Development on land within the coastal environment area <p>Chapter 4: Remediation of Land</p> <p>Section 4.6 - Contamination and remediation has been assessed and the proposal meets the provisions of cl4.6 under SEPP (R&H) and is considered is satisfactory subject to conditions. A detailed assessed is contained below under SEPP (R&H)</p>	<p>Yes - The proposal is acceptable in terms of the coastal environment area.</p> <p>Yes - The proposal meets the provisions of cl4.6</p>
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p>Chapter 2: Infrastructure</p> <ul style="list-style-type: none"> Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions. Section 2.121(4) - Traffic-generating development The development was referred to TfNSW for consideration who raised no objections to the proposal is considered it to be acceptable. 	<p>Yes - Ausgrid have provided comments regarding investigation and design for likely network upgrades.</p> <p>Yes</p>

BASIX SEPP	No compliance issues identified subject to imposition of conditions on any consent granted.	Yes
Proposed Instruments	No compliance issues were identified.	Yes
LEP	Newcastle Local Environmental Plan 2012 <ul style="list-style-type: none"> • Clause 2.3 – Zone Objectives and Land Use Table • Clause 4.3 – Height of buildings • Clause 4.4 – Floor space ratio • Clause 4.6 - Exceptions to development standards • Clause 5.1/5.1A – Land acquisition • Clause 5.10 – consideration of Aboriginal and non-aboriginal heritage • Clause 5.21 – consideration of flood impacts • Clause 6.1 – consideration of Acid Sulfate Soils • Clause 6.2 – consideration of earthworks • Clause 7.1 – Objectives of Part (i.e. Newcastle City Centre) • Clause 7.3 – Minimum building street frontage E2 zone • Clause 7.4 – Building separation (24 metres) • Clause 7.5 – Design excellence • Clause 7.6 – Active street frontages in Zone E2 Commercial Core • Clause 7.10 – Floor space ratio for certain development in Area A 	Majority yes (see any issues below)
DCP	<ul style="list-style-type: none"> • Section 3.01 – Subdivision • Section 3.03 – Residential Development • Section 3.10 – Commercial Development • Section 4.01 – Flood Management • Section 4.03 – Mine Subsidence • Section 4.04 – Safety and Security • Section 4.05 – Social Impact • Section 5.01 – Soil Management • Section 5.02 – Land Contamination • Section 5.03 – Vegetation Management • Section 5.04 – Aboriginal Heritage • Section 5.05 – Heritage Items • Section 5.06 – Archaeological Management • Section 6.01 – Newcastle City Centre • Section 6.02 – Heritage Conservation Areas • Section 7.02 – Landscape, Open Space and Visual Amenity • Section 7.03 – Traffic, Parking and Access • Section 7.06 – Stormwater • Section 7.07 – Water Efficiency • Section 7.08 – Waste Management • Section 7.10 – Street Awnings and Balconies 	Yes

Consideration of the relevant SEPPs is outlined below;

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

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

The application is accompanied by BASIX Certificate No. 1340698M prepared by Credwell Energy dated 4 November 2022 committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the BASIX SEPP. The proposal is consistent with the BASIX SEPP subject to the recommended conditions of consent at **Attachment A**.

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

State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development ('SEPP 65') aims to improve the quality of residential apartment development by establishing a consistent approach to the design and assessment of new apartment development across the State. SEPP 65 establishes nine design quality principles to be applied in the design and assessment of residential apartment development.

Section 4 – Application of Policy

Section 4(1) of SEPP 65 sets out development for which this policy applies. The development application comprises development for the purposes of mixed use development with a residential accommodation component (122 dwellings) which consists of the erection of a new building of at least 3 or more storeys and containing at least 4 or more dwellings. As such, the provisions of SEPP 65 are applicable in accordance with Section 4(1) of the policy.

Section 4(2) clarifies that if a particular development comprises development which Section 4(1) identifies and other development, SEPP 65 applies only to the part of the development identified under Section 4(1) and does not apply to the other part. As such, the commercial component (*retail premises*) of the development application is not subject to the provisions of SEPP 65 in accordance with Section 4(2).

Section 28 – Determination of development applications

Section 28(1) of SEPP 65 requires the consent authority to refer a development application to which this policy applies to the relevant design review panel for advice concerning the design quality of the development prior to determining the application.

Furthermore, Section 28(2) of SEPP 65 requires consent authorities to take into consideration; (a) the advice obtained from the design review panel; and (b) the design quality of the development when evaluated in accordance with the design quality principles; (c) the *Apartment Design Guide* ('ADG'), when determining a development application for consent to which SEPP 65 applies.

The development application has undergone the following assessment:

- The development was the subject of an Architectural Design Competition in accordance with cl 7.5(4) of the Newcastle LEP 2012. The submitted proposal results from being the winning design selected by the Jury and then its further development and final endorsement by the Design Integrity Panel (DIP) which consisted of the same Jury members,
- The proposal was additionally reviewed by the CN's Urban Design Review Panel ('UDRP'), who operate under a charter stating that they undertake the functions of a design review panel for the purposes of both SEPP 65 and Clause 7.6(6) of the NLEP 2012. The development application has been referred to the UDRP on two occasions.

The development proposal has been amended during the assessment process in response to assessment matters raised by CN, including the recommendation of the UDRP.

An assessment of the current amended proposal has been undertaken in relation to the Design Quality Principles, as detailed in **Table 4** below. CN is satisfied the amendments and additional information submitted has adequately responded to the matters raised by the UDRP and is considered an appropriate design response. The UDRP, due to the intertwined nature of the two applications, have reviewed the proposals as a concurrent entity.

Table 4: Consideration of the UDRP advise in relation to the design quality principles under SEPP 65

Design Quality Principles
Principle 1. Context and Neighbourhood Character
UDRP Comment
<u>22 February 2023</u>
It was confirmed that following the lodgement of the DA, the UDRP will take over oversight of the design excellence integrity of the proposal, including any subsequent amendments and future s4.55 modifications. The role of the UDRP also covers the SEPP 65/ Apartment Design Guidelines (ADG) considerations and any aspects not covered by the design excellence process under architectural design competition.
The Panel requested information in respect to Designing for Country and Connecting with Country, and following the meeting was provided with the documentation prepared for the design competition by COLA. This was considered to be a valuable input, that established principles for the design that are supported by the UDRP. It is noted that these demonstrated principles for designing for Country and Connecting with Country need to be carried through the design development of the project. From the documents currently provided, it is unclear how these principles are meaningfully progressing and how the proposed staging will be managed so that there is no loss of integrity.
<u>31 May 2023</u>
The physical context of the proposal is largely unchanged. The UDRP again acknowledged the cited COLA document and noted the importance to the design of conceptually and physically

connecting ground plane landscape with elements of the podium façade and with extensive soft landscape treatment of the podium level.

Officer Comment

The context and neighbourhood character aspects are considered to be acceptable in this instance. The UDRP are satisfied that the Designing for Country and Connecting with Country elements have been adequately addressed via the design submission by COLA.

Principle 2. Built Form and Scale

UDRP Comment

22 February 2023

The Panel noted that the proposed subdivision of the site and the subsequent consideration of the overall design competition proposal under two separate Development Applications, brought with it some design-related considerations that did not arise in the design competition process. It was noted that, while the technical aspects of the proposed staging of the overall development do not form part the Panel's considerations, any uncertainties arising may have impacts upon amenity, safety or other ADG impacts, that would need to be considered. These include:

- Easements and reciprocal agreements for parking, access and public domain areas.
- In terms of the proposed two DAs to effect staging, the public domain outcomes for the site will be a concern. Provisions need to be in place to ensure the preservation of the public domain/open space and it is likely a combination of easements for aspects such as access, pedestrian spaces, public domain etc will be required. The development, including the upper floors, are likely to need complex and comprehensive reciprocal easements to ensure vehicular and pedestrian access is properly addressed and preserved.
- Having to the design and nature of the public domain areas, especially the changes in levels and the design of the walkways and resolution of the ground plane, the proposal needs to include restrictions on possible impediments to accessibility. These include locations for any retail outdoor displays, and seating in these areas considering the intended food and drink offerings (which may also extent to restrictive covenants considering the proposed 'staged' split within the proposal).
- It needs to be ensured that the restaurant/bar on level two has proper provision for services.
- Consideration should be given to the protection of privacy of the roof decks, which will be seen from adjoining buildings (e.g. the new proposal at No 1 National Park Street).
- Street address, entry and access to Commercial G.04 needs development.

It was noted that the design of the podium was modified following the design competition, which involved the introduction of extensive residential accommodation on the common podium – which previously entirely devoted to landscape and communal space for residents. The DIP has made recommendations in respect to this area, and a revised design has not as yet been received in response. The UDRP has raised a number of issues pertaining to this area, and awaits the mooted design revisions.

31 May 2023

The UDRP acknowledged the provision of additional documentation in respect to staging and the temporary use of the Stage 2 footprint area pending the commencement of the second stage of the development. The proposal to create an interim public place that has visual and physical connection to the central plaza space was supported, as was the increase of the Stage 1 footprint to permit the great majority of the central public space to be constructed as part of Stage 1. Further reference to these changes is made under the following headings.

The UDRP also noted a moderate widening of the raised walkway outside the National Park St retail spaces in Stage 1, which had previously been raised as a concern in respect to possible clashes between outdoor dining or retail displays and pedestrian and wheel chair paths of travel. The Panel supported the increase in width, which resulted in what was considered to be the minimum workable dimension for this area.

In respect to the proposed elevated food and beverage spaces in the podium volume on the corner of Hunter Street and National Park St, for which further detail had been sought by both panels, the Applicant advised that internal stair access was still considered likely to be provided, but the proponent was awaiting the requirements of a future tenant / occupant/operator for possible layouts in this respect. While accepting that the business that occupies the spaces will have requirements for fit-out and operational considerations, the UDRP noted previous requests to demonstrate, at least indicatively, where stairs might workably be located. This will be determined by both operational considerations and structural restrictions. The loss of any soft landscape elements from these external corner spaces was again noted. While functional Food & Beverage space was obviously a necessary priority, the provision of soft landscape elements should not be abandoned as this assists the external visual connection of landscape elements between ground level and the podium as noted in the COLA report.

Officer Comment

The majority issues raised by the UDRP have been satisfactorily resolved by the additional design details and the introduction of the provision of the temporary park within Stage 2. The submitted landscaping design for the development would form part of any approval including the landscaping proposed at the various podium levels plus the elevated food and beverage spaces. Any proposal to alter/decrease the approved landscape areas in a later application would need to be assessed in detail at the time but would likely be discouraged.

Conditions to address easements and the servicing of food and drink premises (i.e. grease arrestors and mechanical ventilation) are recommended at **Attachment A**.

Principle 3. Density

UDRP Comment

22 February 2023

While the proposal, including tower massing and heights was supported in principle by the UDRP, it is noted that the design is currently undergoing refinement in response to the Design Integrity Panel's (competition Jury's) input. Satisfactory resolution of this design development may result in a minor reduction of proposed yield.

31 May 2023

The proposed density of the development is considered to be generally acceptable. However, comments in respect to provision of an indoor communal space in the southern tower are reiterated under heading 8 Housing Diversity and Social interaction.

Officer Comment

The proposal is considered to be acceptable in terms of density. The proposal relies the 'bonus provisions' under cl7.5 of the NLEP 2012 in terms the proposed FSR and has a small exceedance of the allowable FSR of 5.5:1. This exceedance is assessed in detail under Clause 4.6.

Principle 4. Sustainability

UDRP Comment

22 February 2023

Detailed information in respect to sustainability provisions has not as yet been provided to the UDRP for consideration, and the Panel's attention has primarily been directed to the broad urban design and primary ADG considerations at this stage.

The overall sustainability strategies, including energy and emissions, local PV generation, provision for electric vehicle charging, were issues identified by the UDRP for further consideration.

Officer Comment

The submitted Basix report has been submitted and is considered acceptable. The proposed development will include electric car charging, end of trip facilities, 4-star Greenstar Building rating and solar panels (minimum 20% of the roof area). A greater provision of solar panels would be encouraged on sustainability grounds but the proposed minimum is acceptable. Electric car charging infrastructure in accordance with the provisions of the NDCP 2012 has been recommended within the conditions of consent at **Attachment A**

It is considered that the proposal has satisfactorily addressed the issues outlined by the UDRP.

Principle 5. Landscape

UDRP Comment

22 February 2023

It was noted that the Designing for Country documentation prepared by COLA envisaged an integrated landscape treatment that visually connected the podium level to the ground plane with vegetation in a number of locations, including the north-east corner (National Park St/ Hunter St corner) and the south-west corner adjacent to the Drill Hall. The extensive podium level soft landscape proposed in the Competition design was an integral part of this, and the design development identified by the DIP needs to take into account how the Design for Country vision can be successfully implemented. Towards this end, the leafy landscape character of the podium and the cited connections to ground needs to be reinstated.

While the introduction of residential accommodation to the podium level is not opposed in principle, the reduction of landscape and the consequential close juxtaposition of public and private areas requires further consideration. For example, the NW corner of the communal open space and the proposed dwelling bedrooms are a potential conflict and need to be further developed, and near the southern tower, the close proximity of the running track and dog exercise area needs to be reconsidered, in favour of greater soft-landscape buffer areas.

Very extensive hard-paved private open areas associated with the introduced residential component at podium level are inappropriate for a range of reasons. They do not support the Design for Country vision, they lack privacy for residents, they are excessive in area, and contribute to heat island effect. These areas do not provide an attractive green foreground area for residents of the subject towers or their neighbours that overlook the podium.

Further details are also required of how the communal open space and podium between the two towers will work, in the light of the proposed staging/subdivision and maintaining a continuous development.

31 May 2023

Temporary arrangements for Stage 2 footprint:

The UDRP was strongly supportive of the proposal to demolish the existing Spotlight car park and to temporarily landscape the area as a publicly accessible landscaped space until such time as Stage 2 works commence.

Treatment of Surface Area to Stage 2:

- The site of Stage 2 is proposed to be landscaped as a horseshoe shaped plan with natural turf intended as the main central surface treatment, surrounded by a continuous band of low shrubs and ground covers.
- Surrounding hard paved areas are of decomposed granite providing some permeability.
- Catenary lighting above the open space is proposed to facilitate casual surveillance.
- Perimeter planting of trees in large pots is proposed to be supplemented to prevent unauthorised vehicle access.
- A licenced coffee/food van is proposed to support leisure activities in the temporary area.

The Panel suggested that further consideration be given to tree placement, both to better visually connect the Stage 1 public landscaped entry with the temporary area, and to avoid a monotonous “shooting gallery” appearance of lines of potted plants. Unauthorised vehicle access to the space should be restricted by visually attractive physical barriers, such as the proposed large potted plantings.

Podium top:

In respect to earlier Panel commentary on landscape and spatial treatment of the podium level open spaces and under-croft areas, the following amendments to the design were proposed:

- Privacy issues to Podium Level apartments in part addressed with a continuous extended awning (reducing oversight from apartments nearby – and potentially also assisting draught wind conditions – the Panel noted that the latter appeared a positive addition, but should be tested by wind modelling, as should any reduction in winter sun to apartments from awnings).
- Surface treatment proposed to be combination of timber decking, synthetic turf and perimeter planted beds.

While the landscape proposal has to some extent addressed some noted concerns, it was noted by the Panel that podium level private open spaces remained extremely large, at the expense of more expansive and appropriate areas of living plants that contribute to both the external appearance of the development – which was a feature of the winning competition design – and to resident enjoyment of the communal spaces as *soft-landscaped areas*.

Furthermore, the limited perimeter planting, estimated by the proponent to be in the order of only 1.5m in width, was proposed to serve also as the access way for maintaining the planter beds. This arrangement is considered to be quite unworkable, and should be reconsidered with proper provision made for safe, convenient access for maintenance of all the contributory planter beds across the podium, and for considerably larger areas of soft landscape. This maintenance access needs to take account of the periodic need to access plants for pruning and mulching, and the less frequent need to replace soils and plants.

While timber decking can be attractive, and is considered appropriate for areas under awning cover, it will have a fairly short life-span if fully exposed to the elements. Synthetic turf is not supported for

both sustainability and aesthetic reasons, and has a short useful life with no prospect of being recycled in Australia. It can be very hot underfoot, and is not considered an appropriate inclusion – other than the limited designated dog area.

While there has been some increases in the planted areas outside bedroom windows that can act as a setback from communal spaces, this separation remains less than desirable for achieving reasonable levels of privacy. This should be reconsidered as part of the recommended overall increase in soft landscape area on the podium in lieu of synthetic turf and some hard paving.

Officer Comment

The proposed amended design, as reviewed by the UDRP, has not been further revised by the applicants to resolve the issues associated within the proposed landscaping design, synthetic turf and the design layout in terms of the ratio of communal open space to private open space.

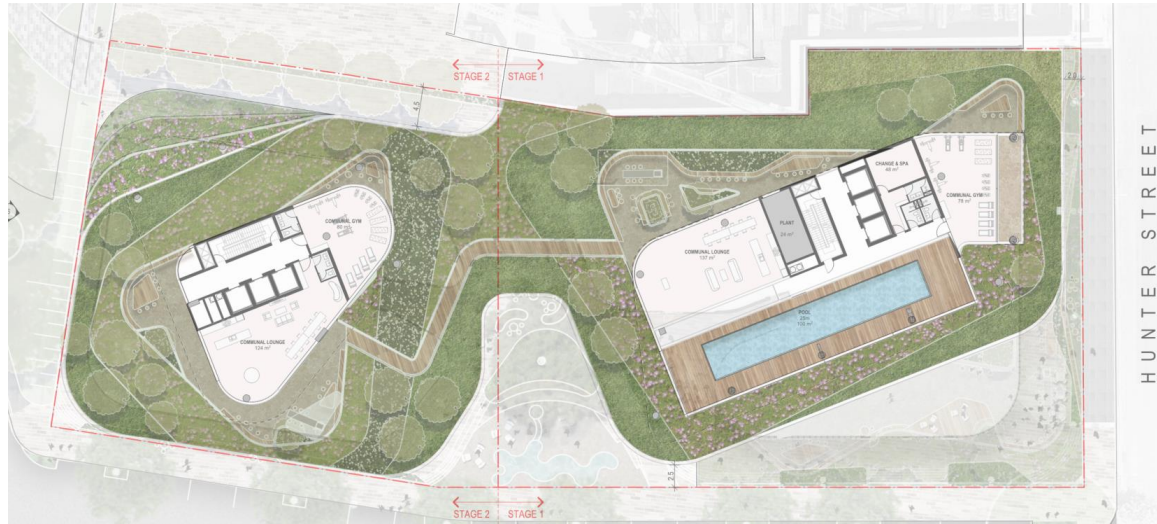
The applicants, while believing that the current design results in a strong design outcome, consider imposition of conditions of consent to facilitate an improved design excellence outcome a good outcome in this instance.

In regard to the above issues, the following is advised:

Communal vs Private Open Space – The amended landscape design, as reviewed by the UDRP, has been raised as a concern considering the extent to which the current design has changed from the winning competition entry, the extracts below provide a broad comparison of the differences. The extent of private open space on the podium compared to the communal landscape area is a concern. It is further noted that compliance, or exceedance, of the ADG requirements does not necessarily equate to a design excellence outcome.

A condition of consent on a deferred commencement basis is recommended at **Attachment A**, requiring that the ratio of communal open space to be increased when compared to private open space for the dwellings on this level podium. The additional communal open space area is to incorporate additional landscape plantings.

Winning Competition Landscaped Podium



Amended Landscaped Podium



Amended Landscaped Use Areas



LEGEND:

- | | |
|------------------------|------------------------|
| 1 PRIVATE OUTDOOR AREA | 5 PASSIVE SEATING AREA |
| 2 PLAY | 6 PET STATION |
| 3 COMMUNITY GARDEN | 7 COVERED BBQ TABLES |
| 4 FITNESS STATION | 8 WORK FROM HOME |

Synthetic Turf – The main issue at hand is that introduction of wide areas of synthetic turf is not consistent with the landscape design of the winning competition entry in the associated architectural design competition and lessens the Designing for Country outcomes in this instance. While several of the points raised by the applicants may have merit, these do not address this prime issue. If synthetic turf was warranted, for the reasons outlined by applicant, this should have been detailed early within the design. Concern is raised that synthetic turf is being proposed as comparable to actual turf within the proposal. A condition of consent, on a deferred commencement basis is recommended at **Attachment A** requiring that the landscape design be amended such that the synthetic turf limited to the pet walking station area .

It is advised that a further landscape change is also recommended below as it interrelates to the discussion of internal communal open space at Principle 8 Housing Diversity and Social Interaction below.

