

COUNCIL ASSESSMENT REPORT

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSHCC-160 – DA2022-01317 - PAN-280964
PROPOSAL	DA2022-01317 - Stage 2 involving demolition of existing structures and the erection of a mixed use development proposing 121 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	\$65,382,029.00 (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 KEY IN 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 • Attachment B: Plans/Documents submitted with the application for assessment.

	<ul style="list-style-type: none"> 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 <p><u>Additional Amended Details (submitted August 2023)</u></p> <ul style="list-style-type: none"> Amended Architectural Plans Amended Solar Access Study Amended Gross Floor Area Plans Updated Landscape Plans Landscape Maintenance Plan Amended ADG Assessment Amended Clause 4.6 Variation Statement – FSR
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	<ul style="list-style-type: none"> • Amended Clause 4.6 Variation Statement – Building Separation • Lift Capability Study • Revised BASIX Assessment
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	None apply
RECOMMENDATION	Approval on a deferred commencement basis
DRAFT CONDITIONS TO APPLICANT	No
SCHEDULED MEETING DATE	19 September 2023
PREPARED BY	Damian Jaeger
DATE OF REPORT	12 September 2023

BACKGROUND

The subject application (DA2022/01317) for Stage 2 involving demolition of existing structures and the erection of a mixed use development proposing 121 apartments, retail premises and associated parking, landscaping, services and associated two lot subdivision was reported to the Hunter Central Coast Regional Planning Panel (HCCRPP) for determination on 27 July 2023.

This supplementary report provides further assessment of the proposal, as amended, in response to matters raised during the determination meeting and provides associated amended conditions of consent. The amended conditions for inclusion by the HCCRPP in the determination have been provided at **Attachment A**. This supplementary report is to be considered in combination with the original determination report.

DESIGN EXCELLENCE

HCCRPP's deferral of the application recommended that an expanded assessment of the design excellence provisions under cl 7.5(3) be provided as extracted below:

- "(3) In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters—*
- (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
 - (b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,*
 - (c) whether the development detrimentally impacts on view corridors identified in the Newcastle City Development Control Plan 2012,*
 - (d) how the development addresses the following matters—*
 - (i) heritage issues and streetscape constraints,*
 - (ii) the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
 - (iii) bulk, massing and modulation of buildings,*
 - (iv) street frontage heights,*

- (v) *environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*
- (vi) *the achievement of the principles of ecologically sustainable development,*
- (vii) *pedestrian, cycle, vehicular and service access, circulation and requirements,*
- (viii) *the impact on, and any proposed improvements to, the public domain."*

The proposal has been the subject of an *Architectural Design Competition*, three assessments by the Design Integrity Panel (DIP) and now three assessments by CN's Urban Design Review Panel (UDRP). The DIP had endorsed the lodgement of the development application as they considered that the proposal exhibited design excellence.

The UDRP, while largely supportive of the proposal in principle, had remaining concerns following its second meeting. These outstanding matters were intended to be addressed via a combination of conditions on a deferred commencement basis as previously reported to the HCCRPP. This approach was not supported by the HCCRPP and the application was deferred for various reasons including concerns that the overall development had satisfactorily demonstrated that design excellence had been achieved.

Subsequent to the HCCRPP deferral, the applicant has submitted amended plans and documents which have been assessed at a third meeting of UDRP (the UDRP report is included at **Attachment B**). The UDRP have now confirmed that the proposal is acceptable subject to conditions of consent and that the proposal achieves design excellence. It is noted that the UDRP, while satisfied with the development, have recommended that the exterior screening of the podium car park, will undergo design development to achieve a Construction Certificate level of detailing and this be provided to the UDRP for comment to ensure maintenance of design excellence. This is a reasonable and typical approach for this level of detail and ensuring continuing design excellence at the construction certificate stage.

Broadly, having regard to the assessments, it is considered that the proposal exhibits design excellence in accordance with the provisions of cl7.5(3). For completeness, an assessment of the provisions of cl7.5(3) is provided below within **Table 1**

Table 1 - CI 7.5(3) Assessment

Clause 7.5(3) Provisions	Assessment
<i>(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,</i>	The proposed development has now been the subject of three assessments by both the DIP and UDRP and is considered to exhibit design excellence. The proposal has a high standard of architectural design with appropriate material and detailing and is consistent in terms of location and type of development as envisioned by the strategic goals of the Newcastle LEP 2012.
<i>(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,</i>	The current proposal is the further development of the winning entry under an architectural design competition. The design provides for a strong external architectural appearance which improves the quality and amenity of the public domain especially via the provision of a wide public domain area towards National Park Street.

<i>(c) whether the development detrimentally impacts on view corridors identified in the Newcastle City Development Control Plan 2012,</i>	The proposal is acceptable in terms of view corridors as assessed within the original CN report.
<i>(d) how the development addresses the following matters—</i>	See points below
<i>(i) heritage issues and streetscape constraints,</i>	The detailed assessment of the proposal in context of the subject site, and the surrounding area, has found that the development is acceptable in terms of heritage and streetscape.
<i>(ii) the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,</i>	A detailed assessment of the massing, amenity, setbacks and building separations, notwithstanding the proposed variations, has found that the development is acceptable and resulted in a high standard architectural design outcome having regard to the site relative to neighbouring developments.
<i>(iii) bulk, massing and modulation of buildings,</i>	As detailed above, the overall bulk, massing and modulation of the proposed design is considered to be a well developed response to the site and its context within the Newcastle CBD.
<i>(iv) street frontage heights,</i>	The proposal has intended to integrate several widely different existing street wall heights such that it is compatible with surrounding the new development (especially 723 Hunter Street) and the existing heritage item at 498 King Street (i.e. "Drill Hall")
<i>(v) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,</i>	The proposal is acceptable in terms of environmental impacts including sustainable design, overshadowing, wind and reflectivity
<i>(vi) the achievement of the principles of ecologically sustainable development,</i>	The development is considered to be suitable in terms of principles of ecologically sustainable development. The landscape podium has been further amended to ensure that significant landscaping will be incorporated. EV charging will be included as part of the parking provision.
<i>(vii) pedestrian, cycle, vehicular and service access, circulation and requirements,</i>	The development is considered to be suitable in this respect. In addition to the onsite provisions being acceptable, it is further advised that the site has access to significant public transport including being close to the Newcastle Interchange (i.e. trains, light rail and buses).
<i>(viii) the impact on, and any proposed improvements to, the public domain."</i>	The proposal will have a degree of impact on the public domain (e.g. Birdwood Park) but this is considered to be reasonable and acceptable plus is a direct function of the existing low scale development being replaced with the allowable 90 metre high development. It is further noted that the proposal includes a large public domain area opening to National Park Street which is a significant improvement over the existing development on site.

