

COUNCIL ASSESSMENT REPORT

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSHCC-264 - DA2023/01154 - PAN-395532
PROPOSAL	Residential flat building - including ancillary development (pools) and demolition of existing structures.
ADDRESS	Lot 1 DP 747803 & Lot 102 DP 736173 - 237 Wharf Road Newcastle NSW
APPLICANT	EJE Architecture
OWNER	Tamba Pty Ltd
DA LODGEMENT DATE	12 December 2023
APPLICATION TYPE	Development Application
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19(1) and Clause 2 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as: General development over \$30 million in estimated development cost.
EDC	\$35,372,023 (excluding GST)
CLAUSE 4.6 REQUESTS	CI4.4 – Floor Space Ratio NLEP 2012
KEY SEPP/LEP	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> • <i>State Environmental Planning Policy (Sustainable Buildings) 2022</i> • <i>State Environmental Planning Policy (Housing) 2021</i> • <i>State Environmental Planning Policy (Planning Systems) 2021</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 (NLEP) 2012</i> • <i>Newcastle Development Control plan 2023.</i>
TOTAL & SUBMISSIONS ISSUES SUBMISSIONS	<p>17 submissions received from the initial notification (20 December 2023 to 25 January 2024)</p> <p>9 additional submissions received from the notification of amended plans (21 January to 5 February 2025)</p> <p>Of the 26-submissions received, 21 are considered unique.</p>

DOCUMENTS SUBMITTED FOR CONSIDERATION	Appendix A - Conditions of consent Appendix B - Architecture plans Appendix C - Landscape Plans Appendix D - Urban Design Review Panel (UDRP) comments Appendix E - Clause 4.6 Request to vary Development Standard Appendix F - External Referral Comments (Ausgrid, TfNSW - Rail and Subsidence Advisory NSW) Appendix G - Submitters List Appendix H - Design Verification Statement. Appendix I - Applicant submitted view loss Assessment Appendix J - Acid Sulfate Soils Report Appendix K - Remediation Action Plan
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	Application is subject to the Housing and Productivity Contributions. Conditions shall be included with any consent.
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes - Applicant's response has been considered and is reflected in Appendix A .
SCHEDULED MEETING DATE	11 March 2025
PLAN VERSION	6 January 2025 Version O
PREPARED BY	Iain Watt - Senior Development Officer (Planning)
DATE OF REPORT	4 March 2025

EXECUTIVE SUMMARY

The development application (DA2023/01154) seeks consent for the demolition of an existing two-storey commercial building and the construction of a six (6) storey residential flat building (RFB) comprising twenty (20) three-bedroom units, resident facilities, basement car parking, outdoor terraces and associated landscaping and stormwater infrastructure ('the proposal').

The subject site is known as 237 Wharf Road, Newcastle ('the site'), occupying an irregularly shaped lot of 2,625.2m² with a 67m frontage to Wharf Road. The site is located within the Newcastle City Centre, directly opposite the harbour foreshore, and is identified as flood-prone land with Class 3 and 4 Acid Sulfate soils. Existing site improvements include a commercial building with basement parking and landscaping elements.

The surrounding area is characterised by a mix of commercial and residential developments, with the site positioned between the eastern end of Newcastle and the Hunter River foreshore. Adjoining the site to the south is a future laneway identified under the Newcastle Development Control Plan (NDCP) 2012. To the east is a 'key site' designated under *Newcastle Local Environmental Plan 2012* (NLEP 2023) for future community space.

The site is zoned MU1 – Mixed Use under the NLEP 2012, which permits RFBs with consent. The proposal includes a Clause 4.6 request to vary the Floor Space Ratio (FSR) control, seeking an FSR of 1.85:1, exceeding the 1.5:1 FSR limit by 23.3%.

The proposal is subject to assessment against State Environmental Planning Policies (SEPPs), including SEPP (Housing) 2021, SEPP (Sustainable Buildings) 2022, and SEPP (Resilience and Hazards) 2021.

The proposal complies with design excellence provisions and has been endorsed by the Urban Design Review Panel (UDRP).