Overall, the landscape outcomes resulting from the combination of the proposed landscape design, and amendments required via conditions recommended at **Attachment A**, are considered to adequately address this landscape element and, on balance, is satisfactory.

Principle 6. Amenity

UDRP Comment

22 February 2023

The apartments were generally considered to provide a good level of internal amenity for future residents. Two areas of needed design development for internal/circulation areas relate to the southern tower:

1. Internalised studies – A number of “study” alcoves were considered to be unsatisfactory. These are habitable spaces requiring natural daylight and ventilation consistent with ADG requirements (that is, habitable spaces/rooms must not borrow daylight and ventilation from other rooms). This requirement is reinforced by the need of increasing number of people working from home. The Panel further noted this has flow-on implications for increased energy demand for artificial light and ventilation needed for day-to-day functionality over the life time of the development.

Exploration of how these spaces can be located on external walls should be pursued. Alternatively, they should be deleted, returning the space to storage or other adjacent habitable spaces. It was also suggested that improved amenity as a bare minimum could be achieved by relocating the adjacent bedroom wardrobe, and aligning the bedroom door and window with the study area so there is an opportunity for some daylight to reach part of the space and so a sightline enabling glimpses to the exterior through windows of the adjacent room.

2. The lobby/corridor areas of the southern tower - have reduced access to views and natural ventilation due to the locating of a plant area at the end of the space, which effectively halves the aperture in the western façade. It was recommended that this area either be relocated or rearranged to widen the glazed opening to an extent commensurate to that proposed in the competition design.

The Panel noted the proposed solution in turn reduces the proportional modulation of the southern tower massing achieved with the competition design's expression of massing.

31 May 2023

Comments above under the Landscape heading in respect to bedroom privacy for some dwellings on podium level are reiterated.

Internal arrangements in Stage 2 apartments and study alcoves are considered acceptable for occasional utilisation - though it is noted that these alcoves remain unsuitable for extended use, such as work-from-home.

The arrangement for natural light access into the corridors of the Stage 2 tower has been illustrated, and though considerably more restricted than the competition design, is considered acceptable.

Officer Comment

The proposal is considered to be an acceptable design outcome and is adequate in terms of the ADG.

It is considered that the proposal has satisfactorily addressed the issues raised by the UDRP.

Principle 7. Safety

UDRP Comment

22 February 2023

The UDRP noted, and fully concurred with the concerns raised by the DIP in respect to the lack of CPTED consideration demonstrated in the layout of the residential pedestrian entrances at ground level. The proposed staging of the towers and the consequential partitioning of the landscaped communal space between them, has potential to further exacerbate the condition that the DIP raised concerns about in respect to CPTED. Both the design for the eventual completed central space, and especially the reduced area available in stage one, need to be further considered in respect to providing safe and welcoming all-hour access to residential lobby spaces.

The Panel noted the modified car park layout for Stage 2, Levels 01 and 02, spaces Residential R.050, 051 and R.121, 122 appear to conflict with the pedestrian open corridor and does not provide a safe swept path due to the corridor's skewed geometry.

31 May 2023

Previous advice in respect to locations in the car park of storage areas is reiterated, in so far as gaining convenient, workable access to the storage, and reducing the likelihood of accidental damage to other residents' parked vehicles when loading or unloading goods for storage.

The Panel noted the revised CPTED report, and changes in the design to better address issues around places of concealment in the car parks and around the pedestrian entries at ground level.

The changes and proposed provisions are considered to have potential to adequately address the concerns raised in respect to pedestrian safety at ground level, and access to the residential lobby spaces from the public area. It is important that the recommendations of Table 2 of the CPTED Report (repeated below) are maintained.

Table 2 of the CPTED Report - items 1 & 2 to ensure activation of frontages and sightlines are maintained:

1 The application of displays, decals, signage and posters on ground level glazing should be minimised so as not to obstruct sight lines.

2 Seating, shelving and other internal built elements within the ground floor retail and commercial premises are encouraged to remain low or transparent to improve views.

The Panel suggested that conditions of consent might be applied along the following lines:

Item 1: DA condition with numerics for extent of shop frontages that must maintain direct lines of sight into retail tenancies (eg. only 10% can have decals/signage/posters etc) plus landscape structures and signage in the public domain are not to obstruct sightlines.

Item 2: DA condition that shelving / internal fit-outs not to have shelving above say 600mm along the frontage.

Officer Comment

The architectural design has been modified on the ground floor to provide an improved outcomes to meet the CPTED principles. The amended design is considered to provide a reasonable outcome in this instance.

It is considered that the proposal has satisfactorily addressed the issues raised by the UDRP.

Principle 8. Housing Diversity and Social Interaction

UDRP Comment

22 February 2023

The UDRP concurred with the DIP's requirement for dedicated interior communal space within the stage 2 southern tower. While there may be proposed reciprocal rights to communal areas, residents are more likely to feel comfortable making use of spaces closer to their residences.

31 May 2023

The Panel noted advice from the Applicant that, on completion of Stage 2, residents are intended to share the use of all common areas between both stages. While this is accepted, better provision should be made for indoor communal space in the Stage 2 building – both for local convenience of residents of Stage 2, and to ensure that any residents of the later stage who may not feel comfortable

using the elevated common area within the Stage 1 tower, have access to an indoor communal space more proximate to their residences.

Officer Comment

The applicants have indicated that they believe that the design provides for a good balance of internal/external communal open space and the provision of an additional internal communal open space area within the Stage 2 tower is not warranted in this instance. Notwithstanding this, the applicants agree that the imposition of conditions of consent to facilitate an improved design excellence outcome a good outcome in this instance.

A condition of consent on a deferred commencement basis has been recommended at **Attachment A** which requires that the outdoor BBQ area on the northern side of the Stage 2 tower being amended to increase its indoor/outdoor functionality and weather protection for the use and enjoyment of future residents.

Overall, the design outcomes resulting from the combination of the current proposal, and amendments required via conditions recommended at **Attachment A**, are considered to adequately address this element and, on balance, is satisfactory.

Principle 9. Aesthetics

UDRP Comment

22 February 2023

The UDRP noted the critical importance of the proposed landscape treatment to the development's overall aesthetic presentation, as well as its Design for Country. The winning Competition design should inform design development in this respect.

The treatment of the podium, in particular the areas in which the car parking extends to the façade, needs to offer a high-quality, residential-friendly presentation to the three streets that the development will occupy.

Landscape treatment is one key component of this presentation, that can soften the façade, as outlined above.

The detail of the façade treatment of non-habitable areas of the podium is critical to ensure a civil, welcoming street presence to customers and to residents returning home.

Cars within the podium should be screened from view, and lighting should be in the form of soft wall "washes" rather than bright lighting or exposure to glare from luminaires.

It was suggested that a large scale working model of the façade and its lighting would be a useful development tool.

Material boards, including accurate representations of colours and finishes, should be provided.

31 May 2023

The Panel's previous advice is reiterated.

Screening of the car park interior from the street and from nearby residences has been a topic that has involved both the DIP and UDRP since the competition design. The most recent renderings of the car park / podium indicate that the LED light source will deliberately be exposed. This is directly contrary to ongoing discussions, which have called for a layered screening of the car parks, coupled with a warm coloured light wash of the screens, that specifically avoids visibility of the light source and that minimises glare. Further design development is required for the podium exterior, including

large scale sections and 3D representations showing layered screening, locations of light sources, and renderings.

Soft landscape design featured highly in the winning competition proposal, as well as being a key element in the COLA Design for Country approach. These were strongly supported by the DIP.

The move to include a significant number of private residences on the podium level, as well as other changes, have substantially reduced the extent of soft landscape treatment, which remains deficient in spite of the most recent design amendments.

Officer Comment

The Design for Country and landscaping aspects have been addressed under previous principles above. The impacts of lighting and head light glare from the parking levels need to be resolved by a detailed screening design which integrates with the appearance of the proposed design while demonstrating that it mitigates these lighting impacts. A condition of consent on a deferred commencement basis is recommended at **Attachment A** to address this issue.

The proposal has satisfactorily addressed the issues raised by the UDRP.

A SEPP 65 Design Verification Statement (dated 19 May 2023, prepared by Plus Architecture) was submitted in support of the current amended proposal pursuant to Clause 29(1) of the *Environmental Planning and Assessment Regulation 2021* ('EP&A Reg 2021'). This statement confirms that a qualified designer, which means a person registered as an architect in accordance with the *Architects Act 2003* as defined by Schedule 7 Dictionary of the EP&A Reg 2021, directed the design of the architectural drawings and provides an explanation that verifies how the design achieves the design quality principals and objectives of the ADG.

The ADG provides greater detail on how residential development proposals can meet the design quality principles set out in SEPP 65 through good design and planning practice. Each topic area within the ADG is structured to provide; (1) **objectives** that describe the desired design outcomes; (2) **design criteria** that provide the measurable requirements for how an objective can be achieved; and (3) **design guidance** that provides advice on how the objectives and design criteria can be achieved through appropriate design responses, or in cases where design criteria cannot be met.

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

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

h) storage.

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

Table 5: Compliance with required topic areas of the Apartment Design Guide (DA2022/1316 & DA2022/01317 combined)

3B Orientation	
<p>Objective 3B-1 Building types and layouts respond to the streetscape and site while optimising solar access within the development</p> <p>Objective 3B-2 Overshadowing of neighbouring properties is minimised during mid winter</p>	
Comment:	Compliance:
<p>The subject site is located on a corner with Hunter St to the North, National Park St to the East and King St to the South. The overall proposed development occupies almost 100% of the site footprint on the ground floor and podium levels with the ground plane commercial tenancies fronting the Hunter St / National Park St corner and the King St / National Park St corner, back of house areas are located behind either along the Hunter street frontage or facing the site access laneway along the sites western boundary away from the prominent visual streetscapes.</p> <p>Above the podium, the building mass and shape respond to the site context, considers solar aspects to apartments and proximity of existing and proposed developments overshadowing the site with the longer axis being north /south for the northern tower (stage 1) and a narrower triangular southern tower (stage 2) to provide apartments with access to either a northern orientation or multiple orientations. There are minimal southern side apartments without access to a second East or West orientation. The upper level apartments are orientated towards the three street frontages or Birdwood Park for street and public space activation.</p> <p>The development considers existing developments and potential future development on neighbouring sites with the resulting overshadowing from the buildings massing and form. It is noted that the neighbouring western boundary has recently been developed and has allowed the development to consider the overshadowing both ways. There is additional overshadowing of the public domain however this is negligible as it is primarily over the adjacent roads and National Park St / King St intersection and generally not public open space areas.</p> <p>The proposed development is considered satisfactory regarding overshadowing to the public domain and neighbouring buildings.</p>	Complies

3D Communal and public open space		
Objective 3D-1		
An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping		
Design Criteria:	Comment:	Compliance:
1. Communal open space has a minimum area equal to 25% of the site.	<p>The proposed development includes two separate open-space areas for communal outdoor activity on different levels providing options for the developments occupants.</p> <p>The level 5 podium area is the larger of the two communal outdoor areas and it contains a mixture of spaces providing for a variety of activities both active and relaxation. This includes various sizes of covered and uncovered seating or dining areas, exercise 'stations', a kids play area, communal vegetable garden, lawn areas, 2 specific pet zones and landscaped spaces.</p> <p>The northern tower has a smaller communal open space on level 17 providing an outdoor kitchen and dining area with elevated views. This area contains a wind screen increasing its usability.</p> <p>The subject site is 4724 m² therefore 25% of the site area equates to 1181 m².</p> <ul style="list-style-type: none"> The podium area is 1329.3 m² The level 17 area is 111.3 m² <p>The total area of communal open space is 1440.6 m² equaling 30.5% of the site area and therefore is more the minimum requirement being 25% of total site area.</p> <p>Stage 1 of the development is situated on an area of 2510 m², being part of the subject site. So therefore 25% of this portion of the site equates to 627.5 m².</p> <ul style="list-style-type: none"> The podium area is 792 m² The level 17 area is 111.3 m² <p>The stage 1 total area of communal open space is 903.3 m² equaling 36% of the stage 1 portion of site area and therefore is more the minimum requirement being 25% of total site area.</p>	Complies
Design Criteria:	Comment:	Compliance:
2. Developments achieve a minimum of 50% direct sunlight	The level 17 roof top communal open space	Complies

<p>to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter).</p>	<p>area on the northern towers is facing north and located at heights above the streetscape and existing neighbouring developments that it achieves unimpeded direct sunlight in mid winter throughout the entire day between 9am and 3pm.</p> <p>The level 5 podium communal open space area of the development that surrounds and links the two residential towers runs most of the podiums length along a north south axis. These areas being on the north, south and west sides of the north tower and wrapping around from the north east to the north west on the south tower. Over the course of the day during mid winter there is direct sunlight to portions of the communal open space areas facing the different aspects.</p> <p>Overall the proposal has direct sunlight to;</p> <ul style="list-style-type: none"> • In excess of 720.3 m², which is 50% of the communal open space provided to the development for 2 hours from 10:30 am.to 12:30pm. • In excess of 590.5 m², which is 50% of the communal open space required for the development for 3.5 hours from 9:00 am.to 12:30pm. • In addition between 12:30pm and 3:00pm there is at least 340 m² of communal open space achieving direct sunlight, which equates to 28.8% of the communal open space required for the development. <p>Stage 1 of the proposal has direct sunlight to;</p> <ul style="list-style-type: none"> • In excess of 451.37 m², which is 50% of the communal open space provided to the development for 3.5 hours from 9:00 am.to 12:30pm. • In excess of 313.8 m², which is 50% of the communal open space required for the development for 4 hours from 9:00 am.to 1:00pm. • In addition between 1:00pm and 3:00pm there is at least 240 m² of communal open space achieving direct sunlight, which equates to 76.5% of the communal open space required for the developments first stage. 	
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	Both stages of the development are provided with more direct sunlight to communal open spaces than the minimum requirement. This along with the overall area and variety of spaces proposed provided for the communal open space will provide good quality amenity for the buildings occupants.			
3E Deep soil zones				
Objective 3E-1				
Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.				
Design Criteria:		Comment:	Compliance:	
1. Deep soil zones are to meet the following minimum requirements:		The subject site is 4724 m ² therefore deep soil zones need to have a minimum dimension of 6m and cover 7% of total site area. This equates to an area of 330.7 m ² . Stage 1 Stage 1 includes 950.6 m ² of ground level landscaping; this is made up of various garden bed areas of varying sizes, widths and heights. This overall area includes a large flexible lawn area located on the southern side of the site that will become stage 2 of the development. This flexible lawn area is the only portion of landscaping proposed on the site with at least a minimum dimension of 6m and can therefore be classified as a deep soil zone. This flexible lawn area of the site is 626 m ² and 7% equates to approximately 13.3% of the site area, which is in excess of the 7% minimum deep soil area requirement and complies. Stage 2 Overall the Stage 2 ground level landscape proposed as part of the development includes landscaped areas equating to 231.7 m ² in the form of garden area and raised planter beds. None of these have a minimum dimension of 6m and therefore do not meet the requirements to be considered as deep soil area. The proposed development for the subject site incorporating the overall complete development (stages 1 and 2 both completed) occupy the majority of the entire site at ground	Satisfactory (Merit based assessment)	
Site area	Minimum dimensions			Deep soil zone (% of site area)
greater than 1500m ²	6m			7%

	<p>level, which is of non-residential uses, as such it is acknowledged that the development cannot comply with the design criteria.</p> <p>Design criteria objectives have been considered in alternative methods by providing landscaping on the buildings podium along with other similar areas, and stormwater management systems.</p> <p>As such, the development is considered acceptable in this regard.</p>													
3F Visual privacy														
Objective 3F-1 Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.														
Design Criteria:	Comment:	Compliance:												
<p>1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <tr> <th>Building height</th><th>Habitable rooms & balconies</th><th>Non-habitable rooms</th></tr> <tr> <td>up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2).</p> <p>Gallery access circulation should be treated as habitable space when</p>	Building height	Habitable rooms & balconies	Non-habitable rooms	up to 12m (4 storeys)	6m	3m	up to 25m (5-8 storeys)	9m	4.5m	over 25m (9+ storeys)	12m	6m	<p>The proposed residential component above the podium is two detached tower structures with one tower towards the northern end of the site and the other at the site's southern edge. The tower structures have the potential for overlooking another.</p> <p>The subject site has three street frontages to Hunter, King and National Park Streets as such building separation setbacks are not relevant to these boundaries. Also noted the neighbouring site to the West contains a multi storey commercial building (727 Hunter St) and the heritage listed Army Drill Hall that fronts King St.</p> <p>Above the podium the towers are stacked with a consistent vertical form to maintain a number of internal apartment layouts, from the sixth floor to the twenty fifth and top floor of both towers. On the northern tower (stage 1) there is a slight reduction in form above the level 17 communal terrace area.</p> <p>Stage 1</p> <p>Setbacks above the fifth floor podium level to the top of the tower (level 25) are:</p> <ul style="list-style-type: none"> 9.0m setback from the shared western boundary to northern end of tower. 	<p>Satisfactory (Merit based assessment)</p>
Building height	Habitable rooms & balconies	Non-habitable rooms												
up to 12m (4 storeys)	6m	3m												
up to 25m (5-8 storeys)	9m	4.5m												
over 25m (9+ storeys)	12m	6m												

<p>measuring privacy separation distances between neighbouring properties.</p>	<ul style="list-style-type: none"> - This setback is complying to up 8 storeys / up to 25m in height. - The setback is non-complying above 9 storeys / over 25m in height. - There is a 15.8m separation to the neighbouring office building (727 Hunter St) above the level 5 podium. <ul style="list-style-type: none"> • 5.0m / 20.0m splayed setback from the eastern / boundary. <ul style="list-style-type: none"> - This setback is from the National Park Street frontage boundary <p>The shortfall in the setbacks / separation distances in this regard are satisfactory as the 727 Hunter St is a commercial building on the neighbouring site that at its closest point above the podium is 15.8m away from the proposed development.</p> <p>Stage 2</p> <p>Setbacks above the fifth floor podium level to the top of the stage 2 southern tower (level 25) are:</p> <ul style="list-style-type: none"> • 8.8m setback from the shared western boundary to the tower face. <ul style="list-style-type: none"> - This setback is almost a complying setback of 9m for habitable rooms and balconies to up 8 storeys / up to 25m in height. - The setback is non-complying above 9 storeys / over 25m in height. - There is a 17.0m separation between the south eastern corner of the neighbouring office building (727 Hunter St) above the level 5 podium from the towers north west corner. • 3.6m setback from the southern boundary to the tower. 	
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	<ul style="list-style-type: none"> - This setback is from the King Street frontage boundary that has an adjacent increased width to the road reserve. • 3.1m setback from the eastern boundary to the closest point of the tower. - This setback is from the National Park Street frontage boundary. <p>On the eastern side of National Park Street is the One National Park twin residential tower development. There is in excess of 24m in separation distance between the towers of the 2 developments at the closest point.</p> <p>Separation between towers.</p> <p>There is a separation distance of approximately 22.6m between the two tower structures on the site. This setback is non-complying above 25m in height / above 9 stories where it is required to be 24m between habitable rooms and balconies. The non-complying setback equates to 1.4m or appropriately 5.8% overall.</p> <p>The two tower forms are not parallel to one another and the separation distance varies from 22.6m to approximately 40m as the forms splay away from one another. Therefore the towers are only separated by less than 24m for a few metres of the facades length, which is between apartment balconies on each tower. The associated internal apartment living spaces are located in excess of 24m from another and the primary orientations from these living areas are in different directions that assist alleviating the primary privacy concerns between apartments.</p>	
	<p>Overall the minor reduction in the towers separation within the development is considered minor. Overall the development is consistent with the intent of the objective and acceptable in this regard.</p>	
A4 Solar and daylight access		

Objective 4A-1

To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space

Design Criteria:	Comment:	Compliance:
1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.	<p>STAGE 1</p> <p>Contains 136 apartments, of which 70% equates to 96 apartments.</p> <p>Stage 1 has 63 out of 136 apartments achieving a minimum of two hours of sunlight at midwinter to balconies and the internal living space. This equates to 46.3% of apartments, which is less than the minimum 70% requirement.</p> <p>The non-compliance is a shortfall of 33 apartments not achieving the required minimum access to sunlight in mid winter.</p> <p>For stage 1 the application documentation suggests that 121 out of 136 apartments achieve a minimum of two hours of sunlight at midwinter to balconies and the internal living space. This equates to 89% of apartments, which is more than the 70% requirement.</p> <p>It is however unclear how this has been achieved as the face of the tower fronting National Park St appears to be orientated south of due east. This combined with the location of some apartment living rooms (eg. on the south side of party walls extending to the balcony edge) creates some doubt as to the apartment numbers stated. The documentation does not provide clear detail as to how, where and when the sunlight is achieved to the apartments main internal living space and balconies in mid winter for the required minimum 2 hours.</p> <p>STAGE 2</p> <p>Contains 122 apartments, of which 70% equates to 86 apartments.</p> <p>Stage 2 has 62 out of 122 apartments achieving a minimum of two hours of sunlight at midwinter to balconies and the internal living space. This equates to 50.8% of apartments, which is less than the minimum 70% requirement.</p>	Satisfactory (Merit based assessment)