STATE ENVIRONMENTAL PLANNING POLICY NO 65 - DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT, NEWCASTLE LOCAL ENVIRONMENT PLAN 2012 CLAUSE 7.5 - DESIGN EXCELLENCE & URBAN DESIGN REVIEW PLAN/APARTMENT DESIGN GUIDELINE

HCCRPP's deferral of the application raised the following matters below in terms of the SEPP 65, '*design excellence*', the Urban Design Review Panel (UDRP) and Apartment Design Guidelines(ADG):-

- (i) General compliance with ADG amenity controls, specifically solar access, cross ventilation, south facing units, minimum room/apartment/balcony sizes as outlined in the Council report. These figures need to be clarified as they request in some cases substantial variation from the ADG benchmarks. The Panel questions how the building could exhibit design excellence if these figures are correct. The Panel notes that the applicant does not agree with the figures documented in the report.
- (ii) Podium landscape outcomes need to be reviewed and the designed to the satisfaction of the Urban Design Review Panel to ensure the design integrity of the competition and review process.
- (iii) Material for carpark screens and lighting solutions to minimise light spill need to be finalised to the satisfaction of the Urban Design Review Panel to address both potential amenity impacts and ensure design integrity of the competition and review process.
- (iv) Capacity of lifts to service the development. The applicant indicated that there has been additional detail provided.
- (v) Analysis of compliance with the ADG and clear statement as to where differences in assessment have occurred, and in the event that there are significant breaches, justification for the degree of variation or amended to improve compliance.
- (vi) Revised landscaping proposal for the podium that address the outcomes anticipated by the winning scheme and avoids the use of artificial turf.
- (vii) Amended plans and details relating to carpark façade and lighting including material finishes.
- (viii) Documentation detailing the capacity of the lifts to service the development.

As detailed above, the UDRP were while largely supportive of the proposal in principle but had remaining concerns following its second meeting.

Subsequent to the HCCRPP deferral, the applicant has submitted amended plans and documents which have been assessed at a third meeting of UDRP (the UDRP report is included at **Attachment B**). The UDRP have now confirmed that the amended proposal is acceptable subject to conditions of consent. That the proposal achieves design excellence and is acceptable in terms of the ADG and the variations proposed by the applicant. The UDRP have recommended that the exterior screening of the podium car park, will undergo design development to achieve a Construction Certificate level of detailing and this be provided to the UDRP for comment to ensure maintenance of design excellence.

The remaining UDRP/ADG issues, that resulted in recommended deferred commencement conditions have been resolved as follows (and as detailed within the UDRP report at **Attachment B**):-

Condition	Response
1 - Level 5 Landscaped Podium changes including provision of a separate communal area to the tower within Stage2, increased landscaping and reduction in synthetic turf.	Applicants have submitted amended plans/landscape plans increasing the area of landscaping, decreasing the synthetic turf and provision of landscape maintenance plan. Additionally, via the reduction of one apartment, the proposal includes a dedicated communal area for the Stage 2 tower. These details have been assessed, including by the UDRP, and are considered to be acceptable and the issue is now resolved.
2 - Car Park Screening - ensuring that lighting/headlight glare is mitigated via architecturally attractive screening.	The further and amended details have been submitted and considered by CN's UDRP. The proposal is considered to be acceptable at the DA stage based on the submitted details. Final details at the construction certificate stage (CC) are to be considered by the UDRP prior to issue of any CC.
3 Lift capacities	The applicants have submitted a detailed report from a suitably qualified and experienced lift consultant demonstrating that the proposed lifts have the capacity to reasonably service the number of floors, apartments and expected resident 'traffic'. The proposed design includes the three lifts to the northern tower and two lifts to southern tower which is consistent with the recommendations of the report based the proposed lift systems, speed of operation and resultant wait times for users. It is considered that this issue has now been resolved.

The further assessment below addresses those matters which were not ADG complaint as detailed within the original assessment report or otherwise raised within the HCCRPP's deferral of the application (the remaining matters are otherwise considered to be acceptable as detailed within CN's original assessment report):-

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>Previous Assessment</p> <p>STAGE 1</p> <p><i>Contains 136 apartments, of which 70% equates to 96 apartments.</i></p> <p><i>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.</i></p> <p><i>The non-compliance is a shortfall of 33 apartments not achieving the required minimum access to sunlight in mid winter.</i></p> <p><i>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.</i></p> <p><i>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 (e.g. 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.</i></p> <p>STAGE 2</p> <p><i>Contains 122 apartments, of which 70% equates to 86 apartments.</i></p> <p><i>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,</i></p>	Satisfactory (Merit based assessment)