Key issues identified from the assessment include:

1. **FSR Variation** – The proposed 23.3% exceedance of the FSR control requires justification under Clause 4.6. The applicant states the proposal meets strategic planning objectives and delivers high-quality residential outcomes.
2. **View Loss** – The development impacts views from nearby properties, including 209 Hunter Street, but retains significant public view corridors.
3. **Flooding and Stormwater** – The site is affected by local flooding. The proposed flood management measures, include increased floor levels and drainage provisions, are considered satisfactory.
4. **Traffic and Parking** – The development provides 38 parking spaces aligning with DCP controls. Concerns raised regarding visitor parking allocation can be resolved via recommended conditions.
5. **Heritage and Design** – The site is within the Newcastle City Centre Heritage Conservation Area (HCA). The existing building has a neutral heritage value and the proposal is consistent with the desired future character of Wharf Road.

The application was publicly notified from 20 December 2023 to 25 January 2024, with 17 submissions received, and renotified from 21 January to 5 February 2025, resulting in 9 additional submissions. Concerns raised include view loss, FSR exceedance, height and visual impacts.

The application has been referred to external agencies, including Transport for NSW (Rail), Subsidence NSW (SANSW) and Ausgrid, with no objections raised subject to conditions.

Following a detailed assessment against Section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), the proposal is in the public interest and generally consistent with strategic planning objectives. Approval is recommended, subject to conditions at **Appendix A**.

1. THE SITE AND LOCALITY

1.1 The Site

The site is located within the Newcastle City Centre on the southern side of Wharf Road directly across from the harbour foreshore and is identified as 237 Wharf Road Newcastle (refer to **Figure 1**).

The site is irregular in shape, with a 67m frontage to Wharf Road and a total area of 2625.2m². Existing site improvements are a two-storey commercial building with basement parking and landscaping elements, with vehicular and pedestrian access from Wharf Road. A stormwater culvert abuts the eastern property boundary (adjacent to the existing driveway entry).

To the south of the site is a large parcel of land which the NDCP 2012 identifies as a future laneway. To the east of the site is a 'key site' under both NLEP 2012 and NDCP 2012 as a future 'multipurpose community space'. Land immediately to the west has a three storey commercial building and to the north, the Wharf Road corridor and beyond the Hunter River.

The development site is identified as flood prone land, having Class 3 and 4 Acid Sulfate soils. It is within a Mines Subsidence District and within the Newcastle City Centre HCA.



Figure 1: location map

1.2 The Locality

The site is located within the Civic Character area between the east end and the Hunter River foreshore areas. The harbour foreshore is approximately 35m to the north and the Crown Street light rail stop 50m to the south-west. This location is within the Newcastle City Centre HCA.

Recent approvals in the area include DA2020/00189, 11 Argyle Street Newcastle for Mixed: Mixed-use - staged development for alterations and additions and part change of use of the building from car park to office and additional floor of office.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent to demolish the existing commercial building and erect a six storey RFB consisting of 20 units, resident facilities and associated car parking. Refer to **Figure 2** for the proposal's north elevation to Wharf Road. **Figure 3** provides a cross section and **Figure 4** a photomontage. Architectural plans are provided at **Appendix B** and Landscape Plans at **Appendix C**.

Specifically, the proposal involves:

- Demolition of the existing two storey commercial building
- The construction of a residential development consisting of the following:

Basement Level

- Carpark of 38 parking spaces for residents and nil visitor/car wash spaces.
- Storage areas provided with the 38 residential car spaces.
- Access from Wharf Road via a curved two lane vehicle ramp.
- Two designated bin areas accessed next to the lift lobby.
- Associated mechanical plant areas.

Ground Level

- Outdoor terraces and a plunge pool.
- Two three bedroom units.
- Master bedroom with walk in wardrobe and ensuite.
- Terrace with spa.
- Resident lounge and gym.
- Concierge and lobby area.
- Amenity facilities (one accessible and two unisex).
- Residential wine cellar.

Levels 1 to 4

- Four three bedroom units on each level.
- Large balconies fronting Wharf Road and smaller balconies fronting the rear laneway.

Penthouse Level

- Two three bedroom penthouse units:
- Wrap around terrace with spa and secondary terrace off bedroom 2 and 3.