	<p>The non-compliance is a shortfall of 24 apartments not achieving the required minimum access to sunlight in mid winter.</p> <p>For stage 2 the application documentation suggests that 79 out of 122 apartments achieve a minimum of two hours of sunlight at midwinter to balconies and the internal living space. This equates to 64.8% of apartments, which is less than the 70% requirement.</p> <p>The complete development overall has 125 out of the 258 apartments that achieve a minimum of two hours of sunlight at mid winter to balconies and the internal living space. This equates to 50.8% of total apartments in the development and is less than the 70% required and therefore does not meet the requirement.</p> <p>The overall development non-compliance is a shortfall of 56 apartments not achieving the required minimum access to sunlight in mid winter.</p> <p>The current development is the resultant outcome of the winning design from an architectural design competition held under CI7.5(4) of the NLEP 2012. The current proposal has been reviewed by both the Design Integrity Panel (DIP) and CN's UDRP. Notwithstanding the non-compliance in terms of solar access, the proposal is on balance is considered to be acceptable.</p>	
Design Criteria:	Comment:	Compliance:
2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter.	Not Applicable	N/A
Design Criteria:	Comment:	Compliance:
3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	<p>STAGE 1</p> <p>Contains 136 apartments, of which 15% equates to 20.4 apartments.</p> <p>7 out of the 136 apartments achieve no sunlight in mid winter. This equates to 5.2% of total</p>	Satisfactory (Merit based assessment)

	<p>apartments in stage 1 and is less than the 15% maximum allowable and therefore meets the requirement.</p> <p>STAGE 2</p> <p>35 out of the 122 apartments achieve no sunlight in mid winter. This equates to 28.7% of total apartments in stage 2 and is more than the 15% maximum allowable and therefore does not meet the requirement.</p> <p>The complete development overall has 42 out of the 258 apartments that achieve no sunlight in mid winter. This equates to 16.3% of total apartments in the development and is more than the 15% maximum allowable.</p> <p>This shortfall is minor in nature, being 3 apartments (15% of the proposed development equates to 39 apartments) therefore the overall proposed development can be regarded as satisfactory.</p>	
4B Natural ventilation		
<p>Objective 4B-3</p> <p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.</p>		
Design Criteria:	Comment:	Compliance:
<p>1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</p>	<p>60% of apartments in the first 9 storeys are required to be cross ventilated, which for the proposed development at completion having 62 apartments over the first 9 storeys, equates to 38 apartments required to be ventilated.</p> <p>Stage 1 has 28 apartments on the first 9 storeys, with 60% being 17 apartments. The proposed stage achieves 18 apartments that are naturally cross ventilated which is 64.3% and compliant.</p> <p>Stage 2 has 34 apartments on the first 9 storeys, with 60% being 21 apartments. The proposed stage achieves 20 apartments that are naturally cross ventilated which is 58.8%. This equates to a shortfall of 1.2% or 1 apartment to meet the total minimum natural cross ventilation requirement for the stage.</p>	<p>Complies Overall</p> <p>Stage 1 Complies</p>

	The proposed development overall achieves 18 apartments that are naturally cross ventilated which is 61.3% and complies with the requirements.									
Design Criteria:	Comment:	Compliance:								
2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	There are no cross over / cross through apartments within the development.	N/A								
4C Ceiling heights										
Objective 4C-1										
Ceiling height achieves sufficient natural ventilation and daylight access.										
Design Criteria:	Comment:	Compliance:								
1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <table border="1"><tr><th colspan="2">Minimum ceiling height for apartment and mixed use buildings</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table> These minimums do not preclude higher ceilings if desired.	Minimum ceiling height for apartment and mixed use buildings		Habitable rooms	2.7m	Non-habitable	2.4m	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	Mixed use Stage 1 The ground floor retail tenancy spaces have a floor to floor height of 5.5m to Level 1. This easily allows for a 3.3m ceiling height or other flexibility of space in the future. The level 1 commercial space has a floor to floor height of 4.6m which includes the depth of the floor and ceiling structure. This provides adequate space to accommodate the minimum ceiling height required along with the associated floor and ceiling structure of the building. The commercial space located between level 2 and 4 currently proposed to be a bar (roof) has a floor to floor height of 5.5m. This provides for adequate floor / ceiling structure to achieve a mixed use ceiling height of 3.3m. Stage 2 The ground floor retail tenancy spaces have a floor to floor height of 5.5m to Level 1. This easily allows for a 3.3m ceiling height or other flexibility of space in the future.	Complies
Minimum ceiling height for apartment and mixed use buildings										
Habitable rooms	2.7m									
Non-habitable	2.4m									
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use									
	Apartments Stage 1 Level 5, the podium level has a floor to floor height of 3.4m. This allows for a 700mm depth for the floor / ceiling structure to achieve the									

	<p>minimum ceiling height of 2.7m which is adequate.</p> <p>From Level 6 to Level 24 the floor to floor height is 3.2m. This allows for a 500mm depth for the floor / ceiling structure to achieve the minimum ceiling height of 2.7m which is adequate.</p> <p>Level 25 is the highest residential level in the tower. There is no RL or specific ceiling height on the stage 1 / north tower to confirm the floor to ceiling height of the level 25 apartments. It appears on the section drawings provided for the proposal that a 'level 26' line indicates a 3.2m height above level 25 to be located within the ceiling / roof structure. This would appear to indicate that a minimum 2.7m high ceiling height is capable of being achieved on level 25.</p> <p>Stage 2</p> <p>Levels 1 to level 4 have a floor to floor height of 3.2m. This allows for a 500mm depth for the floor / ceiling structure to achieve the minimum ceiling height of 2.7m which is adequate.</p> <p>Level 5, the podium level has a floor to floor height of 3.4m. This allows for a 700mm depth for the floor / ceiling structure to achieve the minimum ceiling height of 2.7m which is adequate.</p> <p>From Level 6 to Level 24 the floor to floor height is 3.2m. This allows for a 500mm depth for the floor / ceiling structure to achieve the minimum ceiling height of 2.7m which is adequate.</p> <p>Level 25 is the highest residential level in the tower. There is no RL or specific roof height level on the stage 1 / north tower to identify the structural allowance for the buildings roof and ceiling located above the level 25 apartments. It appears on the section drawings provided for the proposal that a 'level 26' line indicates a 3.2m height above level 25 to be located within the ceiling / roof structure. This would appear to indicate that a minimum 2.7m high ceiling height is capable of being achieved on level 25.</p>	
4D Apartment size and layout		
<p>Objective 4D-1</p> <p>The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.</p>		
Design Criteria:	Comment:	Compliance:

<p>1. Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>	Apartment type	Minimum internal area	studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>The total overall development contains 258 apartments.</p> <p>Stage 1 of the proposed development is the northern tower and associated podium, which consists of 136 apartments.</p> <p>12 of the 136 apartments in stage 1 do not meet the minimum apartment area requirements. This equates to 8.8% of the apartments being non-compliant.</p> <p>Details of the non complying apartments are;</p> <p>Apartment type 1.07.03 (as per general floor plan L6 – L16) – 2 Bed x 11 apartments.</p> <p>The apartment has an area of 74.8 m². The minimum area for 2 bedroom, 2 bathroom apartments is 75m². This equates to a shortfall of 0.2m².</p> <p>Apartment type 1.17.01 (L17) – 2 Bed x 1 apartment.</p> <p>The apartment has an area of 74.7 m². The minimum area for 2 bedroom, 2 bathroom apartments is 75m². This equates to a shortfall of 0.3m².</p> <p>The non-complying apartments areas in stage 1 are all very minor being less than 0.3m². It is considered that the shortfall is nominal and has minimal impact of the performance of the apartments.</p> <p>Stage 2 of the proposed development is the southern tower and associated podium which consists of 122 apartments.</p> <p>All 122 apartments in stage 2 have internal areas that meet the minimum requirement.</p> <p>The development overall therefore includes 12 non-complying apartments of the 258 total. This equates to 4.7% of the total overall apartments.</p>	<p>Satisfactory (Merit based assessment)</p>
Apartment type	Minimum internal area											
studio	35m ²											
1 bedroom	50m ²											
2 bedroom	70m ²											
3 bedroom	90m ²											
<p>Design Criteria:</p> <p>2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and</p>	<p>Comment:</p> <p>All habitable rooms within the apartments have window or doors within an external wall. There are no situations of borrowed daylight from adjoining rooms.</p>	<p>Compliance:</p> <p>Complies</p>										

air may not be borrowed from other rooms.		
Objective 4D-2 Environmental performance of the apartment is maximised.		
Design Criteria:	Comment:	Compliance:
1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	All apartments are provided with combined living / dining / kitchen open-space areas.	Complies
Design Criteria:	Comment:	Compliance:
2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	<p>In Stage 1, 135 of 136 apartments have a maximum habitable room depth of less than 8m from a window for an open plan living / dining / kitchen area to the furthest kitchen bench.</p> <p>Details of the non-conforming apartment is;</p> <ul style="list-style-type: none"> Apartment type 1.05.01 – 3 Bed x 1 apartments. The apartment has a combined living / dining / kitchen space that is rectangular in shape 4.2m in width and 9.35m long. The only window / glazed door in this space is located on the narrow end wall opposite the kitchen which is 8.55m from the furthest kitchen bench. <p>This is 550mm longer than the maximum depth of the design criteria. The overall increased depth of approximately 7% is therefore minor nature is deemed to be consistent with the design objective.</p> <p>In Stage 2, all 122 apartments have a maximum habitable room depth of less than 8m from a window for an open plan living / dining / kitchen area to the furthest kitchen bench.</p> <p>The development overall therefore contains 1 non-complying apartment of the 258 total. This equates to 0.07% of the total overall apartments and is minor in nature, therefore the overall proposed development can be regarded as satisfactory.</p>	Satisfactory (Merit based assessment)
Objective 4D-3 Apartment layouts are designed to accommodate a variety of household activities and needs.		
Design Criteria:	Comment:	Compliance:
1. Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space)	Master Bedrooms Stage 1	Satisfactory (Merit based assessment)

	<p>9 of the 26 apartment types in stage 1 have master bedrooms with a minimum area of less than 10m², which consists of 75 of the total 136 stage 1 apartments. This equates to 55.1% of the stage 1 apartments.</p> <p>Stage 2</p> <p>7 of the 21 apartment types in stage 2 have master bedrooms with a minimum area of less than 10m², which consists of 34 of the total 122 stage 2 apartments. This equates to 27.9% of the stage 2 apartments.</p> <p>Other Bedrooms</p> <p>Stage 1</p> <p>3 of the 26 apartment types in stage 1 have a bedroom (excluding the master bedroom) less than the 9m² minimum requirement excluding wardrobe space. This equates 23 apartments being 16.9% of the total apartments in stage 1 of the development.</p> <p>Stage 2</p> <p>6 of the 21 apartment types in stage 2 have a bedroom (excluding the master bedroom) less than the 9m² minimum requirement excluding wardrobe space. This equates 9 apartments being 7.4% of the total apartments in stage 2 of the development.</p> <p>Overall</p> <p>109 of the 258 apartments in the total development have master bedrooms with a minimum area of less than 10m². This equates to 42.2% of the apartments in the development.</p> <p>32 of the 258 apartments in the total development have a bedroom (excluding the master bedroom) less than the 9m² minimum requirement excluding wardrobe space. This equates to 12.4% of the apartments in the development.</p> <p>In this regard the 0.1-0.8 m² shortfall is considered minor and is deemed to be satisfactory.</p>	
Design Criteria:	Comment:	Compliance:

<p>2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p>	<p>Stage 1</p> <p>7 of the 26 apartment types in stage 1 have bedrooms with a dimension less than the 3m minimum dimension requirement of the design criteria. This equates to 43 of the 136 apartments and is 31.6% of the total apartments in stage 1 of the development.</p> <p>Stage 2</p> <p>14 of the 21 apartment types in stage 2 have bedrooms with a dimension less than the 3m minimum dimension requirement of the design criteria. This equates to 75 of the 122 apartments and is 61.5% of the total apartments in stage 2 of the development.</p> <p>Overall</p> <p>118 of the 258 apartments in the total development have bedrooms with a dimension less than the 3m minimum dimension requirements of the design criteria. This equates to 45.7% of the total apartments in the development.</p> <p>The shortfall in width is generally due to the irregular shape of rooms due to the angular forms of the building. This has resulted in splayed or angled walls to bedrooms with the minimum width of the room being less than the minimum. In most cases these rooms are significantly larger at the opposite end and are fit for purpose for their intended use as bedrooms.</p> <p>In this regard the proposed development can be regarded as satisfactory.</p>	<p>Satisfactory, (Merit based assessment)</p>
<p>Design Criteria:</p> <p>3. Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments. • 4m for 2 and 3 bedroom apartments. 	<p>Comment:</p> <p>Stage 1</p> <p>112 of the 136 apartment types in stage 1 of the proposed development have living rooms or combined living / dining rooms which achieve the minimum distances required for the number of bedrooms provided in the apartment.</p> <p>Details of the 24 non-complying apartments are;</p> <ul style="list-style-type: none"> • There are 4 x 1 bedroom apartment types that account for the 24 total 1 bedroom apartments with living spaces less than 	<p>Compliance:</p> <p>Satisfactory - (Merit based assessment)</p>

	<p>the minimum required width of 3.6m. These apartments all have 3.0m wide living spaces which is a shortfall in width of 600mm from the required minimum width.</p> <p>The 24 apartments not complying with the minimum living room width equate to 17.6% of total apartments in stage 1 of the development.</p> <p>Stage 2</p> <p>87 of the 122 apartment types in stage 2 of the proposed development have living rooms or combined living / dining rooms which achieve the minimum distances required for the number of bedrooms provided in the apartment.</p> <p>Details of the 35 non-complying apartments are;</p> <ul style="list-style-type: none"> • There is 1 x 1 bedroom apartment type (apartment 2.07.06) that account for the 8 x 1 bedroom apartments with living spaces less than the minimum required width of 3.6m. This apartment type has an angled living space starting from a width of 3.2m. • There are 3 x 2 bedroom apartment types that account for the apartments with living spaces less than the minimum width required of 4.0m. These apartments all have living room widths of 3.65m. <p>The 35 apartments not complying with the minimum living room width equate to 28.7% of total apartments in stage 2 of the development.</p> <p>Overall</p> <p>The development overall has 199 of 258 apartments with living rooms or combined living / dining rooms which achieve the minimum distances required for the number of bedrooms provided in the apartment.</p> <p>For the development overall this equates to 22.9% of the total apartments that do not achieve the minimum living room width requirement of the design criteria.</p>	
Design Criteria:	Comment:	Compliance:
4. The width of cross-over or cross-through apartments are at least	Not applicable	N/A

4m internally to avoid deep narrow apartment layouts.																	
4E Private open space and balconies																	
Objective 4E-1 Apartments provide appropriately sized private open space and balconies to enhance residential amenity.																	
Design Criteria: 1. All apartments are required to have primary balconies as follows: <table border="1" data-bbox="207 607 633 893"> <thead> <tr> <th>Dwelling type</th><th>Min. area</th><th>Min. depth</th></tr> </thead> <tbody> <tr> <td>Studio</td><td>4m²</td><td>-</td></tr> <tr> <td>1 bedroom</td><td>8m²</td><td>2m</td></tr> <tr> <td>2 bedroom</td><td>10m²</td><td>2m</td></tr> <tr> <td>3+ bedroom</td><td>12m²</td><td>2.4m</td></tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	Dwelling type	Min. area	Min. depth	Studio	4m ²	-	1 bedroom	8m ²	2m	2 bedroom	10m ²	2m	3+ bedroom	12m ²	2.4m	Comment: Stage 1 23 apartments of the 132 apartments in stage 1 of the development do not have primary balcony areas that achieve the minimum area and depths required for the number of bedrooms provided in the apartment. <ul style="list-style-type: none"> 12 x 2 Bed apartments, having non-conforming balconies. All the subject apartments are stacked which includes the balcony areas that repeat the identical fluid form and overall area. These balcony areas do not achieve the minimum 2.0m width requirement to achieve the minimum primary balcony required area of 10 m², having widths down to 1.0m which is a shortfall of 1.0m. 11 x 1 Bed apartments all being apartment type 1.07.02, have non-conforming balconies with an area of 6.8 m², which is less than the 8.0 m² required for 1 bedroom apartments. This is a shortfall of 1.2 m² or 15% that does not achieve the minimum width requirement of 2.0m. It is noted that the subject apartment includes additional balcony space 1m in width in front of the bedroom however this area is less than 2.0m in width and excluded from the overall calculation. <p>The 23 apartments that do not meet the minimum balcony / private open space requirements in stage 1 of the development equate to 17.4% of the total development stage.</p> Stage 2 67 apartments of the 118 apartments in stage 2 of the development do not have primary	Compliance: Satisfactory - (Merit based assessment)
Dwelling type	Min. area	Min. depth															
Studio	4m ²	-															
1 bedroom	8m ²	2m															
2 bedroom	10m ²	2m															
3+ bedroom	12m ²	2.4m															

	<p>balcony areas that achieve the minimum area and depths required for the number of bedrooms provided in the apartment.</p> <ul style="list-style-type: none"> • There are 7 x 2 Bed apartment types that account for 65 of the apartments having non-conforming balconies. The subject apartment balconies are all either 7.4m², 8.5m² or 9.2m² in area and do not achieve the minimum 2.0m width requirement to achieve the minimum primary balcony required area of 10 m². The balconies have a fluid curved edge form that sometimes includes additional balcony space less than the 2.0m minimum width required for the primary balcony area. • 2 x 3 Bed apartments, having non-conforming balconies. These balcony areas at no point achieve the minimum 2.4m width required for the primary balcony area of 12 m² required for a 3 bedroom apartment. As such the 2 subject apartments (Apartment 2.25.01 & Apartment 2.25.03) have a balcony area of 0 m² which is a shortfall of 12.0 m² or 100% of the required primary balcony area. <p>Overall</p> <p>90 of the 250 apartments in the overall development with balconies do not have primary balcony areas that achieve the minimum area and depths required for the number of bedrooms provided in the apartment. This equates to 36.0% of the apartments in the overall development.</p> <p>The current development is the resultant outcome of the winning design from an architectural design competition held under CI7.5(4) of the NLEP 2012. The current proposal has been reviewed by both the Design Integrity Panel (DIP) and CN's UDRP.</p> <p>The UDRP noted that the proportions (areas and widths) of the provided balconies fell short of ADG recommendations in a number of</p>	
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	instances. While it is not acceptable that the Design Verification Statement states ADG compliance when this is not the case, the layouts of the balconies were evident on the plans, if not the areas. While falling short in some respects, given that the dimensions of the balconies was not raised as an issue during either review process, and that they are reasonably functional and useful as laid out, and considering that increasing balcony dimensions would require a major replanning of apartment interiors, it is not concluded appropriate that a further modification at this stage in the review process is warranted.	
Design Criteria: 2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	Comment: There are 4 podium level apartments in stage 1 of the development, and another 4 apartments in stage 2. All 8 apartments located on a podium or similar structure (Level 5) have a private open space in excess of the 15 m ² minimum requirement and have a depth of more than the 3m minimum requirements. As such each stage and the overall development comply with the design criteria.	Compliance: Complies
4F Common circulation and spaces		
Objective 4F-1 Common circulation spaces achieve good amenity and properly service the number of apartments.		
Design Criteria: 1. The maximum number of apartments off a circulation core on a single level is eight.	Comment: The proposed development includes two residential towers above the podium level. Stage 1 is the north tower, which has 3, 4, 5, 6 or 8 apartments on each level that share the circulation core. No level has more than 8 apartments sharing the circulation core. This meets the requirements of the design criteria. Stage 2 is the south tower, which has either 3, 4, 5 or 6 apartments that share the circulation core on each level. Each level has at most 6 apartments sharing the circulation core which is less than the 8 apartment maximum. Therefore this meets the requirements of the design criteria and complies.	Compliance: Complies

Design Criteria:	Comment:	Compliance:
<p>2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<p>The proposed development consists of two residential towers above the podium level and contains 258 apartments in total overall.</p> <p>Stage 1 of the proposed development is the north tower which includes 136 apartments and contains 3 lifts. The design criteria permits a maximum of 40 apartments serviced per lift in a 10+ storey building. 3 lifts are proposed for the Stage 1 residential tower, which under the design criteria allowance can service a maximum total of 120 apartments.</p> <p>The proposed developments stage 1 north tower's 3 lifts average out to servicing 45.3 apartments each, this is more than the 40 apartments max per lift permitted by the design criteria.</p> <p>Stage 2 of the proposed development is the south tower, which includes 122 apartments and contains 2 lifts. The design criteria permit a maximum of 40 apartments serviced per lift in a 10+ storey building. 2 lifts are proposed for the Stage 2 residential tower, which under the design criteria allowance can service a maximum total of 80 apartments.</p> <p>The proposed developments stage 2 south tower's 2 lifts average out to servicing 61 apartments each, this is more than the 40 apartments max per lift permitted by the design criteria.</p> <p>In respect to the lifts, the UDRP recommended a report be provided, via conditions of consent, from a lift consultant or provider, to demonstrate that the proposed lifts have the capacity to reasonably service the number of floors and apartments proposed. Waiting times and consideration of impacts when residents are moving in or out, should be considered as part of an overall assessment. A condition addressing this aspect is recommended at Attachment A.</p>	<p>Satisfactory - (Merit based assessment)</p>
4G Storage		
<p>Objective 4G-1 Adequate, well designed storage is provided in each apartment.</p>		

Design Criteria:	Comment:	Compliance:								
<p>1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling type</th><th>Storage size volume</th></tr><tr><td>1 bedroom</td><td>6m³</td></tr><tr><td>2 bedroom</td><td>8m³</td></tr><tr><td>3+ bedroom</td><td>10m³</td></tr></table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling type	Storage size volume	1 bedroom	6m ³	2 bedroom	8m ³	3+ bedroom	10m ³	<p>The storage elements of the proposal initial did not comply with the provisions of the ADG (and adjacent table). The applicants provided revised details demonstrating that all of the proposed dwellings will achieve the minimum combined storage per dwelling as given by the ADG table detailed to the side (including that at 50% is achieved within the dwellings).</p>	<p>Complies</p>
Dwelling type	Storage size volume									
1 bedroom	6m ³									
2 bedroom	8m ³									
3+ bedroom	10m ³									

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

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 2 of Schedule 6 of the Planning Systems SEPP as the proposal comprises a *General development over \$30 million*. Accordingly, the Hunter Central Coast Regional Planning Panel (HCCRPP) is the consent authority. The proposal is consistent with this Policy.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2: Coastal Management

Section 2.10(1) & (2) – '*Development on land within the coastal environment area*' of the SEPP includes broad provisions addressing the protection of coastal values within a 500 metre wide area.