	<p><i>which is less than the minimum 70% requirement.</i></p> <p><i>The non-compliance is a shortfall of 24 apartments not achieving the required minimum access to sunlight in mid winter.</i></p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>The overall development non-compliance is a shortfall of 56 apartments not achieving the required minimum access to sunlight in mid winter.</i></p> <p><i>The current development is the resultant outcome of the winning design from an architectural design competition held under Cl7.5(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.</i></p> <p>Applicants Response</p> <p>2hrs 9am-3pm</p> <p>Stage 1 112/136 82.3%</p> <p>Stage 2 63/121 52.1%</p> <p>TOTAL 176/257 68.1%</p> <p>2hrs 8:25am-3:30pm</p> <p>Stage 1 112/136 82.3%</p> <p>Stage 2 80/121 66.1%</p> <p>TOTAL 192/257 74.7%</p> <p>No Solar 37/257 14.4%</p>	
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	<p>Summary:</p> <p>The proposed towers were accepted at the competition stage as angled rather than aligning themselves parallel to National Park Street to allow their eastern face to achieve the minimum two hours of sunlight. It has also been accepted from both the DIP and the UDRP that Tower 1 would capture the majority of solar given the North/South orientation of the site and that compliance review would be on a combined basis. Clarity has been provided to the eastern units for Stage 1 which confirm that 2hrs minimum can be achieved between 9am-11am on 21st June.</p> <p>The detailed design overtime including the development of services, structure and nuances to the built form has meant that in some instances a minor discrepancy in the minimum two hours is achieved from 8:25am and not 9am. This is such a case for Stage 2 Unit type 03 between levels 6-19. This adjustment sees compliance with 2 hours direct sunlight at Winter solstice being achieved for 74.7% of apartments however for 16 of these apartments the time period is extended by 35 minutes.</p> <p>Clarifications:</p> <p>Stage 1 Unit type 02 on levels 18-24, and penthouses 02 & 03 have their living rooms overshadowed by the proposed awning overhang, achieving less than 2hrs as required. Their habitable rooms are stepped back from the building edge subsequently allowing the full length of their generous balconies to achieve direct sunlight. These clarifications in the sun eye model have resulted in a small reduction in Stage 1's level of compliance.</p> <p>In Stage 2, clarity is provided on to Unit Type 02 which is closely overshadowed by the adjacent property and therefore compliance is only achieved for this unit type for levels 11 and above.</p> <p>Pages 11-13 for Stage 1, and pages 21-22 for Stage 2 of this package provide further clarity on the apartments Council's assessment noted as under two hours using sun eye views and</p>	
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	<p>elevational area calculations to provide great certainty on the accuracy of the calculations.</p> <p>Whilst the construction of the commercial tower at 723 Hunter Street has seen a reduction in solar from the design competition in 2021 to now (particularly for the Southern tower). The main objective of achieving 2 hours direct sunlight at winter solstice can still be achieved through a slight adjustment to the time period for calculation bringing forward 8:25am which sees compliance increase to 74.7%.</p> <p>(Above is a summary of the applicants response - full details of the response are included at Attachment B).</p> <p>Further CN Assessment</p> <p>The revised plans and documentation has been considered at a third meeting by CN's UDRP which provided the following comments in respect to solar access (as included at Attachment B): -</p> <p><i>Applicant's revised calculations note a decrease in compliance from their original figures, which reflect a numeric non-compliance with ADG recommendations. However, it is noted that the site is located in an area which permits substantial building heights and densities, and the proposal has been considered in the context of this, and the completion of a neighbouring tall building. Shortfalls are not excessive, and solar access is considered acceptable on merit.</i></p> <p>The ADG is inherently a guideline and consideration needs to be given to the overall outcomes achieved in this instance. It is further noted that the ADG and the provisions of cl7.4 of the NLEP 2012 (i.e. 24 metre building separation) were not applicable to the approval of 723 Hunter Street. The design and setbacks approved for 723 Hunter Street created notable constraints for any design on the subject site which the current proposal has addressed in a significant way by the current design response. While the solar access achieved is not fully compliant, the overall design outcome is considered to be acceptable in this instance and is recommended for approval.</p>	
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Design Criteria:	Comment:	Compliance:
2. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	<p>Previous Assessment</p> <p>STAGE 1</p> <p><i>Contains 136 apartments, of which 15% equates to 20.4 apartments.</i></p> <p><i>7 out of the 136 apartments achieve no sunlight in mid winter. This equates to 5.2% of total apartments in stage 1 and is less than the 15% maximum allowable and therefore meets the requirement.</i></p> <p>STAGE 2</p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p> <p>See the further applicant response and CN assessment combined above.</p>	Satisfactory (Merit based assessment)

Detailed below is CN's original assessment of cross ventilation under the ADG. The variation of one apartment within Stage 2 is considered to be acceptable in the circumstances and no further assessment is required in this instance.

4B Natural ventilation		
Objective 4B-3		
The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.		
Design Criteria:	Comment:	Compliance:
1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.	60% of apartments in the first 9 storeys are required to be cross ventilated, which for the proposed development at completion having	Complies Overall