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

Table 1: Key Development Data

Control	Proposal
Zone	MU1 Mixed Use - The development is permitted with consent by way of not being a prohibited land use.
Site area	2,625.2sqm
GFA	4,859.2sqm
FSR (retail/ residential)	1.85:1 being above the limit of 1.5:1 (no bonus provision under Clause 7.5 as FSR not set by Clause 7.10 for the subject site)
Clause 4.6 Requests	Yes – Clause 4.4 Floor Space Ratio
No of apartments	20 (three bedroom) units
Max building height	22m Subject to Clause 7.5 NLEP Proposal is 22m at RL 24.53

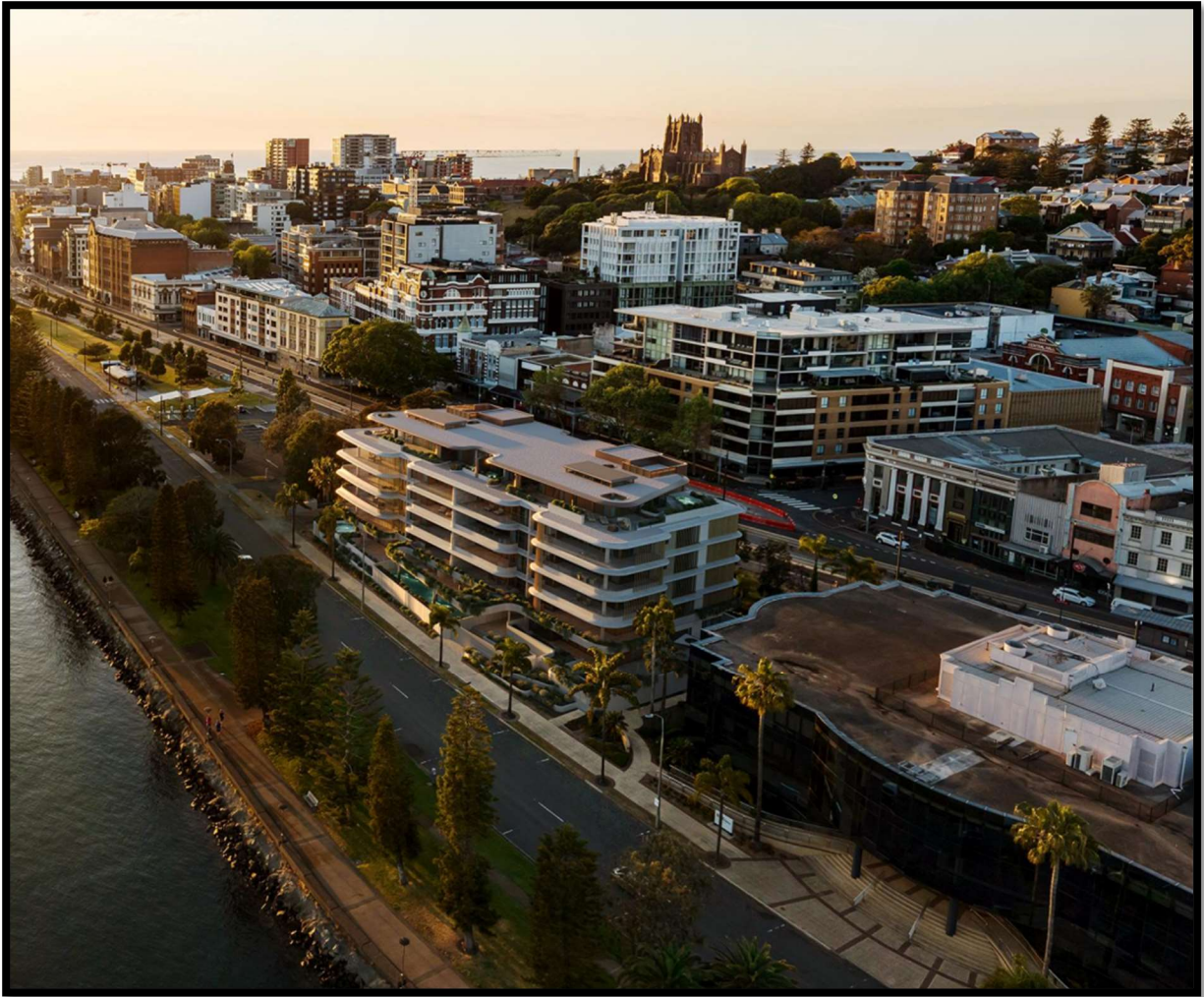


Figure 4 - 3D Views - Source: EJE 06/01/2025

2.2 Background

A pre-lodgement meeting was held on 17 October 2022 for a 7 storey mixed use (commercial and residential) development. It included a basement carpark with 34 spaces and a podium level. A summary of the key issues and how they were addressed by this proposal is outlined below:

- Building Height - the development was redesigned to reduce it to 6 storeys.
- Floor Space Ratio - the reduction in storeys reduced the FSR exceedance.
- Urban Design - design refinement to achieve design excellence.
- Heritage impacts - design refinement improved the building's neutrality to HCA context.

The development application was lodged on **12 December 2023**. A chronology of it since lodgement is outlined below in **Table 2** including the Hunter & Central Coast Planning Panel's (HCCRPP) involvement with the application:

Table 2: Chronology of the DA

Date	Event
12 December 2023	DA lodged
19 December 2023	DA referred to external agencies
20 December 2023 - 25 January 2024	Exhibition of the application
24 April 2024	UDRP meeting held with advice provided to applicant
18 June 2024	Update/directions briefing
1 August 2024	Request for Information from Council to applicant
12 December 2024	Public Listening meeting
10 January 2025	Amended plans lodged - Height reduced to below HoB Development Standard, and ground floor side setback increased away from stormwater infrastructure
21 January 2025	Re Notification of the application
10 February 2025	Detailed Site Investigation and Remediation Action Plan provided

2.3 Site History

The site currently contains a two-storey commercial building including basement parking and landscaping elements, with vehicular and pedestrian access from Wharf Road. The site was development under DA1986/0023 as offices.