Section 2.10(1) & (2) provides that development consent must not be granted to development on land that is within the coastal environment area unless the consent authority is satisfied that the proposed development will not cause an adverse impact on: the integrity and resilience of the biophysical, ecological and hydrological environment, including surface and groundwater; coastal environmental values and processes; water quality of any sensitive coastal lakes; marine vegetation, native vegetation and fauna and their habitats; existing public open space and access to and along the foreshore; and Aboriginal cultural heritage.

The development is located upon highly disturbed land and has been commercially used for many decades with the entire site covered hardstand and including two existing buildings. It is considered that the current proposal will have no likely impacts on the coastal environment area under the SEPP and is acceptable particularly in relation to the biophysical environment and coastal processes and maintaining public access to the foreshore.

The proposal will have no material impact on environmental, coastal, native vegetation, surf zone or access issues listed above. Similarly, the long historic usage of the site for commercial

uses, plus its highly disturbed nature, leaves negligible coastal attributes remaining as part of the subject site. The proposal has been assessed in terms of Aboriginal heritage and archaeological aspects and is considered to be acceptable. Overall, the proposal is acceptable, on balance, in terms of its impacts.

Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021* (*the Resilience and Hazards SEPP*) have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out. In order to consider this, a Preliminary Site Investigation ('PSI'), Detailed Site Investigation ('DSI') and a Remedial Action Plan ('RAP') has been prepared for the site.

The proposal has been assessed by CN's Senior Environment Protection Officer and is considered to be acceptable subject to conditions of consent recommended at **Attachment A**.

A PSI and DSI was prepared by Tetra Tech Coffey dated October 2022 has been submitted with the application.

CN has reviewed the Detailed Site Investigation (DSI) assessment carried out by Tetra Tech Coffey and noted 13 boreholes had been advanced across the accessible portions of the site. The results of the soil sampling indicated an absence of gross contamination with the consultant concluding that the site presents a low risk to human health.

It is also noted that a comprehensive site history had been undertaken where Title Searches spanning from 1897 to present date have been carried out with no obvious contaminating activities being identified.

However, Section 9 (Conclusion) states "*The DSI was carried out in accessible locations and assessment beneath the building was not possible. This means that there are some data gaps with respect to the fill quality beneath the existing building and the limited nature of the groundwater assessment (one well only)*". The consultant recommends that further contamination assessment be completed following demolition of the existing building.

The applicant submitted to Council a Remedial Action Plan (RAP) prepared by Tetra Tech Coffey dated 17 July 2023. The RAP proposed to address any potential contamination at the subject site with further sampling once the site has been cleared. Section 4 details the additional investigation being required to fully characterise the site, as access to all sampling points was restricted due to the presence of the existing buildings.

The additional investigation is to include:

"To meet the minimum number of sample points required for site characterisation to detect a hotspot, as per the NSW EPA (2022) Sampling Design Part 1 – Application within building footprint areas, with an area of about 4,000m², 11 sample points are required. In order to adequately assess the building footprint, grid-based, systematic sampling will be completed." (Section 4.1)

It is noted the above sampling is reflecting in Figure 3 Proposed Sampling Plan prepared by Tetra Tech Coffey dated 16 May 2023.

The RAP proposes to address any potential contaminated soils on site by excavating the contaminated affected areas and disposing the material to a licenced facility that can lawfully accept this waste. Following remediation works being carried out, the site will be validated, and the report submitted to Council and the Principal Certifying Authority. CN has no objection to this method along with the need for further sampling to be incorporated in the RAP and will address the above by appropriate conditions of consent.

Overall, subject to the recommended conditions of consent at **Attachment A**, including remediation, it is considered that Section 4.6 of Resilience and Hazards SEPP has been satisfied as it is considered that the land is suitable in its contaminated state, with its required remediation, for the purposes for which the development is proposed to be carried out.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2: Infrastructure

The proposal was referred to Transport for NSW and also assessed by CN's Senior Development Engineer. The submitted development falls under several sections of SEPP (T&I) as detailed below:

Section 2.121(4) - Traffic-generating development

The proposal has been referred to TfNSW as traffic generating development under Schedule 3, s2.121(2).

TfNSW provided its advice raising no objections to the proposal.

The overall proposal, including the advice of the TfNSW, has been assessed by CN's Senior Development Engineer and is considered to be acceptable subject to the conditions of the consent recommended at **Attachment A**.

Newcastle Local Environmental Plan 2012

The relevant local environmental plan applying to the site is the *Newcastle Local Environmental Plan 2012* (NLEP). The aims of the NLEP under Clause 1.2(2) include:

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) to respect, protect and complement the natural and cultural heritage, the identity and image, and the sense of place of the City of Newcastle,*
- (b) to conserve and manage the natural and built resources of the City of Newcastle for present and future generations, and to apply the principles of ecologically sustainable development in the City of Newcastle,*
- (c) to contribute to the economic well being of the community in a socially and environmentally responsible manner and to strengthen the regional position of the Newcastle city centre as a multi-functional and innovative centre that encourages employment and economic growth,*
- (d) to facilitate a diverse and compatible mix of land uses in and adjacent to the urban centres of the City of Newcastle, to support increased patronage of public transport and help reduce travel demand and private motor vehicle dependency,*
- (e) to encourage a diversity of housing types in locations that improve access to employment opportunities, public transport, community facilities and services, retail and commercial services,*
- (f) to facilitate the development of building design excellence appropriate to a regional city.*

The proposal is considered to be consistent with these aims.

Zoning and Permissibility (Part 2)

The site is located within the E2 Commercial Centre zone (previously B3 Commercial Core) pursuant to Clause 2.2 of the Newcastle Local Environmental Plan 2012. The proposal is permitted with consent within the E2 Commercial Centre zone under Clause 2.3 as combination of *commercial premises* and *shop top housing* (as extracted below).

commercial premises means any of the following—

- (a) business premises,*
- (b) office premises,*
- (c) retail premises.*

shop top housing means one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities.

Note—

Shop top housing is a type of **residential accommodation**—see the definition of that term in this Dictionary.

The E2 zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

- *To strengthen the role of the commercial centre as the centre of business, retail, community and cultural activity.*
- *To encourage investment in commercial development that generates employment opportunities and economic growth.*
- *To encourage development that has a high level of accessibility and amenity, particularly for pedestrians.*
- *To enable residential development only if it is consistent with the Council's strategic planning for residential development in the area.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To provide for commercial floor space within mixed use development.*
- *To strengthen the role of the Newcastle City Centre as the regional business, retail and cultural centre of the Hunter region.*
- *To provide for the retention and creation of view corridors.*

The proposal is considered to be consistent with these zone objectives for the following reasons:

- i. The proposed development provides an integrated mix of apartments and retail premises, including opportunities for food and drink premises, that will serve the needs of the community and the future residents.
- ii. The retail premises proposed will encourage employment opportunities and economic growth in the area.
- iii. The development includes a significant public domain area linking the two proposed towers and has a high level of amenity aimed particularly to pedestrians. The ground floor of the two proposed towers incorporates a range of retail premises (including intended food and drink offerings) around this public domain area, and orientated towards the adjoining King, National Park and Hunter Streets to provide active street frontages.
- iv. The development is acceptable in terms of adopted view corridors and view sharing principles.
- v. The proposal is well placed within a prime central location to utilise public transport with both multiple bus routes nearby and the Newcastle Interchange. The site is well located to encourage both walking and cycling.
- vi. The proposed development is consistent with the strategic planning goals for the Newcastle City Centre and the promotion the Newcastle West area as the regional business, retail and cultural centre of the Hunter region.

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

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 6** below.

Table 6: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Minimum subdivision Lot size (CI 4.1)	No minimum lot size applies to this site under E2 Commercial Centre zone	<ul style="list-style-type: none"> 2,510 m² (Stage 1) & 2,214 m² (Stage 2), respectively 	Yes
Height of buildings (CI 4.3(2))	90 metres	89.91 metres	Yes
FSR (CI 4.4(2))	5.5:1 (with the combined operation of cl7.10 & cl7.5(6))	5.58:1 12,364m ² (CI4.6 request lodged – see the detailed assessment below)	No
Exceptions to development standards (CI4.6)	The applicant must submit a written cl4.6 request to seek variations to development standards.	<p>The proposed development includes variations to the following development standards and the applicants have submitted cl4.6 requests to variation these standards– see the detailed assessment below):</p> <ul style="list-style-type: none"> CI4.4 – Floor Space Ratio NLEP 2012 CI7.4 – Building Separation NLEP 2012 	Variation requests are assessed in detail below.
Land acquisition (CI 5.1/5.1A)	Development on land intended to be acquired for public purposes	The subject site is not affected by any land acquisition requirements under the NLEP 2012	Yes
Heritage (CI 5.10)	<p>The site contains no heritage items but is located within the Newcastle Heritage Conservation Area.</p> <p>The site is within the vicinity of the following heritage items:</p> <ul style="list-style-type: none"> Bank Corner (former Bank of NSW)—744 Hunter Street—NLEP Item 500 	A detailed assessment of the proposal and applicants supporting heritage reports has been undertaken and confirmed that the proposal is acceptable in this instance.	Yes

	<ul style="list-style-type: none"> • Army Drill Hall— 498 King Street— NLEP Item 508 • Birdwood Park • Bellevue Hotel 		
Flood Planning (CI5.21)	The flood risks for any development is to be minimised so to protect life and property. Development is to be assessed having regard to cumulative flood impacts, flood evacuation and the effects of climate change.	The proposal has been assessed by CN's Senior Development Engineer and is acceptable in terms of flooding. A detailed flood assessment has been undertaken under Section 4.01 NDCP 2012 detailed below.	Yes
Acid sulphate soils (CI 6.1)	<p>Class 4 –</p> <p>Works more than 2 metres below the natural ground surface.</p> <p>Works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface.</p>	<p>The applicants have submitted a 'Geotechnical Report and Acid Sulfate Soils Management Plan' prepared by Terra Tech Coffey meeting the requirements of CI6.1(3).</p> <p>CN has reviewed the Acid Sulfate Soil Management Plan (ASSMP) prepared by Tetra Tech Coffey dated October 2022 and notes that based on the findings from the geotechnical investigation, Acid Sulfate Soils (ASS) have been assessed at depth and will need to be managed during construction. The ASSMP provides the applicant and their contractors with ASS management protocols for use during the earthworks proposed for the redevelopment at the Site. The ASSMP presents the approach and methodology for ASS management at the site to be followed. This report provides a basis for specifications for ASS management.</p> <p>A condition of consent addressing the implementation of the Acid Sulfate Soil Management Plan is included within the</p>	Yes

		recommended conditions of consent at Attachment A .	
Earthworks (CI 6.2)	<p>Before granting development consent for earthworks, the consent authority must consider the following matters—</p> <p>(a) <i>the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development,</i></p> <p>(b) <i>the effect of the proposed development on the likely future use or redevelopment of the land,</i></p> <p>(c) <i>the quality of the fill or the soil to be excavated, or both,</i></p> <p>(d) <i>the effect of the development on the existing and likely amenity of adjoining properties,</i></p> <p>(e) <i>the source of any fill material and the destination of any excavated material,</i></p> <p>(f) <i>the likelihood of disturbing relics,</i></p> <p>(g) <i>the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.</i></p> <p>(h) <i>any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</i></p>	<p>The extent of proposed earthworks is commensurate with that required to construct the proposed mixed use development having regard to the slope of the land and the overall size and height of the proposal. It is considered that the proposal is acceptable in terms of its impacts. The quality of any fill material to be imported to the site can be controlled by appropriate conditions of consent.</p>	Yes
Newcastle City Centre objectives (CI7.1)	That development demonstrates it meets the Newcastle City objectives	The proposal is considered to be consistent with the intended strategic planning outcomes for the Newcastle City Centre.	Yes

Minimum building street frontage E2 zone (CI7.3)	Minimum of least one street frontage being at least 20 metres	Proposal has three street frontages of 47.54 m (Hunter St), 112.6 m (National Park St) and 42.3 m (King St) respectively.	Yes
Building separation (24 metres) (CI 7.4)	A proposed building must be erected so that the distance from the building to any other building is not less than 24 metres at 45 metres or higher above ground level.	<p>The 24 metre requirement applies both to external sites and internally where multiple structures are proposed.</p> <p>The proposed development does not meet internally the 24 metre separation between the two proposed towers. Additionally, each proposed tower does not meet the separation to the existing development at 727 Hunter Street, Newcastle West.</p> <p>The applicants have submitted a cl4.6 variation request in this respect.</p>	Variation requests are assessed in detail below.
Design Excellence (CI 7.5)	<p>The proposal, being over 48 metres in height, triggers the requirement for an architectural design competition ('design excellence competitions') under cl7.5(4) of the NLEP 2012.</p> <p>A comprehensive architectural design competition was undertaken for development on the site. The proposal is the resultant winning entry following further design development, including three reviews by the Design Integrity Panel (and associated endorsement) and reviews by CN's Urban Design Review Panel.</p>	<p>An assessment of the current proposal, including the undertaking an architectural design competition cl7.5(4), has demonstrated that all the provisions of cl7.5 have been met.</p> <p>In accordance CI7.5(2), this assessment has found that the development "exhibits design excellence" and it is recommended that the Panel approve the subject development on this basis.</p>	Yes
Active street frontages in Zone E2 Commercial Core (CI 7.6)	Land within the E2 zone must provide an active street frontage.	The proposal meets the provisions of cl7.6 which respect of active street frontages to Hunter, King and National Park Streets.	Yes

Floor space ratio for certain development in Area A (CI 7.10)	<p>CI7.10 acts to alter the applicable FSR for development within area A.</p> <p>In this instance, as the site is over 1500 m² and mixed use proposal, the applicable FSR becomes 5:1 under cl7.10, as opposed to the 8:1 within the LEP mapping.</p> <p>It is further noted that cl7.5(6) provides a 10% bonus equating to a final allowable FSR of 5.5:1 in this instance.</p>	<ul style="list-style-type: none"> • Stage 1 -5.51:1 • Stage 2 – 5.58:1 • Overall FSR 5:54:1 	Variation requests are assessed in detail below.
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The proposal is considered to be generally consistent with the LEP.

Clause 4.6 Request

The Development Standard to be varied and extent of the variation

The proposal involves two cl4.6 variation requests: -

- CI4.4 – Floor Space Ratio NLEP 2012 & CI7.10 Floor space ratio for certain development in Area A
- CI7.4 – Building Separation NLEP 2012

It is advised that both of these cl4.6 requests arise for each of the two proposed applications on the subject site. As these variation requests interact between the two separate proposed applications (i.e. DA2022/01316 – 'Stage 1' and DA2022/01317 – 'Stage 2') the assessment below will consider these variations concurrently to ensure a clear and comprehensive assessment (and will be included in each separate assessment report). The cl4.6 assessment below should be read in conjunction with the detailed CI4.6 variation requests made by the applicants Urbis at **Attachment E**

Preconditions to be satisfied

Clause 4.6(4) of the LEP establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard. Clause 4.6(2) provides this permissive power to grant development consent for a development that contravenes the development standard is subject to conditions.

The two preconditions include:

1. Tests to be satisfied pursuant to CI 4.6(4)(a) – this includes matters under CI 4.6(3)(a) and (b) in relation to whether the proposal is unreasonable and unnecessary in the circumstances of the case and whether there are sufficient environmental planning grounds to justify contravening the development standard and whether the proposal is in the public interest (CI 4.6(a)(ii)); and
2. Tests to be satisfied pursuant to CI 4.6(b) – concurrence of the Planning Secretary.

These matters are considered below for the proposed development having regard to the applicant's Clause 4.6 request.

Cl4.4 – Floor Space Ratio NLEP 2012 & Cl7.10 Floor space ratio for certain development in Area A

The effective allowable FSR for the subject site is 5.5:1 under NLEP 2012, with the combined operation of cl7.10 & cl7.5(6).

The FSR allowable for the subject site under the NLEP 2012 is 8.0:1 but, via the operation of Cl7.10, this is reduced to 5.0:1.

Cl 7.5(5) then further alters the allowable FSR, via an additional 10% provision, to an effective 5.5:1 (i.e. an extra 0.5:1)

Cl4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

The applicants Cl4.6 request details the cl4.4 variations respectively as follows:

- Stage 1 – 5.51:1 (for its proposed respective allotment) (6.54 m² 0.05% variation)[#]
- Stage 2 – 5.58:1 (for its proposed respective allotment) (187.00 m² 1.54% variation)[#]
- Combined FSR – 5.54:1

As Stage 1 and Stage 2 are proposed to be subdivided into separate Torrens title allotments, the combined FSR is only provided as information and is not prime to the cl4.6 variation request assessment.

It is further advised that the submitted cl4.6 variation request is written on the basis that the development had not been to the UDRP prior to lodgement (hence the 10% 'bonus' under cl7.5(6) did not yet apply). Notwithstanding this, the applications have now been reviewed by the UDRP and the 10% provision applies to the development and, in this instance, it is considered that the cl4.6 variation requests remain appropriate. The maximum FSR for the proposals remains unchanged but the numerical and percentage variations for the purposes of cl4.6 request have effectively decreased.

The applicant's variation request is summarised in the following points: -

- i. The request is made on the basis of the first limb of the tests set out in the LEC judgement *Wehbe v Pittwater Council* [2007] NSWLEC 827 which submits that the variations are reasonable and strict compliance is unnecessary as the objectives of the standard and the objectives of the associated zone (i.e. E2- Commercial Centre) is otherwise achieved.
- ii. The request is also made on the third limb of *Wehbe*, "*..that the underlying objective or purpose of the development standard would be undermined, defeated or thwarted if compliance was required with the consequence that compliance is unreasonable (Initial Action at [19] and Linfield Developments Pty Ltd v Cumberland Council [2019] NSWLEC 131 at [24]).*"
- iii. "*The Request also seeks to demonstrate the 'unreasonable and unnecessary' requirement is met because the burden placed on the community by not permitting the variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made*

in an analogous context, in Botany Bay City Council v Saab Corp [2011] NSWCA 308 at [15])."