<p>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>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.</p> <p>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.</p> <p>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>The proposed development overall achieves 18 apartments that are naturally cross ventilated which is 61.3% and complies with the requirements.</p>	<p>Stage 1 Complies</p>
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4D Apartment size and layout												
Objective 4D-1												
The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.												
Design Criteria:	Comment:	Compliance:										
<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</p>	Apartment type	Minimum internal area	studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>Previous Assessment</p> <p><i>The total overall development contains 258 apartments.</i></p> <p><i>Stage 1 of the proposed development is the northern tower and associated podium, which consists of 136 apartments.</i></p> <p><i>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.</i></p> <p><i>Details of the non complying apartments are;</i></p> <p><i>Apartment type 1.07.03 (as per general floor plan L6 – L16) – 2 Bed x 11 apartments.</i></p> <p><i>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.</i></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>minimum internal area by 12m² each.</p>	<p><i>Apartment type 1.17.01 (L17) – 2 Bed x 1 apartment.</i></p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>Stage 2 of the proposed development is the southern tower and associated podium which consists of 122 apartments.</i></p> <p><i>All 122 apartments in stage 2 have internal areas that meet the minimum requirement.</i></p> <p><i>The development overall therefore includes 12 non-complying apartments of the 258 total. This equates to 4.7% of the total overall apartments.</i></p> <p>Applicants Response</p> <p><u>Apartment Size</u></p> <p>Stage 1: 91.2% (124/136)</p> <p>Stage 2: 100% (122/122)</p> <p>Combined: 95.3% (246/258)</p> <p>One apartment type in Tower 1 (apartment type 3) through floors 6 - 17 has shortfall of 12cm² and is the only non-compliance in the development. Given the extreme minor nature of the non-compliance which can easily be remedied in Design Development it is considered 100% compliance is achieved. The apartment is highly efficient with no wasted circulation space and has been demonstrated to achieve functional layout options.</p> <p>Further CN Assessment</p> <p>The applicant has submitted further plan details addressing in detail the ADG requirements in terms of apartment sizes, bedrooms and living rooms.</p>	
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	<p>It is also advised that the proposal has been assessed on three occasions by CN's UDRP which raised no objections to these ADG elements within the design (as included at Attachment B).</p> <p>CN's original assessment of these ADG aspects considered that the variations were very small and did not detract from the design and amenity outcomes for future residents and could be supported in this instance.</p>	
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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)	<p>Previous Assessment</p> <p>Master Bedrooms</p> <p>Stage 1</p> <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</p>	Satisfactory (Merit based assessment)

	<p><i>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.</i></p> <p>Overall</p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>In this regard the 0.1-0.8 m² shortfall is considered minor and is deemed to be satisfactory.</i></p> <p>Applicants Response</p> <p>Master Bedrooms</p> <p>Stage 1: 100% Compliant</p> <p>Stage 2: 100% Compliant</p> <p>All master bedrooms achieve the minimum 10sqm requirement and other bedrooms achieve 9sqm requirement.</p> <p>Further CN Assessment</p> <p>The applicant has submitted further plan details addressing in detail the ADG requirements in terms of apartment sizes, bedrooms and living rooms.</p> <p>It is also advised that the proposal has been assessed on three occasions by CN's UDRP which raised no objections to these ADG elements within the design (as included at Attachment B).</p> <p>CN's original assessment of these ADG aspects considered that the variations were very small and did not detract from the design and amenity outcomes for future residents and could be supported in this instance.</p>	
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Design Criteria:	Comment:	Compliance:
<p>2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p>	<p>Previous Assessment</p> <p>Stage 1</p> <p><i>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.</i></p> <p>Stage 2</p> <p><i>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.</i></p> <p>Overall</p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>In this regard the proposed development can be regarded as satisfactory.</i></p> <p>Applicant Response</p> <p>Bedroom Dimension</p> <p>Stage 1: 100% Compliant Stage 2: 99.2% (121/122) compliant</p> <p>All bedrooms in tower 1 achieve the minimum dimension required in each direction. All bedrooms in tower 2 achieve the minimum dimension except for the secondary bedroom</p>	<p>Satisfactory, (Merit based assessment)</p>

	<p>in apartment 2.01.02 (which still exceeds 9m2 in size).</p> <p>Due to the irregular tower form as a result of the design excellence competition some of the bedrooms have encroachments into the minimum dimension on one end. In all instances the bedrooms have been increased in size above the ADG requirements, and often include a door swing nook. The bedrooms have been demonstrated to achieve satisfactory layout options. Refer to detailed apartment breakdown</p> <p>Further CN Assessment</p> <p>The applicant has submitted further plan details addressing in detail the ADG requirements in terms of apartment sizes, bedrooms and living rooms.</p> <p>It is also advised that the proposal has been assessed on three occasions by CN's UDRP which raised no objections to these ADG elements within the design (as included at Attachment B).</p> <p>CN's original assessment of these ADG aspects considered that the variations were acceptable. While there were technical non-compliances at one end of a room, due to the room shapes formed by the overall angular floorplates proposed, these do not detract from amenity outcomes for future residents, provide significantly larger widths overall and are fit for purpose. It is considered that these room dimensions are acceptable and could be supported in this instance.</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><i>Previous Assessment</i></p> <p><i>Stage 1</i></p> <p><i>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.</i></p>	<p>Compliance:</p> <p>Satisfactory - (Merit based assessment)</p>

	<p><i>Details of the 24 non-complying apartments are;</i></p> <ul style="list-style-type: none"> • <i>There are 4 x 1 bedroom apartment types that account for the 24 total 1 bedroom apartments with living spaces less than 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.</i> <p><i>The 24 apartments not complying with the minimum living room width equate to 17.6% of total apartments in stage 1 of the development.</i></p> <p>Stage 2</p> <p><i>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.</i></p> <p><i>Details of the 35 non-complying apartments are;</i></p> <ul style="list-style-type: none"> • <i>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.</i> • <i>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.</i> <p><i>The 35 apartments not complying with the minimum living room width equate to 28.7% of total apartments in stage 2 of the development.</i></p> <p>Overall</p> <p><i>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.</i></p> <p><i>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.</i></p>	
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	<p>Applicants Response</p> <p><u>Apartment Layout</u></p> <p><u>Living Room Width</u></p> <p>Stage 1: 100% Compliant</p> <p>Stage 2: 100% compliant</p> <p>All living rooms achieve the minimum dimension required in each direction. Due to the irregular tower form as a result of the design excellence competition some of the living spaces have encroachments into the minimum dimension at one end. In all instances the living rooms have been increased in size above the ADG requirements and demonstrated to achieve satisfactory layout options. Refer to detailed apartment breakdown</p> <p>Further CN Assessment</p> <p>The applicant has submitted further plan details addressing in detail the ADG requirements in terms of apartment sizes, bedrooms and living rooms.</p> <p>It is also advised that the proposal has been assessed on three occasions by CN's UDRP which raised no objections to these ADG elements within the design (as included at Attachment B).</p> <p>The angular floorplates proposed by the current design result in irregular room sizes which do not technically meet the ADG dimensions at all ends (i.e. one end will be larger and another smaller). Notwithstanding this, the overall areas provided are larger and overall achieve good amenity and functionality outcomes for the future residents and could be supported in this instance.</p>	
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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:

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

The minimum balcony depth to be counted as contributing to the balcony area is 1m.