Prior to the redevelopment in 1986, the site was part of a coal loading wharf from at least 1831 until after 1911. From around 1912 the site was used for refrigeration machinery manufacture and cold storage, the buildings remaining on site until the redevelopment in 1986.

The land to the south was the former heavy rail corridor between the former Civic Station to the west and the Newcastle Station to the east. The land (4,125 sqm lot at 280 Hunter Street and stretches from Brown Street to near the intersection of Darby and Hunter Streets) is owned by City of Newcastle (CN) and is to be developed for mixed-use affordable housing development including a connecting laneway.

The rear boundary of the site meets with 280 and 280A Hunter Street, the remains of Australian Agricultural Company (AA Co.) bridge and fence, a heritage item of local significance. The initial bridge was constructed in 1841 from timber, however, was replaced in 1863 with a stronger support structure made from brick and iron until its demolition in 1923. During its 80 years of service, the AA Co. bridge allowed cargo to be transported to be adjacent wharves without disturbing the bustling traffic on Hunter Street and King Street. Following the demolition, several warehouses were constructed at 237 Wharf Road with the purpose to serve the neighbouring wharves. In 1986, the site was redeveloped, housing three commercial buildings. Designed to complement the scenic views, 237 Wharf Road adopted a sleek glass curtain wall, tinted with a dark glaze to mirror the opposing scenery.

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 are considered below.

The proposal requires concurrence and referrals from external agencies (s4.13): Transport for New South Wales (TfNSW), SANSW, and Ausgrid. These are considered within this report.

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 (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Sustainable Buildings) 2022*
- *State Environmental Planning Policy (Housing) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Newcastle Local Environmental Plan 2012*

A summary of the key matters for consideration from these SEPPs are outlined in **Table 3** and considered in more detail below.