- iv. The design of the proposal *exhibits design* excellence in accordance with cl 7.5(2) of the NLEP 2012 having undergone an architectural design competition, review and endorsement by the associated Design Integrity Panel and review by CN's UDRP.
- v. Notwithstanding that the effective FSR in this instance is 5.5:1, a commercial building would be allowed an FSR of 8.0:1 which is significantly greater than the current proposal.
- vi. The design of the proposal "*..delivers a significant public benefit by the redistribution of floor space from the ground plane to the tower to provide generous and publicly accessible spaces with through site links creating greater permeability of the site.*"
- vii. "*The variation to FSR does not result in non-compliances to the Apartment Design Guidelines (ADG) visual privacy guidelines and does not result in unreasonable tower setbacks or street wall heights inconsistent with Newcastle Development Controls 2012 (NDCP) objectives. The design is sympathetic to the surrounding context and does not overwhelm the public domain.*"
- viii. "*The proposed variation does not result in any unreasonable amenity impacts to adjoining properties or public spaces including Birdwood Park.*"
- ix. "*The proposed variation does not result in any additional height above the NLEP height limit; therefore, the resultant additional bulk and scale is negligible.*"
- x. "*The proposal will not result in any adverse impacts to surrounding heritage items and enhances view lines to the Army Drill Hall from National Park Street.*"

To address the first limb of *Wehbe*, the applicant has correctly noted that cl7.10 does not directly have associated objectives, so they have addressed the relevant objectives under cl7.1 of Part 7 (Additional local provisions—Newcastle City Centre), under which cl7.10 falls. This approach is considered to be appropriate, and has previously been accepted in similar circumstances as comprehensive way to resolve this issue in combination with the objectives of cl4.4 (see below).

In assessing the applicant's response to the cl7.1 objectives, they have adequately demonstrated that the current proposal meets these objectives notwithstanding the proposed FSR variation.

Secondly, the applicants have also addressed the objectives of cl4.4 – Floor Space Ratio. This is consistent with previous accepted approaches and is a comprehensive way to ensure that the intent of the relevant objectives within the Newcastle LEP 2012 are met in terms of floor space ratios.

In assessing the applicant's response to the cl4.4 objectives, they have adequately demonstrated that the current proposal meets these objectives notwithstanding the proposed FSR variation. It is agreed that the operation of cl7.10 results in the circumstance where, just by changing the proposed use of a building to a *commercial building*, as defined under the Newcastle LEP 2012, the site would enjoy a 8.0:1 permissible FSR with the resultant building having a significantly greater gross floor area. It is further agreed that the proposed combination of the two towers setbacks, design, height, bulk and scale results in reasonable impacts having regard to amenity, overshadowing, views, privacy and visual appearance.

Notwithstanding that the cl4.6 request indicates it would also rely on the third limb of *Wehbe*, no submissions are included to effectively argue this limb. It is advised that it would have been unlikely that CN would have accepted a variation based on the third limb of *Wehbe* in this instance. Furthermore, it is not accepted that the test set out in *Botany Bay City Council* has been properly argued within the cl4.6 request. While the points raised in the variation under this heading may be true, they've not met the terms of the test per

se and the variation on this basis would not be accepted.

Cl4.6(3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

As detailed above, the applicants cl4.6 request is made on a number of grounds which include the architectural design competition process, the limited extent of the impacts (e.g. overshadowing) resulting from the proposals, the good design outcomes achieved in this instance (eg public domain areas, street wall heights, setbacks), lack of impacts on the Drill Hall heritage item and meeting the strategic planning outcomes of the Newcastle Central City.

Cl4.6(4)(a)(i) (a) the consent authority is satisfied that— (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

Following an assessment of the cl4.6 request, CN agrees that it adequately addresses the required matters. The cl4.6 variation request is solely accepted on the basis of the first limb Wehbe as discussed above in terms of cl4.6(3)(a).

It is noted that there are several areas where the proposed designs are not ideal and require redesign via conditions. Additionally, there are issues arising, such as the western boundary setback, which are the result of a combination of issues not solely within the control of the applicants (e.g. 727 Hunter Street also being not compliant with the same setback controls at its common boundary with the proposal). On balance, it is considered that there are sufficient environmental planning grounds to find the request has adequately addresses the required matters in terms of cl4.6(3)(b).

Cl4.6(4)(a)(i) (a) the consent authority is satisfied that (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The public interest element has two components under the subclause being:

- i) Objectives of the development standard (ie. cl 4.4 & 7.1); and
- ii) Objectives of the particular zone (ie. E2 Commercial Centre).

The consent authority must be satisfied when assessing a clause 4.6 variation, that the proposed development, and its associated clause 4.6 variation are in the public interest by being consistent with the objectives of the development standard (FSR).

The applicant's clause 4.6 variation request, as assessed above, has demonstrated that the proposal meets the objectives of the FSR development standard. It is considered that requiring compliance with the FSR development standard is unnecessary in this instance and that the proposed variations, as submitted, are considered to be in the public interest in terms of the FSR development standard objectives. Similarly, it is considered that the proposed variations are in the public interest as the applicants cl4.6 variation requests have demonstrated that the zone objectives have otherwise been met.

Overall, the provisions of cl4.6(4) have been satisfied.

Planning Secretary Concurrence - Clause 4.6(4)(b)

The proposal does not specifically require approval of the HCCRPP as the extent of the proposed FSR variation is below the 10% trigger criteria given by the Planning Secretary's planning system circular PS2020-002. It is confirmed that under this circular the HCCRPP has assumed concurrence.

Clause 4.6 – Conclusion (FSR)

Overall, is it considered that the submitted clause 4.6 FSR variation requests are acceptable and is recommended that the HCCRPP approve the application on this basis.

Cl7.4 – Building Separation

The required building separation under cl7.4 of the NLEP 2012 is as follows:

- "(1) A building on land to which this Part applies must be erected so that the distance from the building to any other building is not less than 24 metres at 45 metres or higher above ground level.*
- (2) For the purposes of this clause, a separate tower or other raised part of the same building is taken to be a separate building."*

Cl4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

The development involves multiple variations of the required 24 metre building separation standard due to the two proposed towers and the adjoining development at 727 Hunter Street as follows:

- Between 15.1 metres (levels 13 to 16) (37.1%/8.9 m) to 15.8 metres (level 17) (34.2%/8.2 metres) separation between the proposed northern tower (Stage 1) and the adjoining building at 727 Hunter Street, Newcastle West.
- 17.0 metres (29.2%/7.0 metres) between the proposed southern tower (Stage 2) and the adjoining building at 727 Hunter Street, Newcastle West.
- 22.6 metres (5.83%/1.4 metres) between the proposed northern tower (Stage 1) and the proposed southern tower (Stage 2).

The applicant's variation request is summarised in the following points: -

- i. The request is made on the basis of the first limb of the tests set out in the LEC judgement *Wehbe v Pittwater Council [2007] NSWLEC 827* which submits that the variations are reasonable and strict compliance is unnecessary as the objectives of the standard and the objectives of the associated zone (i.e. E2- Commercial Centre) is otherwise achieved.
- ii. The request is also made on the third limb of *Wehbe*, *"..that the underlying objective or purpose of the development standard would be undermined, defeated or thwarted if compliance was required with the consequence that compliance is unreasonable (Initial Action at [19] and Linfield Developments Pty Ltd v Cumberland Council [2019] NSWLEC 131 at [24])."*
- iii. *"The Request also seeks to demonstrate the 'unreasonable and unnecessary' requirement is met because the burden placed on the community by not permitting the*

variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in Botany Bay City Council v Saab Corp [2011] NSWCA 308 at [15])."

- iv. *That in the judgement "...EXP No 1 National Park Street Pty Ltd v Newcastle City Council [2020] NSWLEC 1441 determined that the variation to the development standard for building separation contained in clause 7.4 was justifiable for 1 National Park Street, as the proposal demonstrated its alignment with the aims of Part 4F of the ADG"*

"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 separation distance is generally consistent with the Apartment Design Guidelines (ADG) in terms of building separation."

- v. *The proposed separation distance is generally consistent with the Apartment Design Guidelines (ADG) in terms of building separation. The ADG "...is a State-wide policy that provides guidance on building separation and what is an equitable setback share in different scenarios."*

"The relationship between adjacent properties and the site, and internal to the site, is appropriate given compliance with the ADG. In particular, a 9m setback is proposed between the northern tower and adjacent commercial building (727 Hunter Street). This represents an equitable share under the ADG given the setback is between a blank wall and a commercial development."

- vi. *The proposed development results in a better outcome than a compliant tower form.*
- vii. *The proposed variation does not result in any unreasonable impacts to surrounding private and adjacent properties.... particularly with respect to overshadowing, loss of privacy and loss of views."*
- viii. *The proposed variation has been considered from a design excellence perspective and determined to be acceptable by the Design Integrity Panel and Urban Design Review Panel.*
- ix. *Clause 7.4 does not have any clear objectives in the NLEP; therefore, the design response has relied on the objectives established by the ADG.*
- x. *The proposed variation does not result in any additional height above the NLEP height limit or the FSR above the design excellence bonus, therefore, the resultant additional bulk and scale is not unreasonable.*
- xi. *Under clause 4.4 of the LEP an 8:1 FSR is permitted for wholly commercial development, which represents a scale significantly more than the proposed development. The bulk and scale of the proposal has been carefully resolved to respond to the surrounding context and represents an appropriate design response. Should a commercial development be proposed on the site, this would result in a significantly reduced separation than proposed.*

To address the first limb of *Webb*, the applicant has correctly noted that cl7.4 does not directly have associated objectives, so they have addressed the relevant objectives under cl7.1 of Part 7 (Additional local provisions—Newcastle City Centre), under which cl7.4 falls. This approach is considered to be appropriate, and has previously been accepted in similar circumstances, as a way to resolve this issue.

In assessing the applicant's response to the cl7.1 objectives, they have adequately demonstrated that the current proposal meets these objectives notwithstanding the proposed building separation variation.

Notwithstanding that the cl4.6 request indicates it would also rely on the third limb of Wehbe and *Botany Bay City Council*, no submissions are included to effectively argue this limb. It is advised that it would have been unlikely that CN would have accepted an variation based on the third limb of Wehbe in this instance.

Cl4.6(3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

As detailed above, the applicants cl4.6 request is made on a number of grounds include: -

- i. the compliance with the ADG (2F Building Separation) in that there is no real visual privacy impacts between the proposed towers and the commercial building at 727 Hunter Street
- ii. that the proposal is compliant with the ADG setbacks in relation to the building at 727 Hunter Street
- iii. that the proposed separation between the Stage 1 and Stage 2 towers, being 22.6 metres, does not result in any unreasonable impacts on adjoining properties or within the development with respect to overshadowing, loss of privacy or loss of views
- iv. that the development "*..results in a good outcome as the design response has relied on the objectives established by the ADG*".
- v. "*ensure that new development is scaled to support the desired future character with appropriate massing and spaces between buildings*"
- vi. "*assist in providing residential amenity including visual and acoustic privacy, natural ventilation, sunlight and daylight access and outlook*"
- vii. "*provide suitable areas for communal open spaces, deep soil zones and landscaping.*"

Cl4.6(4)(a)(i) (a) the consent authority is satisfied that— (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

Following an assessment of the cl4.6 request, CN agrees that it adequately addresses the required matters. The cl4.6 variation request is solely accepted on the basis of the first limb Wehbe as discussed above in terms of cl4.6(3)(a).

It is noted that there are several areas where the proposed designs are not ideal and require redesign via conditions. Additionally, there are issues arising, such as the western boundary setback, which results from a combination of issues not solely within the control of the applicants (e.g. 727 Hunter Street is also not compliant with the same setback controls at this common boundary with the proposal).

It is also noted that the Building Separation requirement of 21.0 metres, under Section 6.01 of the NDCP 2012 (A3.1), has still been met by the proposal (noting that this provision only applies to buildings within the same site in terms of 6.01).

CN's assessment of view loss and view sharing within the report below, confirms that the view impacts are acceptable. The comparative shadow diagram submitted with the proposal and variation request demonstrates that the proposed building separation request is reasonable on these grounds.

On balance, it is considered that there are sufficient environmental planning grounds to

find the request has adequately addresses the required matters in terms of cl4.6(3)(b).

Cl4.6(4)(a)(i) (a) the consent authority is satisfied that (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The public interest element has two components under the subclause being:

- iii) Objectives of the development standard (ie. cl7.1); and
- iv) Objectives of the particular zone (ie. E2 Commercial Centre).

The consent authority must be satisfied when assessing a clause 4.6 variation, that the proposed development, and its associated clause 4.6 variation are in the public interest by being consistent with the objectives of the development standard (Building Separation).

The applicant's clause 4.6 variation request, as assessed above, has demonstrated that the proposal meets the objectives of the Newcastle City Centre under which the cl7.4 Building Separation standard operates. It is considered that requiring compliance with the Building Separation development standard is unnecessary in this instance and that the proposed variations, as submitted, are considered to be in the public interest in terms of the objectives of the Newcastle City Centre under which the cl7.4 Building Separation standard operates. Similarly, it is considered that the proposed variations are in the public interest as the applicants cl4.6 variation requests have demonstrated that the zone objectives have otherwise been met.

Overall, the provisions of cl4.6(4) have been satisfied.

Planning Secretary Concurrence - Clause 4.6(4)(b)

The proposal requires approval of the HCCRPP as the extent of the proposed building Separation variations exceeds the 10% trigger criteria given by the Planning Secretary's planning system circular PS2020-002. It is confirmed that under this circular the HCCRPP has assumed concurrence.

Clause 4.6 – Conclusion

Overall, it is considered that the submitted clause 4.6 Building Separation variation requests are acceptable and it is recommended that the HCCRPP approve the application on this basis.

Clause 5.10 – Heritage Conservation, & NDCP 2012 Section 6.02 Heritage Conservation Areas, Section 5.04 Aboriginal Heritage, Section 5.05 – Heritage Items & Section 5.06 – Archaeological Management

The proposal has been assessed by CN's Heritage Officer and is considered to be acceptable as provided within the detailed assessment below.

NDCP 2012 Section 6.02 Heritage Conservation Areas

The site is located in the Newcastle City Centre Heritage Conservation Area (HCA) and is identified as a non-contributory building.

The existing building on the site is a two storey commercial building (the Spotlight building) at the corner of Hunter and National Park Street.

The existing Spotlight building has sheet metal cladding to the façade dating to the mid-20th century. An inspection of the structure behind the sheet metal revealed that part of an earlier historical façade (the Marcus Clarke building) remains extant behind the Spotlight facade. As such, although the building is non-contributory to the conservation area, the remnant façade behind the Spotlight facade was constructed in the Key Period of Significance of the HCA and would be considered to have contributory qualities if exposed.

Existing case law, set down by the NSW Land and Environment Court, has established tests for the demolition of a building in a heritage conservation area (*Helou v Strathfield Municipal Council* [2006] NSWLEC 66). The tests established within this judgement have been applied in this assessment to determine suitability of demolishing the existing building and construction of a new development.

Demolition of the existing building

The site is located in the Newcastle City Centre Heritage Conservation Area (HCA) and is identified as a non-contributory building.

The existing building on the site is a two storey commercial building (the Spotlight building) at the corner of Hunter and National Park Street.

The Spotlight building has sheet metal cladding to the façade dating to the mid-20th century. An inspection of the structure behind the sheet metal revealed that part of an earlier historical façade (the Marcus Clarke building) remains extant behind the Spotlight facade.

As such, although the building is non-contributory to the conservation area, the remnant façade behind the Spotlight facade was constructed in the Key Period of Significance of the HCA and would be considered to have contributory qualities if exposed.

Case law for the demolition of a building in a heritage conservation area established in the NSW Land and Environment Court (*Helou v Strathfield Municipal Council* [2006] NSWLEC 66) has been applied in this assessment to determine suitability of demolishing the existing building and construction of a new development. Questions established in this judgement are addressed below.

1. What is the heritage significance of the heritage conservation area?

The heritage significance of the conservation area is defined in the NDCP 2012. The Statement of Significance of the Newcastle City Centre HCA is as follows:

"The Newcastle City Centre Heritage Conservation Area is significant on many levels. The mix of commercial, retail and civic buildings is a powerful reminder of the city's past, its economic and social history. Historic buildings provide the backdrop to a city of dramatic topography on the edge of the sea and the mouth of a harbour.

The pre-1840s buildings in the city are of state significance (Rose Cottage, c1830, Newcomen Club, 1830, parts of James Fletcher Hospital) and share associations with the city's convict origins. Newcastle has a rich archaeological record of national significance, with the potential to yield information about the early convict settlement and early industrial activities. The city area is known to have been a place of contact between colonists and the indigenous population. This evidence is available in historical accounts and in the archaeological record surviving beneath the modern city.

The high numbers of commercial and civic buildings of the 19th and 20th centuries gives the city a rich historic character which is notable and allows an understanding of the importance of the city as a place of commerce, governance and city building. The historical foundation of the city was the discovery and exploitation of coal with good shipping access via a safe and navigable harbour. The town's layout by Surveyor General Henry Dangar in 1828 is still visible in the city's streets, and is an element of historical value, particularly in the vicinity of Thorn, Keightley, Hunter and Market Streets."

2. What contribution does the individual building make to the significance of the heritage conservation area?

Reference is made to the heritage impact statement (HIS) (John Carr Heritage Design, November 2022). The HIS provides the following comments regarding the history of the building and the significance of the HCA:

"Preliminary research suggests that Marcus Clark & Co opened a Newcastle branch on the study area in around c1894... Photographs dated c1900–1902 provides the earliest visual evidence of the shop façade. A two-storey building fronts Hunter Street, potentially on top of four previous 19th century shopfronts.

...The second storey was also expanded along the site's National Park Street frontage, where it joined the existing two-storey showroom towards the rear. It appears that part of the original late 19th century building features, such as the clocktower, were replaced or modified.

...The [façade] investigation revealed that the original building was constructed in brick with the decorative render applied as part of the overall coating with some small decoration pre-cast and applied to the wet render. The investigation also revealed the timber grounds supporting the metal cladding were cut into the decorative render causing extensive damage to the finished masonry façade

...The alterations and additions undertaken on the building during the 1920s renovations introduced additional decoration to the façade that changed it from simple clean lines with restrained decoration to the larger parapets and overall extent of decoration. All the windows except at the corner were widened by retaining the central masonry transom and widening each window to provide more natural light to the first floor. The design style could be categorised as a restrained version of the Federation Free Style...The renovated building was not an exemplar of the Federation Free Style probably because it was restricted by being a renovation to an existing building.

The extensive damage to the façade and the missing elements from the large cornice up requires a skilled hard wall plasterer to repair and reconstruct the missing elements. The repair and

reconstruction work required to repair the entire façade is very difficult to justify at this level of damage for the following reasons:

- The façade has been changed from its original decoration;
- The extent of the 1920s expansion created a new aesthetic to the façade by increasing window size, altering the fine details, changing the parapet & lettering and changing the cupola to the corner of Hunter & National Park Street;
- The benefit to the project in preserving and repairing the whole façade is questionable as opposed to preserving a small area or detail elements for display.

The remains of the façade of the former Marcus Clark & Co building at 711 Hunter Street Newcastle is of little Local heritage significance due to the aesthetic style of the building which was dramatically altered in the additions undertaken in the 1920s. This appears to be a result of retaining the 1899 façade and altering it rather than removing the facade or demolishing the existing building and constructing a new design in one of the Inter-War period styles.

The result was a building out of character with the leading styles developed in the era such as the heritage listed former Bank of NSW opposite the site, designed in the Art Deco style in 1938.

The façade can be repaired by a specialist hard wall plasterer however the cost would be substantial and needs to be balanced against the quality of the design style to be repaired. In this case the 1929 façade has been assessed as a poor standard of decoration as compared to the quality of the original façade constructed in 1899."

Based on review of the HIS and the physical context of the building, it is considered that the building is so altered that its period and style is no longer evident. Its form and massing are consistent with the streetscape and nearby contributory buildings. On close inspection following removal of the sheet metal cladding, remnant features associated with the c1920s alterations can be distinguished. However it is noted that its integrity and condition of the original 1890s building has substantially diminished as a result of the c1920s alterations, which in turn have been substantially diminished following the mid-20th century facade alterations. Retention and reuse of the facade is not considered to be reasonable having regard to the existing building's significance and contribution to the HCA. The HIS has provided an assessment of heritage significance of the existing building and concludes that the building does not have heritage significance; and is not of sufficient value or condition to warrant incorporation into a redevelopment of the site.

3. Is the building structurally unsafe?

The following comments are noted from the heritage impact statement (John Carr, November 2022): *'The buildings have not been assessed structurally. They appear to be generally in sound condition and are currently occupied by a number of local businesses. The structural stability of the buildings is not considered critical due to the particularly low value they present within the HCA.'* (pg 44).

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?