Comment:

Previous Assessment

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.

- 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.*

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.

Compliance:

Satisfactory -
(Merit based assessment)

	<p>Stage 2</p> <p>67 apartments of the 118 apartments in stage 2 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.</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 Cl7.5(4) of the NLEP 2012. The current proposal has been reviewed by both the Design Integrity Panel (DIP) and CN's UDRP.</p>	
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	<p><i>The UDRP noted that the proportions (areas and widths) of the provided balconies fell short of ADG recommendations in a number of 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.</i></p> <p>Applicants Response</p> <p>Balcony Size</p> <p>The development is 100% compliant with minimum size – refer to detailed apartment breakdown.</p> <p>The ADG allows for balcony areas in excess of 1m to be included in the area calculation. The independent assessment only calculated balcony areas in excess of the 2m or 2.4m minimum dimension which is incompatible with the ADG definition.</p> <p>Balcony Dimension</p> <p>Stage 1: 99.3% compliant (135/136) refer to detailed apartment breakdown. One apartment being Apartment 1.25.03 (3-bed) is the only non-compliant balcony for Stage 1, however is significantly larger than minimum size requires to compensate and demonstrated to cater for a range of furniture layouts.</p> <p>Stage 2: 98% (120/122) refer to detailed apartment breakdown Compliant</p> <p>Apartments 2.25.01 (3 bed) and 2.25.03 (3 bed) are marginally non-compliant due to the irregular tower form. However, are significantly larger than minimum size requires to compensate and demonstrated to cater for a range of furniture layouts.</p>	
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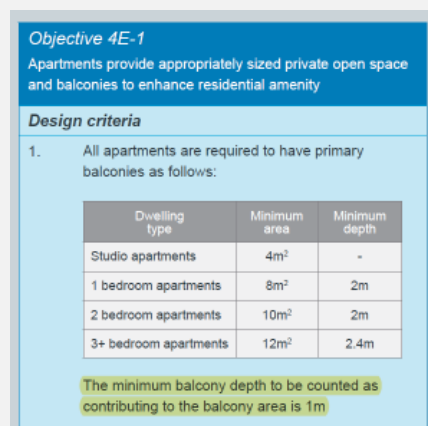
Further CN Assessment

The revised plans and documentation has been considered at a third meeting by CN's UDRP which provided the following comments in respect to balconies (as included at **Attachment B**): -

Noted that ADG includes an exception that allows lesser widths over 1.0 metre wide to contribute to the balcony areas.

The areas/dimensions of the balconies are considered acceptable in terms of amenity and outcomes on merit.

The original assessment of the balconies by CN was undertaken on a 'strict' interpretation of the *Objective 4E-1 Design Criteria 1* (see screenshot below for reference) – only counting areas of the balcony which achieve at least the minimum depth noted in the table as contributing towards the minimum balcony area required.



The screenshot shows a blue header for 'Objective 4E-1' with the text 'Apartments provide appropriately sized private open space and balconies to enhance residential amenity'. Below this is a section for 'Design criteria' with a numbered list. The first item states that all apartments must have primary balconies meeting specific criteria. A table follows with columns for 'Dwelling type', 'Minimum area', and 'Minimum depth'. The table lists requirements for studio, 1-bedroom, 2-bedroom, and 3+ bedroom apartments. A yellow highlight at the bottom states that a minimum balcony depth of 1m can be counted as contributing to the balcony area.

Dwelling type	Minimum area	Minimum depth
Studio apartments	4m ²	-
1 bedroom apartments	8m ²	2m
2 bedroom apartments	10m ²	2m
3+ bedroom apartments	12m ²	2.4m

The minimum balcony depth to be counted as contributing to the balcony area is 1m

The ADG balcony criteria, as detailed within the table above, allows for an interpretation where areas of the balcony less than 2m wide, but 1m or greater in width, can still contribute towards the primary balcony area. Based on this interpretation it means that all 23 apartments identified as 'non-complying' in stage 1 would actually comply, and for 65 out of the 67 apartments identified as 'non-complying' in stage 2 would actually comply, as follows:-

- 132 out of 132 apartments in stage 1 comply, or 100%.
- 116 out of 118 apartments in stage 2 comply, or 98.2%. The non-complying apartments are identified below:

	<ul style="list-style-type: none"> • Apartment 2.24.01 – the maximum balcony width at any point is 2m. A minimum width of 2.4m is required for 3 bedroom apartments. • Apartment 2.24.03 – the maximum balcony width at any point is 2.2m. A minimum width of 2.4m is required for 3 bedroom apartments. • 248 out of 250 total apartments comply, or 99.2% <p>The ADG is inherently a guideline and consideration needs to be given to the overall outcomes achieved in this instance. It is considered that the non-compliances by the two apartments is not substantial and will still be fit for purpose in this instance notwithstanding the small variation to the balcony widths proposed.</p>	
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Overall it is considered that the proposal, based on the further assessment of the amended plans and additional information provided by the applicants, is acceptable in terms of the ADG and can be supported in this instance. It is further advised that, as detailed in the assessment above, that it is considered that the amended proposal achieves design excellence which has been confirmed by the DIP and UDRP.