The following comments are noted from the applicants response (Urbis, 2023): *'The façade could be considered structurally safe with extensive works including a skilled hard wall*

plasterer to repair and reconstruct. These works would be difficult to justify at this level of damage...If the extensive works to reconstruct the façade were undertaken the cost of works would be significant and not feasible.'

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 use of the site under the applicable statutes and controls) so unreasonable that demolition should be permitted?

The following comments are noted from the applicants response (Urbis, 2023): *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.*

6. Is the replacement of such quality that it will fit into the heritage conservation area?

Further discussion relating to the design of the proposed development is provided below.

Design of new infill building

The proposed replacement building is a twenty-storey mixed use development. Section 6.02.07 (Infill Development) provides the relevant objectives and controls for new buildings in HCAs. It is noted that 'infill development should not copy or replicate its neighbouring traditional buildings. Rather, it is appropriate to interpret the features of the neighbouring buildings and design them in a way that reflects and respects them.'

The setting of the site is undergoing a rapid change evidenced through recent approvals for several multi-storey developments in the immediate context. This is reflective of the changing context of the Newcastle West End and the transition from a lower scale industrial/commercial area to a new CBD. Heritage items and contributory buildings in this part of the Newcastle City Centre HCA are more sporadic and the surrounding streetscapes lack the integrity and cohesive character that is plainly evident in the majority of the precinct, as described in the Statement of Significance for the HCA. Despite isolated buildings of heritage significance in the vicinity, including the Cambridge Hotel, Bank Corner, and the former Castlemaine Brewery, the general streetscape has no consistent heritage character and is characterised by a wide range of building styles, uses and scales. here are several multi-storey contemporary buildings in the vicinity, including commercial development at 6 and 12 Stewart Avenue, 727 Hunter Street, 770 Hunter Street, 25 Beresford Street, and recent approved development at 1 National Park Street, 854 Hunter Street, and 20 Denison Street.

The HIS notes the following with regard to the design of the proposed building:

'The character of the podium achieves this harmony by the use of a warm colour applied to the finish of the podium envelope together with the use of vertical blades which respect the strong vertical lines found in the various facades in the area.

..The use of a podium assists with the site massing having five levels allows it to align with existing and future neighbouring development as well as incorporating setbacks and envelope changes.

...The traditional character of the surviving older building in the area has been reflected in the design of the podium, whereas the towers differ from more recent designs by reducing sharp corners and including more rounded changes of direction of the building and tower's facades.

...The podium design blends with the three storey former Bank of NSW building and is reasonably set back off the former Bellevue Hotel and former Army Drill Hall buildings so as to not overpower them but leave plenty of area for viewing these buildings.'

The proposed development respects the design of old and new neighbouring buildings in the design alignment of the podium with regard to the smaller mid century buildings and the more recent podiums on the newer neighbouring buildings.

The development is one of a number of nearby high rise buildings either constructed or under construction in this area. The proposal is non-compliant with a number of NDCP 2012 controls in relation to the HCA; however, these guidelines are more relevant to HCAs with cohesive streetscapes and consistent building typologies. NDCP 2012 6.02.07 requires that infill development be designed to correspond to the prevailing height, form and character of contributory buildings in the vicinity, in order to reinforce the character of the HCA. It is considered that using the predominant height and form of the nearby contributory buildings as a guide for the proposed development would be inappropriate due to the existing context.

Section 5.04 Aboriginal Heritage

A Due Diligence Assessment (by AMAC, 8/12/22) has been provided.

The report follows the Due Diligence Code of Practice and includes analysis of the environmental and archaeological context, summary of predictive modelling, and archaeological site survey.

The report makes the following conclusions:

A background analysis of the environmental and archaeological context revealed that the study area has significant surface disturbances, however, due to the deep soil profile of the soil landscape and archaeological record of the area, it is still likely for in-situ or non-in-situ Aboriginal objects and/or deposits of possible conservation value to be present.

Although the area has significant surface disturbances and subsequently may have moderate archaeological potential it may hold Aboriginal cultural objects and deposits with cultural significance and intrinsic value to the Aboriginal community.

...Based on the locale of waters and tributaries to the Hunter River, as well as Throsby Basin, and nearby Cottage Creek, it is likely that Aboriginal movement and land use would be channelled to this location and therefore the site may hold information regarding past Aboriginal cultural activities of the area.

In accordance with the Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales, Part 6 National Parks and Wildlife Act 1974 (DECCW, 2010) it is recommended that further archaeological and cultural assessment, as well as, test

excavation...is necessary, as the proposed development zone is located within 200m of waters.

The recommendations set out in the report are incorporated as recommended conditions of consent at **Attachment A**.

Section 5.05 – Heritage Items

The site is in the vicinity of the following heritage items:

- Bank Corner (former Bank of NSW)—744 Hunter Street—NLEP Item 500
- Army Drill Hall—498 King Street—NLEP Item 508
- Birdwood Park
- Bellevue Hotel

The incorporation of a podium into the design of the proposed development references the predominant height of form of nearby heritage and contributory buildings.

The setback of the development from the Army Drill Hall maintains a good distance from the heritage item to enable its ongoing interpretation. Views to and from the nearby heritage items will not be unreasonably obstructed by the development as it does not block any views from public streets to the heritage items.

The colours, materials and rounded corners to the buildings complement the Bank Corner setting as well as how the site addresses Birdwood Park and is set back off the boundary to the neighbouring Army Drill Hall.

The proposed development is consistent with the established context of Newcastle West and will not unduly impact the setting of the nearby heritage items.

Section 5.06 – Archaeological Management

A Baseline Archaeological Assessment (by AMAC) has been provided.

The report includes analysis of the documentary and physical evidence, an assessment of archaeological significance and heritage impact, and makes recommendations for future management in the context of the proposed development.

The report makes the following conclusions:

- *There is nil-low potential to retain occupational deposition and structural remains relating to the mid-late 19th century building phase.*
- *Moderate potential exists for occupational deposition within the context of the lower structural portion of two late 19th century wells.*
- *Subsequent twentieth century impacts limits the archaeological potential of the site. Intact occupation deposits from the lower portion of two wells would be of local significance.*
- *The proposed development has the potential to impact on locally significant relics in the form of two late 19th century wells and their deposits.*

- *To mitigate impacts, a program of historical archaeological test excavation, salvage or monitoring is proposed to occur at the study site in advance of the construction works.*

The recommendations set out in the report are incorporated as recommended conditions of consent at **Attachment A**.

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

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

- *Draft Remediation of Land SEPP*

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

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

(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

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

Section 3.01 – Section 3.01 – Subdivision

The proposal involves a Torrens title subdivision of the existing allotment (4724 m²) into two allotments being 2,510 m² (Stage 1 – northern proposed lot) and 2,214 m² (Stage 2 – southern proposed lot) respectively. Additionally, the each of the proposed two towers will be further subdivided into a two lot stratum subdivision (i.e. the residential and commercial components being separated).

The proposed subdivisions are generally acceptable subject to:

- i. conditions requiring appropriate easements to be implemented between Stages 1 and 2,
- ii. conditions addressing the sequence of the proposed subdivisions relative to the construction of Stages 1 and 2.

Conditions addressing these issues are recommended at **Attachment A**.

Section 3.03 – Residential Development

This section applies to *residential flat buildings* and the submitted proposal meets this definition. Notwithstanding this, the operation of the Apartment Design Guide (SEPP 65) and Section 6.01 below would prevail over controls within Section 3.03 and also considered more applicable to the scale of the development and its City Centre location.

Section 3.10 – Commercial Development

The proposal has been assessed in regard to Section 3.10 and is consistent with these requirements. It is noted that the combination of the Apartment Design Guide (SEPP 65) and Section 6.01 below generally provide for greater controls in any respect.

The proposal representation a good example of an integrated retail precinct and likely to be capable of supporting a number of food and drink premises.

Section 4.01 – Flood Management

The proposal has been assessed by CN's Senior Development Engineer and is considered to be acceptable as provided within the detailed assessed below.

Introduction

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

Based on City Flood data, the site is affected by Ocean (1% AEP of 2.2m AHD and PMF of 3.4m AHD) and Local (flash) flooding (1% AEP of 2.6m AHD and PMF of 4.10m AHD). It is noted that the historic flooding of the area has generally been most affected through flash flooding including the 2007 Pasha Bulker floods, which reached to approx. 3.2m AHD.

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

- a) Floor levels of any occupiable rooms in a new development on this site shall not be lower than the flood planning level (3.2m AHD).
- b) Garage floor levels are set no lower than the 1% Annual Exceedance Probability flood level (2.6m AHD).
- c) On-site flood refuge is to be provided at or above the PMF level (of 4.10m AHD) and (velocity – 0.8m/s). This flood refuge shall cater for the number of people reasonably expected on the development site and be provided with emergency lighting.

- d) Not more than 20% of the area of any development site in a flood storage area is filled. The remaining 80% may be developed allowing for underfloor storage of floodwater by the use of suspended floor techniques such as pier and beam construction.

In view of the uniqueness and sensitivity of the site, the implications of the proposed development to the surrounding environment and potential impacts on the adjoining properties, the risks to the proposed development and future use of the site, a site-specific flood impact assessment has been prepared by BG&E. The study has been undertaken to determine the flood impacts and to manage flood planning for the development.

The site is located in a high-risk area for flash flooding and flood risk management must be foremost considered for the development.

Flood Planning Level

Majority of the proposed retail units along National Park St and Hunter frontage have been designed at 3.2m AHD, which is generally based on the recommended flood FPL (2007 flood level as referenced).

The proposed FPL are clearly noted on the architectural plans and are also reflected on the stormwater plans.

The primary vehicular access for the overall development (that is stages 1 and 2) is from King St frontage. The vehicular access starts are approx. 2.10m AHD at the street entry and meets floor level of the Stage 1 building (North Tower) at 3.2m AHD (FPL).

Further to this, the services rooms such as regulator room, fire & tank room, fire control room and substations within the Stage 1 building are mainly located along Hunter St frontage and have been set at FPL.

The proposed floor level for Stage 1, vehicular access and service room levels is generally acceptable.

Flood Risk Management and Flood Refuge (Shelter in Place (SIP))

The site is noted to be within a high-risk area (L4). National Park St itself generally functions as a floodway and sections of road reserve may not be accessible in flood events.

To mitigate risk to life, the Stage 1 development proposes to make available a flood refuge on higher levels.

The flood refuge (SIP) is proposed to be at Level 5 Communal Area. These areas can be accessed via the stairs or car park ramp.

A flood risk management plan must be prepared at construction certificate stage for Stage 1, recommended as a condition, to ensure that access to flood refuge is made available and necessary arrangements can be done with future building management to manage flood risks and access to flood refuge area.

The proposal has been assessed by CN's Senior Development Officer and is considered to be acceptable subject to conditions of consent recommended at **Attachment A**.

Flood Storage

The whole of the site is a flood storage area. The building ground floor slab will be designed as a suspended slab, which will allow for storage of flood waters and mitigate impacts on the surrounding environment.

The vehicular access levels will also be at lower levels along the Stage 2 development frontage, thus acting as a flood storage area.

Minor loss of flood storage area (approx. 7%) for both Stages 1 and 2 is noted, which is well below the 20% allowed within the DCP, thus achieves compliance with the NDCP 2012.

Newcastle West Flood & Drainage Mitigation

Newcastle West Drainage Study Option B for the purposes of flooding and drainage mitigation has been considered. Option B & C of the report indicates that King St, National Park St, Hunter St and Bellevue St can be regraded, and drainage upgrade works can be done to assist in reducing the flood levels in the area by approx. 150mm – 200mm. However, the report indicates that this option requires considerable effort through developments.

It is noted that the Verve development at 470 King St has already regraded the road levels and further works are anticipated with the 1 National Park St development (GWH) is anticipated. Hunter St and Bellevue St regrading could also potentially assist the development to reduce the flood impact on the development.

CN recommends that regrading of National Park St frontage must be undertaken as part of this Stage 1 development. It is anticipated that National Park St will be heavily used as a construction access and services connections and therefore very likely to have sustained damages which will be required to be repaired.

However, the regrading of Hunter Street, together with Bellevue Street, is likely to be unreasonable for a development to undertake as it may involve significant other factors such as impacts on traffic signal, road pavement and services management.

As there are new stormwater connections to King St and Hunter St Road drainage network, pipe upgrades will be required to manage stormwater discharge from the development and as anticipated in the Newcastle West Drainage Study to mitigate flood impacts.

The proposal has been assessed by CN's Senior Development Engineer and is considered to be acceptable subject to conditions of consent recommended at **Attachment A**.

Conclusion

The proposed development has satisfactorily addressed flooding impacts and the risks associated with flooding on the site and the surrounding areas. A flood refuge (Shelter in place) will be provided, and the ground floor areas comply with flood planning level requirements.

The proposal has been assessed by CN's Senior Development Engineer and is considered to be acceptable subject to conditions of consent recommended at **Attachment A**.

Section 4.03 – Mine Subsidence

Applicant has provided revised report to address merit assessment criteria detailed by Subsidence Advisory NSW.

Following assessment of the revised reports, Subsidence Advisory NSW has issued their General Terms of Approval (GTA's).

The GTA's have been included within the conditions of consent recommended at **Attachment A**.

Section 4.04 – Safety and Security

The applicants have submitted a Crime Prevention Through Environmental Design (CPTED) report by The Design Partnership (May 2023).

The proposal is considered to be adequate in relation to the provisions of Section 4.04 and Crime Prevention Through Environmental Design (CPTED).

The development has been designed with an acceptable level of casual surveillance and there are limited opportunities for hidden areas within the public spaces. The layout includes multiple retail premises which will encourage activity during business hours and potentially into the evening (where food and drink premises may trade later).

It is advised that CCTV will also be utilised within the public domain areas, driveways, lobbies and lift areas.

Access to the residential components of the proposal will be via security swipe passes ensuring appropriate access control.

It is considered that the layout of the development provides clear separation between public and private areas.

The combination of CPTED measures is such, that the overall proposal is considered to be acceptable in relation to this section.

The CPTED recommendations of The Design Partnership (May 2023) report are incorporated within the conditions of consent recommended at **Attachment A**.

Section 4.05 – Social Impact

The proposal is acceptable in terms of social and economic impacts.

The development is consistent with the intended strategic planning outcomes for the E2 Commercial Centre zone and the Newcastle City Centre generally.

It is expected that the proposal during construction, and in operation, would provide positive economic inputs to the broader Newcastle area and beyond. The proposal will increase the available housing within the City Centre and, by association the additional population will contribute to economic vitality. Additionally, the proposal will include an integrated retail

precinct likely capable of supporting food and drink premises. The potential acoustic impacts of the proposal, including food and drink premises trading between 7am to 10pm, has been assessed and is acceptable in terms of amenity impacts.

Overall the proposal is acceptable having regard to social and economic impacts.

Section 5.01 – Soil Management

The extent of proposed earthworks is commensurate with that required to construct the proposed mixed use development having regard to the slope of the land and the overall size of the proposal. It is considered that the proposal is acceptable in terms of its impacts. The quality of any fill material to be imported to the site can be controlled by appropriate conditions of consent recommended at **Attachment A**.

The proposed development is considered to be acceptable in terms of the above Section of the NDCP 2012.

Section 5.02 – Land Contamination

Land contamination has been investigated and is considered suitable as detailed under SEPP (Resilience and Hazards) 2021 within the report above.

The proposed development is considered to be acceptable in terms of the above Section of the NDCP 2012.

Section 5.03 – Vegetation Management

The existing subject site does not contain any vegetation.

The proposal has been assessed by CN's City Greening City and is considered to be acceptable as detailed within Section 4.2. The proposal has four street trees nearby of which three are required to be retained and one is acceptable for removal. Additionally street trees, including a compensatory tree to address the one street tree removed, is recommended as conditions of consent.

Overall, the proposal is acceptable subject to conditions of consent recommended at **Attachment A**.

Section 5.04 Aboriginal Heritage, Section 5.05 Heritage Items, Section 5.06 Archaeological Management & Section 6.02 – Heritage Conservation Areas

These matters were addressed under Clause 5.10 of the NLEP 2012 above.

The proposed development is considered to be acceptable in terms of the above Section of the NDCP 2012.

Section 6.01 – Newcastle City Centre

The proposal falls within the Newcastle City Centre map under Section 6.01 of the NDCP 2012 and, as such, has been assessed against the associated controls.

The proposal is located within the 'West End' character area under the section and is considered to be "*the western gateway to Newcastle's city centre and is an area of unrealised potential*". The proposal on the subject site will form a significant element of the western portion of the Newcastle central business district especially as the site extends from King Street/Birdwood Park, along National Park Street to Hunter Street. The position of development within Hunter Street is further notable due to its location on bend/corner combination which will be visually significant within the streetscape particularly along Hunter Street from the east.

Street Wall Height, Building Setbacks & Building Separation

This section of the DCP requires 22m Street wall for King Street and a portion of National Park Street, 16m high street wall otherwise. Notwithstanding this, the development has proposed a 18.7 metre street wall height to be consistent with the adjoining development at 727 Hunter Street. Additionally the proposed street wall heights are consistent with the development at 470 King Street ('Verve') and the development at the south-eastern corner of National Park/King Street ('ONE' by GWH).

It is further advised that the overall development, including its street wall heights and setbacks, has been assessed as acceptable in terms of heritage impacts including the relationship with the adjoining heritage item at 498 King Street (i.e. "Drill Hall").

Finally, the proposal has been the subject of an architectural design competition, three Design Integrity Panels and associated endorsement, and review by CN's UDRP and, overall, the proposal is satisfactory in terms of urban design outcomes.

Similarly, the following controls apply for side and rear setbacks:

Table 6.01-1: Minimum setback for side and rear boundaries

Minimum setback for side and rear boundaries		
Part of building	Side boundary	Rear boundary
Below street wall height	Nil	Nil
Between street wall height and 45m	6m	6m
Above 45m	12m	12m

It is further noted that the combination of the ADG and NLEP 2012 controls also act to constrain the design options.

The proposal has a complex combination of street wall heights and setbacks to address the various design controls, the three street frontages of the site and the interaction with the adjoining development.

The proposal has a zero setback to the western boundary with 727 Hunter Street to the podium height. The remaining setbacks to Hunter and National Park Streets are highly variable being from zero setback at the lower levels of the podium and increasing as the podium steps back at the corner of Hunter and National Park Streets. Similarly, these setbacks increase from National Park Street to form the large public domain area for the proposal located midblock along National Park Street.

At levels 6-25, the proposed development continues to provide variable setbacks of 7.15-14.05 metres to the western common boundary with 727 Hunter Street. The Hunter Street setback is 6.3 metres. The National Park Street setback is between 5.0-20.0 metres which reflects the slanted orientation of the proposed tower to the respective streets.

The proposal complies with these setbacks up to level 13 (i.e. 45 metres height), except for the 6.0 metres to National Park Street (if it was to be considered a side boundary) for a small portion. The setback to National Park Street is acceptable in this instance considering that the overall design of the proposal achieves greater urban design and visual outcomes by the varied design in this instance as opposed to strict compliance with the 6.0 metre setback. The impacts of this variation are not significant in terms of shadowing, privacy, height, bulk or scale.

Above level 13 the proposed development does not comply with the 12.0 metre setback requirements to side and rear boundaries. As discussed above, the setback to National Park Street is considered to be acceptable in this instance. Similarly, the setbacks to Hunter Street is considered to be acceptable in this instance. The design of the proposal has a resultant form which is consistent with the setback of the neighbouring building at 727 Hunter Street without resulting in unreasonable impacts in terms of shadowing, privacy, view loss, height, bulk or scale.

The proposed setback to the western boundary with 727 Hunter is variable being between 7.15-14.05 metres. The 7.15 metre setback occurs as a result of the zig-zag in the irregular common boundary which has an effect of less than 10 metres. The overall non-compliance with the 12.0 setback is variable due to the design, its orientation and the irregular zig-zag common boundary. It is further noted that the adjoining building at 727 Hunter Street does not comply with the same 12.0 metre setback requirement to this common boundary with a variable setback of 6.0-6.3 metres.

In this respect, neither the proposed development or the existing development at 727 Hunter Street comply, with the required 12.0 metre setback (i.e. above 45.0 metres in height). It is notable that 727 Hunter Street, while a commercial building, is generally providing a setback of 6.0-6.3 metres as opposed to the 12.0 metres required to this common boundary. In these circumstances, where the 'acceptable solution setbacks' cannot be achieved, regard needs to be given to the performance criteria and the objectives of the control.

Under Section A2 – *Building Setbacks* the following objectives and performance criteria applies:

"A building setback is the distance between the building and the street boundary, a neighbouring site, waterfront, or any other place needing separation. Building setbacks can enhance development and its relationship with the adjoining sites and the public domain, particularly in terms of access to sunlight, outlook, view sharing, ventilation, wind mitigation and privacy. In a city centre it is desirable to locate the frontage of lower levels (the podium) on the street boundary to give strong definition to the street and create setbacks in the upper building elements."