CLAUSE 4.6 REQUEST & FSR/GFA CALCULATIONS

HCCRPP's deferral of the application raised the following matters below in terms of the proposed Cl4.6 requests Floor Space Ratio (FSR) and Building Separation:-

- (i) Calculation of GFA on architectural plans do not appear to be in accordance with the definition of GFA under NLEP 2012.
- (ii) There is a difference between the GFA calculation in the clause 4.6 written request and the GFA numbers on the architectural plans. The written requests also refers to a variation of 10% which is not factually correct.
- (iii) The clause 4.6 FSR written request needs to identify the actual square metre variation to FSR for each of the developments, identify environmental planning grounds specific to the breach for each development, and if including references to the zone and zone objectives, update to the correct zones and objectives.
- (iv) The clause 4.6 separation written request needs to ensure calculations are accurate and identify source.
- (v) Revised clause 4.6 written requests that include correct calculations, detail the breaches, and provided arguments specific to the breach, addressing the requirements of clause 4.6 (3)(a) and (b).

Extracted below is the definition of gross floor area (GFA) which provides for the respective inclusions and exclusions to GFA: -

"gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic, but excludes—
- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement—
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above."

The applicants have provided a further amended GFA plan (dated 14/8/23) which provided detailed calculations of the proposal's GFA in accordance with the above definition. A review of the original and amended GFA plans was undertaken to confirm that the areas included as GFA were correct as detailed in **Table 2** below.

Table 2 - GFA Assessment

Level	GFA Compliance
Ground	<p>Yes - The GFA plan correctly excludes the loading areas, the areas for <i>plant rooms, lift towers and other areas used exclusively for mechanical services or ducting</i> and <i>any area for common vertical circulation, such as lifts and stairs</i>. Additionally, it is noted that a large part of the area labelled "BOH" (Back of House) is actually the driveway and ramp to the parking on the upper floors (and this is excluded as <i>car parking to meet any requirements of the consent authority (including access to that car parking)</i>).</p> <p>It is further noted that the waste and storage areas on the ground floor have been correctly included within the GFA as these areas are not in a basement and therefore, not excluded from the definition of GFA.</p>
01	Yes - The GFA plan correctly includes the retail, access to lift areas and storage as GFA. Additionally, it excludes the parking areas (and access to parking), areas for vertical circulation and the plant rooms.
02	Yes - The GFA plan correctly includes the retail, access to lift areas and storage as GFA. Additionally, it excludes the parking areas (and access to parking), areas for vertical circulation and the plant rooms.
03	Yes - The GFA plan correctly includes the access to lift areas and storage as GFA. Additionally, it excludes the parking areas (and

	access to parking), areas for vertical circulation and the plant rooms.
04	Yes - The GFA plan correctly includes the access to lift areas and storage as GFA. Additionally, it excludes the parking areas (and access to parking), areas for vertical circulation and the plant rooms.
05/Landscape Podium	Yes - The GFA plan correctly excludes the areas for vertical circulation and <i>mechanical services or ducting</i> . Balconies are not included as they are not enclosed. Additionally, the covered communal room area is not fully enclosed, being open on the sides, and does not count as GFA.
06-16	Yes - The GFA plan has correctly excluded balconies, any area for common vertical circulation, such as lifts and stairs and plant rooms, lift towers and other areas used exclusively for mechanical services or ducting.
17	Yes - The GFA plan has correctly excluded balconies, any area for common vertical circulation, such as lifts and stairs and plant rooms, lift towers and other areas used exclusively for mechanical services or ducting.
18-24	Yes - The GFA plan has correctly excluded balconies, any area for common vertical circulation, such as lifts and stairs and plant rooms, lift towers and other areas used exclusively for mechanical services or ducting.
25	Yes - The GFA plan has correctly excluded balconies, any area for common vertical circulation, such as lifts and stairs and plant rooms, lift towers and other areas used exclusively for mechanical services or ducting.

The applicants have also submitted an amended Clause 4.6 variation request to address the FSR addressing the concerns raised previously by the HCCRPP.

The submitted amended Clause 4.6 has correctly detailed the total proposed FSR (12484.56 m²) and the numerical exceedance (307.56 m²) but has, in error, overstated the percentage variation as 2.78%, whereas it is 2.53%. It is also noted that a similar error has been made in relation to the combined variation percentage being 0.87% as opposed to 1.99%. It is confirmed that the total GFA, FSR and numerical variations are correct and its only an error in the percentage of variation. It is further advised that the combined GFA/FSR/percentage details are not technically relevant to the assessment of the two separate development applications (each must be considered on its own merits) and, as such, this error has no effect (i.e. it does not alter the variations for each of proposed separate development applications).

These error in the percentage calculations are inconsequential to the assessment of the Clause 4.6 variation, has been overstated as opposed to understated and the total GFA and variation to FSR in square metres is correct.

It is confirmed that these GFA calculations are based on the combination of cl 7.10(2) (which decreases the gazetted 8.0:1 FSR to 5.0:1) and the 10% 'bonus' allowed under cl7.5(6) within the design excellence clause of the NLEP 2012 (i.e. providing a final allowable FSR of 5.5:1). The interaction between cl7.10(2) and Cl7.5(6) was discussed in detail within the original report.

In terms of design excellence (cl7.5 and the 'bonus' under cl7.5(6)) it is advised that the original report recommended that the HCCRPP resolve that the proposal exhibits design excellence in accordance with cl7.5 subject to conditions of consent on a deferred commencement basis. Following the submission of the amended and additionally information, plus the further review of the development by CN's Urban Design Review Panel, it is now recommended that the HCCRPP can resolve that the proposal exhibits design excellence in accordance with cl7.5, subject to conditions of consent, without any need for deferred commencement basis. In this respect it is confirmed that it is considered that the provisions of cl7.5(6) have been satisfied and the 10% 'bonus' applies to the current proposal.

The applicants amended Clause 4.6 ensures that it is based on GFA definition as discussed above. It notes that because aspects such as waste management and storage are not located within a basement, they must be included within the FSR for the proposal and its associated cl4.6 variation.