"Performance criteria

A2.2 Side and rear setbacks enhance amenity and allow for ventilation, daylight access, view sharing and privacy for adjoining buildings."

It is firstly noted that the minimum combined separation between the two developments is 15.1 metres increasing to 17.1 metres. It is important to note that the existing commercial development provides the lesser setbacks to the common boundary of 6.0-6.3 metres.

The proposed development has been designed and orientated to limit the number of living areas facing the commercial building and, where proposed, are at a distance of greater than 17.1 metres. The setback separation proposed is acceptable in this instance in terms of privacy.

The current proposal, being located south-west of 727 Hunter Street, results in no additional shadow impacts on this adjoining development. The shadowing impacts of 727 Hunter Street on the current development are considered to be acceptable under the circumstances. It is noted that the allowable height limit is 90 meters for both the subject site and 727 Hunter Street. Notwithstanding this, the height of 727 Hunter is 60.32 metres and has a lesser shadowing impact than otherwise could have potentially occurred.

The resultant separation between the two buildings is acceptable in terms of ventilation and winds. The development at 727 Hunter Street has a terrace area towards Hunter Street which then extends along its southern boundary. The current proposal does not unreasonably impact on this terrace area.

The interaction of the two sites, due to their relative orientations and the irregular zig-zag common boundary, are considered to be acceptable in terms of view sharing and outlook.

The 'Tenacity' planning principle has been applied to consider the impact on views and outlook in this instance (*Tenacity Consulting v Warringah [2004], NSWLEC 140*) which has four steps:

- i. 'The first step is the assessment of views to be affected'
- ii. 'The second step is to consider from what part of the property the views are obtained'
- iii. 'The third step is to assess the extent of the impact'
- iv. 'The fourth step is to assess the reasonableness of the proposed development that is causing the impact'

Firstly, it could be argued that the current proposal has been negatively impacted in terms of views and outlook due to the non-compliant setbacks of 727 Hunter Street. The impact of these non-compliances is to partially limit views/outlook towards Wickham but it is considered that these do not form any significant views (and the loss of this partial outlook would be a typical function of major development within the Newcastle Centre Business District). It is not considered necessary to pursue this aspect of the assessment further having regard to 'Tenacity' and it is noted that the neighbouring at 727 Hunter Street has been approved and is nearing completion.

Secondly, in terms of 727 Hunter Street, it is advised that commercial developments (e.g. office premises) do not inherently have any rights to views. Notwithstanding this, an assessment in terms of Tenacity has been applied.

i) 'The first step is the assessment of views to be affected'

To properly consider the impacted views, a comparison was made of the current proposal and a hypothetical compliant design on the subject site (i.e. basic applicable massing meeting the required setbacks). Comparative views for 727 Hunter Street were considered from three locations being from the Hunter street front, midblock of the eastern elevation and towards the southern end of the building's southern elevation.

It is noted that there is very little difference in achievable view angles from 727 Hunter Street when comparing the current proposal and a hypothetical compliant design with the largest being under 5 degrees.

In terms of views, the most significant view which would exist is towards the harbour and further beyond towards the ocean (to the north and north-east). This view will already be partially interrupted by existing development in the area, and the possible future development with allowable height limits from 30-90 metres (with 727 Hunter being surrounded by an allowable 90 metres height limit) could impact further into the future.

A secondary view would exist partially along Hunter Street towards the Civic precinct (easterly).

Outlooks which possibly exist across the main part of the subject site, towards the south-east and south, which would include the residential suburbs (Cooks Hill and Merewether) and distance glimpses towards the ocean.

ii) 'The second step is to consider from what part of the property the views are obtained'

The majority of the views discussed above for 727 Hunter Street are across the subject site of the proposal. The development would enjoy a degree of views via its Hunter Street frontage, as discussed above, but this could be limited now and into the future by potential development due to the allowable 90 metre height limit.

The case law makes the following comment in relation to views across side boundaries:

'the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries...The expectation to retain side views and sitting views is often unrealistic'.

The impacts on views and outlook in this instance, across the Hunter Street portion of the

subject site are acceptable and reasonable. Any loss of views or outlook across the remainder of the site are also acceptable and, it is further noted, that a setback compliant single tower proposal could completely block these and be considered to be reasonable.

iii) 'The third step is to assess the extent of the impact'

As discussed under point i) above, when a comparison of the current proposal and a hypothetical compliant design is made, the extent of impact by the current proposal is not significant with the decrease in view angle being less than 5 degrees. The current proposal has a limited real impact on the prime significant views to the north and north east of 727 Hunter Street.

iv) 'The fourth step is to assess the reasonableness of the proposed development that is causing the impact'

As discussed under point i) above, when a comparison of the current proposal and a hypothetical compliant design is made, the extent of impact by the current proposal is not considered to be great or unreasonable. The current proposal has a limited real impact on the prime significant views to the north and north east of 727 Hunter Street. The enjoyment of views that may currently have been achieved across the subject site, which contains lower scale buildings, cannot be reasonably expected to be maintained considering the allowable planning controls in the area. Finally, it is noted that when considering any views 727 Hunter Street gains via its side boundaries, these are somewhat constrained by its own the design. The development at 727 Hunter Street does not comply with the required 12.0 metre setbacks, being 6.0-6.3 metres and, as such, limits the view angles itself.

The case law associated with the planning principle makes the following comment in relation to the suitability of a design and its impact on views:

'the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.'

Overall, the impacts on views and outlook are considered to be acceptable in this instance considering the allowable development controls (e.g. heights, FSR's and setbacks) and the expected strategic outcomes for the CBD and its transition to the intended built form.

Building separation

Under this section of the DCP the following controls apply for buildings on the same site:

Table 6.01-2: Minimum building separation

Minimum building separation			
Up to 16m	Up to 45m	Above 45m	
Nil or 6m for link		9m	21m

The proposal exceeds this control as the NLEP 2012 requires 24 metres as discussed above under cl7.4.

Building depth and bulk; Building exteriors; Landscaping; Public Domain

While the DCP provides for controls in relation to these elements, the provisions of the ADG, and the assessment of the proposal via an Architectural Design Competition, the associated Design Integrity Panel and CN's URDP in relation to the overall design, prevail and the proposal is considered to be acceptable.

Awnings

The proposal does not provide awnings over the public footways due to the nature of the design, proposed setbacks and in combination with the required floor levels (having a required ground level 850mm above the footway). The design effectively includes covered walkways within and around the site. The proposal is considered to provide an acceptable outcome having regard to the overall urban design outcomes, visual appearance and provision of weather protection.

Design of parking structures

The proposed parking is consistent with the provisions of this section of the DCP by the design positioning the proposed parking sleeved behind screens and located at the podium levels of the design. The site having three street frontages, is restricted in its opportunities to reasonable limit the positioning of the required car parking within the design. Overall, the visual appearance outcomes achieved by the proposed parking, and its integration into the design of the overall proposal is considered to be acceptable subject to conditions of consent recommended at **Attachment A**.

Landscaping

The proposal includes a large communal open space area at the podium level (i.e. Level 5) and a smaller at Level 17.

The overall design of the landscaping is considered to be acceptable subject to conditions of consent recommended at **Attachment A**.

Views and vistas

The proposal does not fall within any specific view or vista corridors under this part of the DCP. The impacts of the proposal are acceptable and indicative of the changing skyline and vistas within the Newcastle City Centre and the overall growth in redevelopment in the area.

Active Street Frontages & 'Addressing the street'

The development provides active street frontages to Hunter, National Park and King Streets (later being Stage 2). It is noted that services areas (particularly fire safety elements) are allowed to be included within the active street frontage areas under the NLEP 2012. It is

considered that the overall outcome in terms of presentation of retail premises (including intended food and drink premises) is acceptable.

It is considered that the proposal provides a good balance of active street frontages and is acceptable in this instance.

Public Domain

The development provides for a generous open public domain area orientated towards National Park Street. This involves a combination of paved and landscape areas which integrates with the overall design and links the 'Stage 1' and 'Stage 2' developments.

Public artwork

Under the DCP public artwork is required to be provided where development is over 45m in height. The development is required to allocate 1% of the capital cost of development towards public artwork for development.

A Preliminary Art Plan has been prepared by Art Pharmacy has been submitted with the current application. Art Pharmacy has explored different forms of public art which has potential to be included within the proposal including water features, murals, catenary hanging, undercroft works and an opportunity to incorporate the Marcus Clarke building history into design.

The final artwork would be subject to consideration by CN's Public Art Reference Group (PARG), and appropriate conditions of consent are recommended at **Attachment A**.

Infrastructure

The proposal is considered to be acceptable in this respect having regard to the assessment separately made under section 4.01 Flooding and section 7.06 Stormwater.

Key Precincts -Birdwood Park

Birdwood Park towards the west of the subject site, is a key precinct under Section 6.01 of the NDCP 2012. The proposed development is considered to meet the specific objectives and controls under these key precinct provisions of the NDCP 2012. The proposal meets the intent to contribute to the future commercial core, integrates with Birdwood Park, promotes active street frontages and protects the existing heritage items (i.e. 'Drill Hall' and 'Birdwood Park').

The proposal has no impacts Birdwood Park in terms of overshadowing. The access and layout of the proposal respects the existing road network with access being via the end of Little King Street and the existing accesses within National Park Street being removed allowing the introduction of an improved streetscape and public domain area.

Overall, the proposal is considered to be consistent with the objectives and provisions of the Birdwood Park key precinct and the overall requirements of Section 6.01.

Section 6.02 – Heritage Conservation Areas

These matters were addressed under Clause 5.10 of the NLEP 2012 above.

The proposed development is considered to be acceptable in terms of the above Section of the NDCP 2012.

Section 7.02 – Landscape, Open Space and Visual Amenity

The proposal is considered to constitute a category 3 development under this section due to being over two million dollars in value. The documentation provided is acceptable in terms of category 3 and results in good landscape design outcomes for the proposed development.

The development is acceptable, subject to amendments, having regard to the mixture of vegetation and deep soil plantings considering the form of development and its location within the City Centre. As detailed within the SEPP 65 assessment above, the existing street tree at the corner of Hunter and National Park Street is recommended for retention plus additional street trees recommended to be planted within the conditions including at **Attachment A**.

Overall, it is considered that the landscape design for the proposed development is acceptable and this section of the DCP has been satisfactorily addressed.

Section 7.03 – Traffic, Parking and Access

The proposal has been assessed by CN's Senior Development Engineer and is considered to be acceptable as provided within the detailed assessed below.

SEPP (Transport and Infrastructure) 2021

The TfNSW's letter dated 25 January 2023 support the proposed development but recommended Council consider the upgrade of King and National Park traffic control signals to provide red arrow protection for pedestrians. Acknowledging the increase in pedestrian activity likely to be generated by this development an appropriate condition has been recommended at **Attachment A** in relation to this matter.

Stage 1 Traffic Generation

The estimated traffic generation associated with the Stage 1 development is presented in Table 5.

A daily traffic generation of 691 vehicles per day is expected with 82 vehicle trips in the AM peak and 51 in the PM peak.

Table 5 - Stage 1 Traffic Generation

USE	SIZE	RATES			TRAFFIC GENERATION		
		Daily	AM peak	PM peak	Daily (v/pd)	AM peak (v/ph)	PM peak (v/ph)
Residential	136	4.58 per unit	0.53 per unit	0.32 per unit	623	72	44
Business/Retail	614m ² GFA	11 per 100m ² GFA	1.6 per 100m ² GFA	1.2 per 100m ² GFA	68	10	7
TOTAL					691	82	51

Combined Stage 1 & 2 Traffic Generation

The estimated traffic generation associated with the overall development (Stage 1 & 2 combined) is presented in Table 6.

A daily traffic generation of 1308 vehicles per day is expected with 155 vehicle trips in the AM peak and 96 in the PM peak.

Table 6 - Combined Traffic Generation

USE	SIZE	RATES			TRAFFIC GENERATION		
		Daily	AM peak	PM peak	Daily (v/pd)	AM peak (v/ph)	PM peak (v/ph)
Residential	258	4.58 per unit	0.53 per unit	0.32 per unit	1182	137	83
Business/Retail	1143m ² GFA	11 per 100m ² GFA	1.6 per 100m ² GFA	1.2 per 100m ² GFA	126	18	14
TOTAL					1308	155	96

Survey data collection was undertaken for the AM & PM peak on the 10th of August 2022 for the following intersections:

- King Street & National Park Street.
- Stewart Avenue & King Street.
- King Street & King Street Service Road.
- Hunter Street & National Park Street.

Sidra modelling was then utilised to determine the performance of these intersections for the pre and post development periods together with a 10 year future projection incorporating a 1.5 % annual traffic growth.

All intersections have been shown to operate within acceptable limits with the exception of the intersections of King Street/National Park Street and Parry Street/ Stewart Avenue. Both of these intersections presently do not operate during peak times within acceptable Tf NSW limits with extended wait times and lengthy queues. It is however noted that this development will only result in a relatively minor increase in traffic at these intersections and therefore it is unlikely to result in any noticeable change to existing intersection performance levels. This has been reinforced with TfNSW's, as the responsible entity for traffic control signal operations, providing support for the development proposal. Furthermore, it is noted by the applicant's traffic consultant, that existing traffic generation rates do not account for the present day shift to alternate modes of transport, that would see a net reduction in the projected traffic generated by this development. On this basis it is concluded that this development can be supported due to the minimal impact on the local road network.

Road Network

The application proposes a short-term pick-up / drop-off area in National Park Street, which is not considered necessary to the operation of the proposal, and would result in a loss of on-street parking is not supported in terms of the current application. It is open to the applicants to separately demonstrate to the Newcastle City Traffic Committee that the inclusion of a short-term pick-up / drop-off area in National Park Street is reasonable.

Parking

A review of parking confirms compliance with Council's DCP – refer below tables

Table 4 - Numeric Overview of Proposal

Descriptor	Proposed
Land Use Activity	Shop top housing
Stage 1 Site Area	2,510m ²
Total GFA	13,811.18sqm
Maximum Height of Building	RL 92.30 (approximately 89.9m)
Floor Space Ratio	5.51:1
Car Parking Spaces	165 spaces (including 13 accessible and 9 EV spaces)
Motorcycle Parking	8 spaces
Bicycle Parking	153 spaces
Loading and Servicing Bays	1 loading bay for Heavy Rigid Vehicle
Dwelling Mix	136 including a mixture of the following:

Table 12 outlines the proposed car parking for Stage 1. It is to be noted that the applicant has utilised the former DCP rates for residential apartments being a minimum parking rate, proposing a total of 127 residential spaces (including 13 accessible). Assessment against the current maximum DCP residential rates of 1 space per 1 & 2 bedroom apartment and 2 per 3 to 4 bedroom apartment totals 165 spaces therefore satisfying Council's DCP.

The provision 10 commercial / retail, 9 EV charging spaces, 28 residential visitor, 8 motorbike, 160 bicycle satisfies Council's DCP – refer below

Table 12 - Stage 1 Planning Scheme Car Parking Requirement

USE	SIZE	PLANNING SCHEME PARKING RATE	CAR PARKING	AVG RATE PROVIDED	COMPLIANT?
Residential	35 x 1-bed	Small (<75m ² or 1-bed) - Max average of one space per dwelling	22	0.63 per dwelling	Yes
	74 x 2-bed	Medium (<75m ² -100m ² or 2-bed) - Max average of one space per dwelling	67	0.9 per dwelling	Yes
	27 x 3 or more bed	Large (>100m ² or 3-bed) - Max average of two space per dwelling	38	1.4 per dwelling	Yes
Residential (visitor)	137 dwellings	No minimum or maximum rate	28	0.2 per dwelling	Yes
Business/Retail	613.84m ² GFA	1 space per 60m ²	10	1 space per 60m ²	Yes
TOTAL			165		

Table 14 - Stage 1 Planning Scheme Bicycle Parking Requirement

USE	SIZE	PLANNING SCHEME BICYCLE PARKING RATE	BIKE PARKING
Residential	136 dwellings	1 space per dwelling	136
Residential (visitor)	136 dwellings	1 space per 10 dwellings (Class 3) for visitors.	14
Business/Retail	613.84m ² GFA	1 space per 200m ²	3
TOTAL			153

As presented in Table 14 the proposed development has a planning scheme bicycle parking requirement of 153 bicycle parking spaces under the Newcastle DCP. As Stage 1 of the proposed development is proposed to provide 160 bicycle parking spaces, the DCP parking requirement is satisfied.

Table 16 - Stage 1 Planning Scheme Motorcycle Parking Requirement

USE	CAR SPACES	PLANNING SCHEME MOTORCYCLE PARKING RATE	MOTORCYCLE PARKING
Motorcycle (Resident)	155	1 space per 20 car spaces	8
Motorcycle (Business/Retail)	10	1 space per 20 car spaces	0
TOTAL			8

As presented in Table 16, the proposed development has a planning scheme motorcycle parking requirement of 8 spaces. Stage 1 of the development is proposed to provide 8 motorcycle parking spaces and as such, the DCP motorcycle parking requirement is considered satisfied.

Public Domain (Footways)

Footways are required to be embellished in accordance with West End Stage One Public Domain Plan dated 27 March 2018_1 and City Centre Technical Manual. Appropriate conditions have been recommended at **Attachment A**.

Site Access

Vehicle access to the site is proposed from Little King Street via a 6.5 m driveway and access road linking Stage 1. The access generally complies with AS 1890.1 & 2 with a height clearance of 4.5m to cater for a maximum heavy rigid vehicle - garbage truck.

Little King Street is a single carriageway approximately 11.8m in width with a traffic lane in each direction. The road is subject to a posted speed limit of 50 km/hr and features ticketed kerbside parking with restrictions varying from 15 min to 2 hour parking.

Public Transport

The site is well serviced by alternate transport options with bus services operating within both king And Hunter Streets. The Newcastle Interchange is also located within 300m of the site and provides access to the Central Coast and Hunter rail lines

Servicing

Waste collection for the proposed development is to be undertaken from the dedicated loading service area, within the ground level of the development (associated with Stage 1). A heavy rigid vehicle is proposed to enter and exit in a forward direction with appropriate space available to undertake turning manoeuvres within the development. As waste is to be

collected, emptied and bins returned within the site, on-street garbage collection is not anticipated which accords with the requirements of the DCP. The business/retail premises within both stages of the development are likely to be serviced by small or medium rigid vehicles, typically courier vans, with short turnover periods. It is expected that these vehicles will be able to also utilise the dedicated loading / service bay. It is concluded that adequate on-site service provisions are proposed for this development.

The overall proposed development has been assessed by CN's Senior Development Engineer and is considered to be acceptable subject to conditions of consent recommended at **Attachment A**.

Section 7.06 – Stormwater & Section 7.07 – Water Efficiency

Introduction

BG&E have been engaged by the applicants to undertake the stormwater design review for the proposed development application.

Stormwater Reuse

The revised stormwater design for Stage 1 has indicated a 5500 litre stormwater reuse tank, which is based on BASIX requirements. However, stormwater reuse should be calculated based on the NDCP 2012 requirements as the DCP objectives are over and above the BASIX requirements. Thus, if the development meets the DCP requirement, then it automatically meets the BASIX requirements.

Based on the roof area for Stage 1 building, a minimum reuse tank of approx. 8000L must be provided.

There is sufficient area on the Mezzanine level to provide an additional 2,500L of stormwater storage for reuse and the design can be refined at construction certificate stage to address this requirement. Alternatively, an additional tank could be located on the Podium Level, similar to Stage 2 proposal.

The proposal has been assessed by CN's Senior Development Officer and is considered to be acceptable subject to conditions of consent recommended at **Attachment A**.

Stormwater Retention and Treatment

A 131 kilolitre (kL) tank is proposed for retention of stormwater. The tank will be located under the access ramp. A separate stormwater filter chamber is proposed with 16 Ocean Protect or similar cartridges, which will provide stormwater treatment.

A few areas on the ground floor (minor landscaped areas with plantings) cannot be contained, however this is acceptable considering the overall design outcomes.

The proposed retention tank and stormwater filter chamber will cater for the entire development, that is Stages 1 and 2.

To capture run-off from the lower parts of the driveway hardstand areas towards King St frontage, which will be exposed to the atmosphere in the interim until Stage 2 is developed, a grated drain is proposed across the driveway. The grated drain will discharge to a pit with 1 Ocean Protect filter cartridge, which will provide for stormwater treatment.

Generally, Stormwater quality and quantity has been designed to mitigate downstream impacts and to meet the provisions of NDCP 2012. The following features are noted for the Stage 1 design:

- Rainwater Tanks (8 kL) for stormwater reuse (to be conditioned).
- Stormwater Retention (131 kL) for stormwater control (for Both Stages 1 and 2)
- Stormwater treatment provided via Water Treatment Chamber. The chamber has been installed with 16 x Ocean Protect filter cartridges, which will provide the stormwater treatment for the site.
- Driveway area exposed to atmosphere at lower end along Stage 2 King St frontage to be installed with grated pit and 1 x Ocean Protect filter cartridges, which will provide the stormwater treatment.

Drainage Connection

Stormwater design allows the discharge from the on-site retention tank to be connected to the existing kerb inlet pits (KIP) on Hunter St.

Stormwater run-off from the driveway area exposed to atmosphere at lower end along Stage 2 is proposed to be discharged to an existing KIP on King St.

Further to this, the majority of the stormwater outlet connections for the overall development will be carried out with the Stage 1 development.

As discussed under flooding, the road infrastructure must be upgraded to ensure that the road drainage is not compromised, and all drainage upgrade works must be undertaken as part of Stage 1 of the application.

Easement for Stormwater Purposes

Based on the submitted draft Stage 1 subdivision plan, no provisions have been made for rights of the proposed Stage 2 development to drain water over the Stage 1 allotment. It is critical that this is established via easements to ensure that the Stage 2 development is legally entitled to discharge its stormwater via the stormwater infrastructure within Stage 1.

A condition is recommended to ensure that an easement to drain water is established to allow the Stage 2 development to drain its stormwater via the Stage 1 allotment.

Maintenance & Monitoring and Safety

The proposed stormwater structures will require regular monitoring and maintenance to ensure the system is functional. A detailed monitoring and maintenance plan will be required under a recommended condition of consent prior to issue of any Construction Certificate.

Stormwater Management for Proposed Park over Stage 2 Development Area

An amended design including the proposed "Pocket Park" within Stage 2, which is required to be established as part of the Stage 1 development, has been recently submitted by the proponents. Stormwater management for the park has not been addressed within the design. Notwithstanding stormwater management has not been addressed, the stormwater design for the proposed park can be appropriately managed for the pavement and grassed areas. The stormwater discharge from the proposed park area will be connected to the road drainage network.

Conditions are recommended to ensure that the stormwater design for the park meets the provisions of NDCP 2012 and a detailed design is submitted prior to the issue of any Construction Certificate.

Conclusion

The principles of water sensitive urban design (WSUD) and the provisions of the NDCP 2012 have been assessed in relation to the proposed development. The submitted stormwater plans and supporting documents, together with the additional stormwater reuse, road upgrade works, and appropriate maintenance management will mitigate any impacts on downstream stormwater system. It is considered that the proposed development can be sustainable.

The proposal has been assessed by CN's Senior Development Officer and is considered to be acceptable subject to conditions of consent recommended at **Attachment A**.

Section 7.08 – Waste Management

The applicant's have submitted an Operational Waste Management Plan (WMP) prepared by Elephant's Foot Consulting (dated 27 October 2022) which has been assessed by CN's Waste & Commercial Collection Manager. The proposal will rely on waste collection via CN's normal waste services utilising our Heavy Rigid Vehicle (HRV) trucks. The building manager will ensure that all bins are moved to the waste collection area within Stage 1 for collection and the relocated back to their respective storage rooms with Stages 1 and 2 once collected.

The proposal has been assessed having regard to Section 7.08 and is considered to be **subject to conditions of consent recommended at Attachment A**.

Section 7.10 – Street Awnings and Balconies

As detailed under Section 6.01 above, the proposed street awnings are considered to be acceptable in context of the overall design and heritage aspects of the site.

Contribution Plans

The following Local Infrastructure Contributions Plans are relevant pursuant to Section 7.18 of the EP&A Act noting that the proposal is recommended for approval (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *Section 7.11 Development Contributions Plan (Commenced 1 January 2022)*

It is further noted that the proposal is not entitled to any exemptions or reductions under section 1.6 of the Plan.

The required contributions have been imposed by conditions of consent recommended at **Attachment A**.

(d) Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act

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

(e) Section 4.15(1)(a)(iv) - Provisions of Regulations

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

- If demolition of a building proposed - provisions of AS 2601.

These provisions of the 2021 EP&A Regulation have been considered and would normally be addressed by conditions of consent where the proposal was recommended for approval.

3.2 Section 4.15(1)(b) - Likely Impacts of Development

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

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

- Context and setting – As discussed under the NLEP, NDCP and UDRP assessments, the proposal is acceptable in terms of its urban design, character, streetscape, bulk, scale and visual appearance impacts. The proposal is considered an appropriate and expected outcome within the Newcastle West portion of the Newcastle City Centre.

- Access and traffic – The proposal as discussed above under the NDCP assessment, is considered to be satisfactory in terms of traffic, parking and access.
- Public Domain – The proposal, as discussed above under the NLEP, NDCP and UDRP assessments, is satisfactory in terms of the public domain especially in regard to streetscape, public domain and urban design outcomes. The proposal represents a significant redevelopment of a site.
- Utilities – It is considered that the proposal is adequate in terms of utilities. Due to the scale and nature of the proposal, upgrades of services such as electricity (e.g. substations) will need to be undertaken which is typical for developments of this size.
- Heritage – A heritage assessment has been undertaken under cl5.10 of the NLEP above.
- Water/air/soil impacts – Land Contamination and earthworks were addressed under SEPP (Hazards & Resilience) and cl6.2 of the NLEP respectively above. Potential air or water quality issues that could stem from construction are addressed by recommended condition of consent at **Attachment A**.
- Flora and fauna impacts – The proposal does not have flora or fauna impacts.
- Natural environment – Earthworks were addressed under and cl6.2 of the NLEP above. The site is highly distributed currently so there are no real impacts on the natural environment.
- Noise and vibration – The proposal was assessed by CN's Senior Environmental Protection Officer.

A noise assessment report prepared by Acoustic Logic dated (October 2021) has been submitted with the application.

CN has reviewed the acoustic report and notes the report theoretically demonstrates that, with appropriate controls in place, the proposed development satisfies the assessment criteria and is therefore unlikely to significantly impact neighbouring receivers or residents within the onsite towers.

The acoustic assessment follows the conventional process of determining appropriate criteria for the potentially affected receivers, characterising source noise levels, modelling the propagation of these source levels, determining compliance, and specifying controls as necessary. The assessment is based on several assumptions which the ESU could treat as recommended conditions of consent. This is a typical process, and the assumptions appear reasonable.

The acoustic assessment demonstrated that provided the glazing and construction recommendations as set out in Section 4 are applied, compliance with internal noise level requirements from the NSW Department of Planning Development Near Rail Corridors and Busy Roads – Interim Guideline, State Environmental Planning Policy (Transport and Infrastructure) 2021 and AS 2107:2016 will be achieved. This will be addressed by an appropriate condition of consent.

The consultant demonstrated that comparable plant did not exceed the noise goals for the subject site (Section 5.2.1). However, the ESU will recommend a condition of consent that the acoustic consultant carry out a detailed assessment once the mechanical plant has been selected so that any potential acoustic treatments can be incorporated into the design of the building to ensure compliance with the internal noise levels (of 35dB in sleeping areas and 40dB in living areas) will comply with AS/NZS2107-2016 and the NSW EPA – Noise Policy for Industry.

The applicant has also submitted an acoustic assessment addressing any future licenced food and beverage tenancies to be located at the subject site. The usage, fit-out layouts and capacities have not been finalised at this stage as they will be subject to separate development applications. As such, the modelling used within the assessment has been based on square metreage with the allowance of one person per square metre as per BCA requirements.

The assessment models source noise propagation against offsite receivers along with residents within the development to ensure acoustic amenity is maintained. The worst affected receivers are located within level 5 of the development.

The applicant has assessed the operation of the future licenced area of the premises against the noise criteria from the Independent Liquor and Gaming Authority (ILGA). This allows the L10 noise levels to exceed the external background noise by 5dB across all octave bands (31.5Hz to 8Khz) external to a residence prior to midnight, whilst imposing inaudibility after midnight.

The assessment theoretically demonstrates in principle, that assumptions adopted with respect to noise emission calculations are expected to comply with the project noise goals for the site. These assumptions are based on prescribed sound pressure levels associated with amplified entertainment, raised speech of patrons along with capacities based on square metreage. The consultant has listed several recommendations set out in Section 6 of the May 2023 assessment that would address any noise exceedances satisfying the project noise goals for future uses.

While it is acknowledged the acoustic assessment theoretically models the operation of a licensed premise in principle, the model was restricted to the day and evening criterion only. As such, no sleep disturbance assessment was carried out. It is recommended a condition of consent restricting the hours of operation of the any future licensed premises to 7:00am to 10:00pm Monday to Sunday. A condition of consent requiring the noise control recommendations in the F & B Tenancy Acoustic Assessment prepared by Acoustic Logic dated 19 May 2023 are to be implemented.

These recommendations are incorporated into the recommended conditions of consent at **Attachment A**.

- Natural hazards – The subject site is not affected by bushfire prone land.

As discussed above, Subsidence Advisory NSW has issued their General Terms of Approval for the development and the proposal is considered to be acceptable.

The subject site is affected by land contamination, flooding, and Class 4 Acid sulfate soils.

As discussed under cl6.1 above, an acid sulfate soils management plan has been prepared (by Tetra Tech Coffey) for the proposal and is considered to be acceptable.

Land contamination has been addressed under SEPP (Resilience and Hazards) and is also considered to be acceptable.

The flooding aspects in relation to the proposal have been assessed in detail under Section 4.01 of the NDCP above and are considered to be acceptable.

- Groundwater – The proposed development will highly likely affect the groundwater table through demolition of existing structures and proposed construction. A separate approval maybe required to be attained from Water NSW. This could be resolved as part of the CC process.

Any discharge of the groundwater directed to the Council drainage system will also be required to obtain a separate approval from CN. An Environmental Engineer, or similar consultant, will need to address groundwater treatment prior to discharge to CN's drainage system. In this regard, the applicants will need to provide CN with evidence of the approved groundwater licence.

- Safety, security, and crime prevention – The CPTED Principles have been considered under the NDCP assessment above.
- Social and Economic Impacts – The social and economic impacts have been considered under the NDCP assessment above.
- Construction Impacts – Appropriate conditions of consent have been recommended to address any potential construction impacts at **Attachment A**.
- Wind Assessment – A wind assessment has been undertaken by Windtech in relation to the proposal. The wind assessment has addressed the wind impacts and loads for all wind directions considering the sites location and proposed design and indicates that it is suitable for pedestrians at ground level. Overall it is considered the proposal is acceptable in terms of the wind assessment.
- Cumulative impacts – Overall it is considered that the cumulative impacts of the proposal are considered to be acceptable subject to conditions of consent recommended at **Attachment A**.

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

3.3 Section 4.15(1)(c) - Suitability of the site

The site is considered to be suitable for the proposed development, subject to the recommended conditions of consent included at **Attachment A**, having had regard to the nature of the existing site and the locality, the character of the area and the intended strategic planning outcomes for the Newcastle City Centre.

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

These submissions are considered in Section 4.3 of this report.

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

The proposal is considered, on balance, to be in the public interest and consistent with the planning controls (i.e. relevant SEPPs, NLEP and NDCP) plus the controls under the Apartment Design Guide, as detailed within the report. The proposal is considered to be an expected outcome of CNs intended strategic planning goals for the Newcastle City Centre and the aim of Newcastle West forming the major focus of the Centre in terms of significant mixed commercial/residential development.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in **Table 7**.

Table 7: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Referral/Consultation Agencies			
Electricity supply authority (Ausgrid)	<ul style="list-style-type: none">Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions.	Ausgrid have provided comments regarding investigation and design for likely network upgrades.	Yes
Transport for NSW	Section 2.121(4) – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	The development was referred to TfNSW for consideration who raised no objections to the proposal is considered it to be acceptable.	Yes

	Development that is deemed to be traffic generating development in Schedule 3.		
Design Review Panel	CI 28(2)(a) – SEPP 65 Advice of the Design Review Panel ('DRP')	The proposal has been the subject of an architectural design competition and review and acceptance by a Design Integrity Panel. The proposal has also been reviewed by CN's Urban Design Review Panel. The proposal is consistent with the design quality principles and the proposal is consistent to the Apartment Design Guidelines.	Yes
Integrated Development (S 4.46 of the EP&A Act)			
Water NSW	S89-91 – Water Management Act 2000 water use approval, water management work approval or activity approval under Part 3 of Chapter 3	A referral was made to Water NSW but no response has been received to date.	Yes – subject to conditions.
Subsidence Advisory NSW	Section 22 of the Subsidence Act	Applicant has provided revised report to address merit assessment criteria detailed by Subsidence Advisory NSW. Following assessment of the revised reports, Subsidence Advisory NSW has issued their General Terms of Approval (GTA's).	Yes

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 8**.

Table 8: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering (Stormwater)	Council's Engineering Officer reviewed the submitted stormwater concept plan and considered that there were no objections subject to conditions.	Yes
Traffic	Council's Traffic Engineering Officer reviewed the proposal in relation to traffic generation, access and car parking. These matters	Yes

	are considered in detail under section 7.03 of the NDCP assessment above.	
Environmental	The proposal has been assessed by CN's Senior Environment Protection Officer and the proposal is satisfactory subject to conditions.	Yes
Waste	The proposal has is considered satisfactory as detailed under section 7.08 of the NDCP assessment above.	Yes
Heritage	The proposal has been assessed by CN's Heritage Officer and is considered to be acceptable as detailed within the report above at cl5.10 of the NLEP.	Yes
City Greening	<p>The proposal has been assessed as acceptable by CN's City Greening section.</p> <p>There are three trees which are required to be retained as part of the proposal. The existing London Plane tree (ID 69237 - <i>Platanus x acerifolia</i>) on the south-western corner of Hunter and National Park Street is to be protected and retained. Additionally, the two existing River Sheoaks (Id 13754, 13755 <i>Casuarina cunninghamiana</i>) on the on the corner of Little King and King Streets is also to be protected and retained.</p> <p>Finally, the removal of Magnolia (ID 13758 <i>Magnolia grandiflora</i>), located towards the middle of the Little King Street frontage, is acceptable and compensatory street tree plantings will be required as part of the overall public domain works for the site.</p>	Yes
Food	The proposal has been assessed by CN's Senior Environmental Health Officer and the proposal is satisfactory subject to conditions.	Yes

Additional issues have been considered in the Key Issues section of this report.

4.3 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan from 25 November to 16 January 2023. A total of three unique submissions raising concerns with the proposal was received. The issues raised in these submissions are considered in **Table 9** below.

Table 9: Community Submissions

Issue	Council Comments
View Loss/View Sharing – 770 Hunter St- <i>The view loss impacts are likely to result in a significant reduction in amenity and enjoyment of the use of existing rooftop facility at Aero</i>	In addition to the issues of view loss/view sharing assessed under Section 6.01 (related to side/rear setbacks) above (727 Hunter Street), concerns have also been raised regarding the impacts on 770 Hunter Street (a mixed use apartment tower north of the subject site).

<p><i>Apartments 770 Hunter Street. The rooftop at Aero Apartments 770 Hunter Street has views to Merewether, with view corridors blocked should the development go ahead in it's currently submitted form and height.</i></p> <p><i>727 Hunter St - The view loss impacts are likely to result in significant reduction in amenity and enjoyment of the use of the approved rooftop activation facility at the Birdwood Business Centre which is forecasted to attracts visitors to the locality and provides much needed quality commercial services, thereby undermining the zone objectives. The rooftop activation facility at the Birdwood Business Centre primarily faces the eastern boundary with views to Newcastle Beach. Given the non-compliant building separation, view corridors and cross views are reduced.</i></p>	<p>Having regard to <i>Tenacity</i>, the views enjoyed by 770 Hunter Street across the subject site to the south east/south would be towards the suburbs of Cooks Hill, Merewether and Bar Beach with distance outlook of the ocean beyond. It is noted that it is likely that 770 Hunter Street enjoys additional views toward the harbour and the like. The views across the subject site would be via their rooftop area, southern and partial eastern elevations. The proposal, having regard to its setbacks, height and scale would likely to impact these views. It is noted that these impacts, due to the proposed shaped and orientation of the towers, would be less than an allowable commercial building form on site. The proposed impacts, considering the allowable controls on the site (e.g. height, FSR and setbacks), is considered to be reasonable.</p> <p>The views enjoyed across the subject site are largely a result of the existing low level buildings. It is expected that any typical redevelopment of the subject site, considering the allowable 90 metre height limit and maximum 8:1 FSR (if a commercial building), would result in the loss of the existing views from 770 Hunter Street (which is 47.85 metres in height) and, in this instance, the impacts on views by the current proposal is reasonable. In this respect, any views which 727 Hunter might enjoy across the Stage2 portion of the site would also only exist due to the low level of the existing buildings and the loss of these views would also be reasonable.</p> <p>Overall, it is considered that the impacts on views and view sharing is reasonable in this instance.</p>
Air Quality	The air quality impacts arising from the proposal and car park elements are considered to be acceptable.
Lighting/Headlight Glare Impacts	The proposal, subject to conditions recommended at Attachment A , is considered to be acceptable as discussed within the report above.
Building Separation/Setbacks	The assessment of the building separation provisions (cl4.6/cl7.4) and the respective setback controls (Section 6.01-NDCP 2012) has been assessed within body of the report and is considered to be acceptable.
FSR Variation	The assessment of the cl4.4 FSR variation has been completed under cl4.6 above report and is considered to be acceptable.
Design Excellence	As detailed within the report above, the proposal was the winning entry resulting from an Architectural Design Competition, three reviews by the associated Design Integrity Panel and two reviews by CN's UDRP. It is considered that the proposal can be found to exhibit design excellence and is acceptable.
Street Interface	The street interface elements of the proposal have been assessed within the report above and are considered to be acceptance in this instance.
Building Height	It is confirmed that the proposal does not exceed the 90 metre height standard. It is noted that rooftop RL's showing height can be misleading as to the effective height of a proposal (e.g. 91.950 m AHD in this instance) as this is an absolute level and

	not the vertical height from existing ground level. The height for the proposal was confirmed via comparing the rooftop RL with the survey detail of the existing ground levels.
Construction Impacts	<p>It is not expected that the construction of the proposal would result in physical damage to neighbouring properties but this is a civil matter in any respect inclusive of issues such as dilapidation reports.</p> <p>Subsidence Advisory NSW, as detailed within the report above, have issued their approval for the proposal,</p> <p>Requirements of SafeWork NSW are addressed via standard conditions of consent in relation to work site management.</p> <p>Standard conditions are recommended at Attachment A regarding sedimentation and soil, demolition and noise and waste aspects.</p> <p>The proposal is, subject to the recommended conditions, is acceptable in terms of construction impacts.</p>

5. KEY ISSUES

There are no further issues which have not otherwise been addressed within the assessment report above.

6. CONCLUSION

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

It is considered that the issues associated with the proposal have been resolved satisfactorily and the proposed development is acceptable subject to the recommended conditions of consent at **Attachment A**.

7. RECOMMENDATION

That the Development Application DA2022-01317 - Stage 2 involving demolition of existing structures and the erection of a mixed use development proposing 122 apartments, retail premises and associated parking, landscaping, services and associated two lot subdivision at 711 Hunter Street, Newcastle West be APPROVED on a deferred commencement basis pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at **Attachment A**.

- A. That the Hunter Central Coast Regional Planning Panel as consent authority, determine that the proposed development, in accordance the CI7.5(2), is considered to "exhibit design excellence" and satisfies the provisions of CI7.5(2) such that the application can be determined by way of approval.
- B. That the Hunter Central Coast Regional Planning Panel note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the E2 Commercial Centre zone in which the development is proposed to be carried out;
- C. That the Hunter Central Coast Regional Planning Panel note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 7.4 Building Separation, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 7.4 and the objectives for development within the E2 Commercial Centre zone in which the development is proposed to be carried out;
- D. That proposal involving demolition of existing structures and the erection of a mixed use development proposing 122 apartments, retail premises and associated parking, landscaping, services and associated two lot subdivision. at 711 Hunter Street Newcastle West be approved on a deferred commencement basis and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment A**;
- E. That Consent is granted subject to 'Deferred Commencement' in accordance with Section 4.16(3) of the Environmental Planning and Assessment Act 1979 and the deferred commencement conditions, contained within Schedule 1 at **Attachment A**, must be complied with to the satisfaction of Council within 24 months from the date of this Notice of Determination to obtain an operational Development Consent (i.e. Schedule 2).
- F. That those persons who made submissions be advised of Hunter Central Coast Regional Planning Panel's determination.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Plans/Documents submitted with the application for assessment.
- Attachment C: Clause 4.6 Request(s) for variation of cl4.4 – Floor Space Ratio and cl7.4 – Building Separation.