The original assessment of the cl4.6 variation to FSR recommended that it be supported by the HCCRPP subject to conditions of consent. It was determined that the submitted cl4.6 variation included errors in terms of FSR/GFA calculations and reference to the zone objectives (the zone was amended E2 Commercial Centre as part of the broad changes to the Standard Instrument LEP). Notwithstanding these issues, the overall impacts of the proposal including height, bulk, scale, visual appearance and amenity impacts (e.g. overshadowing) is unchanged and, as such, it is still recommended that the cl4.6 variation to FSR be supported. It is considered that the applicants amended cl4.6 variation request has resolved the issues raised by the HCCRPP deferral of the application including i) GFA/FSR calculations, ii) differences in plans/cl4.6 calculations, specific environmental planning grounds and addressing the correct zone objectives.

Overall, it is considered that the support for the applicants cl4.6 request to vary FSR can be made on the basis that strict compliance with the standard is unnecessary as the objectives of the standard and objectives of the zone have otherwise been met (i.e. first limb of *Wehbe*).

CLAUSE 4.6 REQUEST & BUILDING SEPARATION

HCCRPP's deferral of the application raised the following matters below in terms of the proposed Cl4.6 requests Floor Space Ratio (FSR) and Building Separation:-

- (i) Calculation of GFA on architectural plans do not appear to be in accordance with the definition of GFA under NLEP 2012.
- (ii) There is a difference between the GFA calculation in the clause 4.6 written request and the GFA numbers on the architectural plans. The written requests also refers to a variation of 10% which is not factually correct.
- (iii) The clause 4.6 FSR written request needs to identify the actual square metre variation to FSR for each of the developments, identify environmental planning grounds specific to the breach for each development, and if including references to the zone and zone objectives, update to the correct zones and objectives.
- (iv) The clause 4.6 separation written request needs to ensure calculations are accurate and identify source.

- (v) Revised clause 4.6 written requests that include correct calculations, detail the breaches, and provided arguments specific to the breach, addressing the requirements of clause 4.6 (3)(a) and (b).

The submitted architectural plans and cl4.6 variation to the building separations (under cl7.4 NLEP 2012) had small discrepancies between the two documents. The applicants submitted amended plans and amended cl4.6 variation requests and the proposed separation distances now all align correctly. It is further noted that the revised building separations are now consistent with the separation distances assessed in CN's original report (only difference being 22.633 metres versus 22.6 metres between the north and south proposed towers - which is only 33 mm).

Similarly, the amended cl4.6 variation request has addressed the E2 Commercial Centre zone objectives.

Overall, it is considered that the support for the applicants cl4.6 request to be vary building separation (cl7.4) can be made on the basis that strict compliance with the standard is unnecessary as the objectives of the standard and objectives of the zone have otherwise been met (i.e. first limb of *Wehbe*).

PLANNING SECRETARY CONCURRENCE - CLAUSE 4.6(4)(B) & CLAUSE 4.6(5)

An expanded assessment of the matters related to the concurrence of the Planning Secretary is provided below (including the assessment from the original report).

Clause 4.6(4)(a) have been addressed by the combination of the original and supplementary reports.

Clause 4.6(4)(b) under NLEP 2012 requires that consent cannot be granted unless the concurrence of the Planning Secretary has been obtained as extracted below: -

"(4) Development consent must not be granted for development that contravenes a development standard unless—...

...(b) the concurrence of the Planning Secretary has been obtained."

Planning system circular PS2020-002 *Variations to development standards*, which applies to HCCRPP as the current proposal is regionally significant development, provides that the HCCRPP has assumed concurrence to vary development standards, including the development standards proposed by this application, as extracted below:-

"Regionally significant development

Sydney district and regional planning panels may also assume the Secretary's concurrence where development standards will be contravened. The restriction on delegates determining applications involving numerical or non-numerical standards does not apply to all regionally significant development. This is because all regionally significant development is determined by a panel and is not delegated to council staff. However, the restriction on assuming concurrence to vary lot size standards for dwellings in rural areas will continue to apply to regionally significant development. The Secretary's

concurrence will need to be obtained for these proposals in the same way as it would for local development."

In this respect, it is confirmed that the HCCRPP has the concurrence to consider and determine the development application inclusive of the proposed cl4.6 variations (i.e. FSR and building separation).

Clause 4.6(5) provides for matters which must be considered by the Planning Secretary in granting concurrence (as extracted below).

"(5) In deciding whether to grant concurrence, the Planning Secretary must consider—
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
(b) the public benefit of maintaining the development standard, and
(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence."

Notwithstanding that concurrence can be assumed, the following assessment is made in relation to the proposed cl4.6 variation requests:

- (i) Neither cl4.6 variation requests raise any matters of significance for State or regional environmental planning
- (ii) The applicants submitted cl4.6 requests, and subsequent CN assessment reports, has demonstrated that the proposed variations are reasonable in this instance and still consistent with the public benefit outcomes of the respective development standards

Overall, it is considered that the HCCRPP has the appropriate authority and concurrences and that the proposed variations can be determined and proposal approved.

ENGINEERING (FLOODING, ACCESS & TRAFFIC)

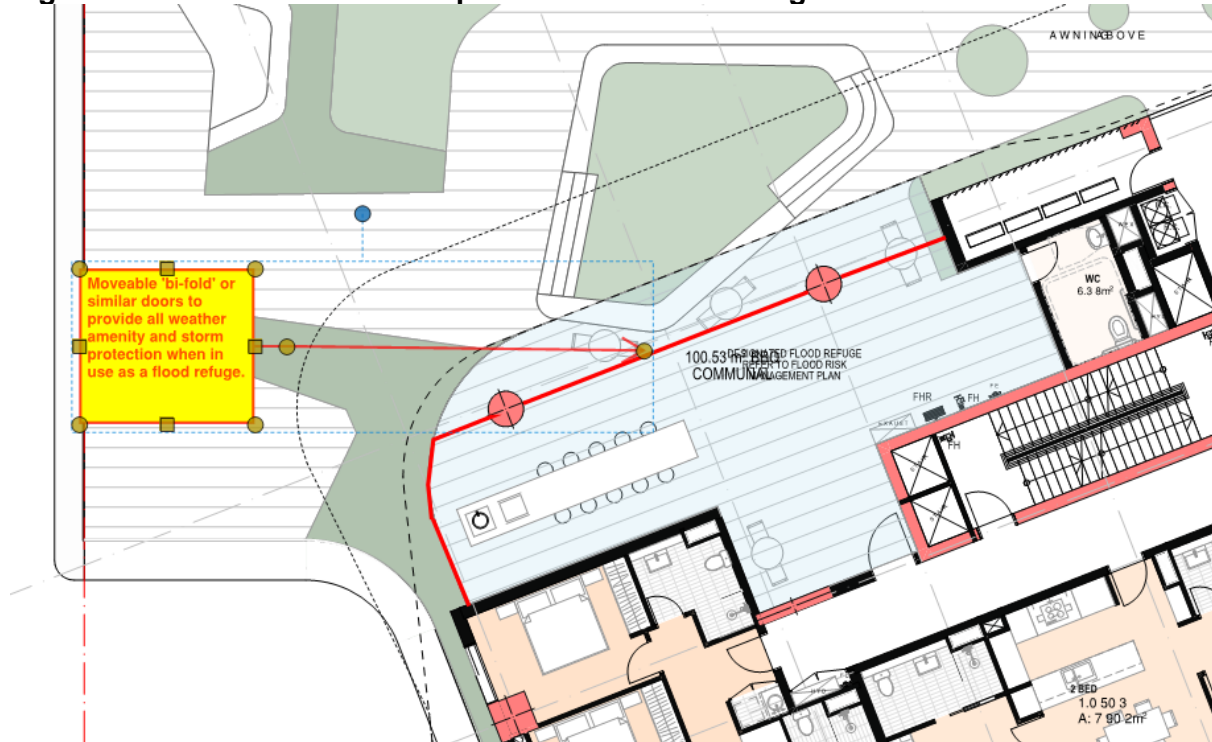
Flooding

HCCRPP's deferral of the application raised 'arrangements for shelter in place'.

It is necessary that reciprocal rights of access be provided to all common areas including the podium and required flood refuge (which is addressed by conditions of consent included at **Attachment A**).

The proposed flood refuge is proposed within the Stage 1 tower and is considered to have sufficient area for its purpose as it only needs to be available for staff and customers of the ground floor retail premises. The flood refuge is not fully weather enclosed as proposed. It is considered that when the use of the flood refuge is necessary, this would typically be a significant storm event. To address this issue it is recommended that a condition of consent be imposed (as included at **Attachment A**) that the area be provided with 'bi-fold' style doors or similar that have a high architectural quality (see **Figure 1** below) such that the area could be enclosed on a temporary basis. This would additionally allow the area to be enclosed to provide all weather amenity for the future residents of the development.

Figure 1 - Movable all weather protection of floor refuge



Overall, the proposed flood refuge is considered to be acceptable subject to conditions of consent.

Access/Easements

The proposal is considered to be acceptable in terms of access (i.e. pedestrian and vehicular) subject to the amended conditions included at **Attachment A**. Access to common areas needs to be achieved for residents and their visitors to both proposed towers. Additionally, as discussed above, access to the flood refuge also needs to be available for the ground floor staff and their customers.

Traffic (Pedestrians)

It was previously recommended within the conditions of consent (i.e. condition 95 as extracted below) that the proposal would be responsible for '*making provision at the King and National Park Street traffic control signals for red arrow protection for pedestrians..*' but the nexus for this being imposed solely on the current development was queried.

CN's Senior Development Engineer further reviewed this condition and confirmed that the proposal, considering its overall size and scale, having regard to its likely pedestrian traffic, that there is sufficient nexus to impose this requirement solely on the current development applications and was reasonable. In this respect, it is confirmed that CN does not intend to propose any changes to the recommended condition.

95 Requirements for Traffic Control Signals

In accordance with the Transport for New South Wales letter dated 25 January 2023 the developer making provision at the King and National Park Street traffic control

signals for red arrow protection for pedestrians, such to be completed prior to issue of any occupation certificate.

Condition reason: To ensure that appropriate additional traffic control measures are implemented.

LANDSCAPE MAINTENANCE PLAN

The applicants have submitted a landscape maintenance plan (prepared by Urbis dated 14 August 2023 Rev) to address all the proposed landscaping on the site for the initial 12 month establishment period. The plan addresses aspects including watering, fertilising and weeding regimes aimed to ensure a successful landscaping outcome for the development.

The plan also addresses safety aspects associated with landscape maintenance, notably in areas near the edge of the podium which will be potentially more hazardous, via the inclusion of safety railings and anchor points (See **Figure 1** below).

The landscape maintenance plan is included within the amended recommended conditions of consent included within **Attachment A**.

Figure 1 - Safety elements for landscape maintenance



Source: Landscape maintenance plan (Urbis dated 14 August 2023 Rev)

CONCLUSION

The amended 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**.

RECOMMENDATION

That the Development Application DA2022-01317 - Stage 2 involving demolition of existing structures and the erection of a mixed use development proposing 121 apartments, retail premises and associated parking, landscaping, services and associated two lot subdivision at 711 Hunter Street, Newcastle West be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at **Attachment A**.

- 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 Clause 7.10 Floor space ratio for certain development in Area A, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4, objectives of Clause 7.1 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 121 apartments, retail premises and associated parking, landscaping, services and associated two lot subdivision at 711 Hunter Street Newcastle West be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment A**;
- E. 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.