Table 3: Summary of Applicable Environmental Planning Instruments
(Preconditions in **bold**)

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 2: Vegetation in non-rural areas The proposal seeks consent to remove 46 of 65 trees being trees on the site, neighbouring site and public domain.	Y
Sustainability SEPP	No compliance issues identified subject to recommended conditions.	Y
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6 as it comprises development in excess of \$30,000,000	Y

State Environmental Planning Policy (Housing) 2021	Chapter 4: Design of residential apartment development Design Quality Principles - The proposal is consistent with the design quality principles and the Apartment Design Guide (ADG) requirements for car parking, communal open space. Conditions are recommended to address storage requirements under the ADG.	Y
SEPP (Resilience & Hazards)	Chapter 2: Coastal Management Section 2.11(1) - proposal meets the provisions of section 2.11 and is considered is satisfactory Section 2.12 - proposal meets the provisions of section 2.12 and is considered is satisfactory Chapter 4: Remediation of Land Section 4.6 - Contamination and remediation has been assessed and the proposal meets the provisions of Clause 4.6 under SEPP (R&H) and is considered satisfactory subject to conditions.	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure Section 2.48(2) (Determination of development applications - other development) - electricity transmission - the proposal is satisfactory subject to conditions. Section 2.98(2) - Development adjacent to rail corridors - the proposal is satisfactory subject to conditions. Section 2.99 (2) - Excavation in, above, below or adjacent to rail corridors - the proposal is satisfactory subject to conditions.	Y
Proposed Instruments	There are no draft instruments of relevance to the proposed development.	
Newcastle LEP 2012 (NLEP)	Clause 1.2 - Aims of Plan Clause 2.3 - Permissibility and zone objectives Clause 4.3 - Height of Building Clause 4.4 - Floor Space Ratio Clause 5.10 - Heritage conservation Clause 5.21 - Flooding Planning Clause 5.22 - Special Flood considerations Clause 6.1- Acid Sulfate Soils Clause 6.2 - Earthworks Clause 7.1 - Newcastle City Centre objectives Clause 7.5 - Design Excellence	Y

Consideration of the relevant SEPPs is outlined below

State Environmental Planning Policy (Biodiversity and Conservation) 2021

This policy aims to protect the biodiversity values of trees and other vegetation and to preserve the amenity of non-rural areas of the State through preserving trees and other vegetation.

The development is satisfactory regarding clause 2.10(1) of this policy as an assessment was conducted against NDCP 2012, addressed later in this report. Should consent be granted, the

consent will act as a permit for the removal of 46 trees under this policy (subject to any conditions of the approval).

State Environmental Planning Policy (Sustainable Buildings) 2022

This policy aims to ensure the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.

The proposal is accompanied by BASIX Certificate No. 1416647M prepared by Building Sustainability Assessments dated 19 September 2023. The certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the Sustainable Buildings SEPP. The proposal is consistent with this policy subject to the recommended conditions.

State Environmental Planning Policy (Housing) 2021

Chapter 4

Chapter 4 of the Housing SEPP establishes a consistent approach to the design and assessment of new apartment development across the State to improve the design quality of residential apartment development.

Section 144 - Application of chapter

The Housing SEPP lists an RFB as development that Chapter 4 applies, in s.144 of the policy. In s.149 it states that where this policy applies the ADG prevails over development control plans.

Section 145 - Referral to design review panel for development applications

Section 145 of the Housing SEPP requires the consent authority to refer a development application to which Chapter 4 applies to the relevant design review panel for advice on the quality of the design of the development prior to determination. The UDRP reviewed the development application and endorsed the design (refer to **Appendix D**).

Section 147 - Determination of development applications and modification applications for residential apartment development

Section 147 of the Housing SEPP requires the consent authority to take into consideration;

- a) the quality of the design of the development, evaluated in accordance with the design principles set out in Schedule 9 of the Housing SEPP;
- b) the ADG; and
- c) any advice received from a design review panel, when determining a development application to which Chapter 4 of the Housing SEPP applies.

CN's Urban Design Review Panel ('UDRP') reviewed the proposal on three occasions. The proposal was considered prior to lodgement at a UDRP meeting held on 23 November 2022. After lodgement it was reviewed at the meeting held 31 January 2024, which concluded the

proposal required amendments and written advice on the design quality principles set out in Schedule 9 of the Housing SEPP.

After receipt of an amended application, the UDRP review of 28 August 2024 recommended refinements to achieve design quality.

In response to UDRP advice, an amended plan set was submitted on 10 January 2025. The proposal was electronically referred to the UDRP for confirmation. On 16 January 2025, the UDRP confirmed:

'... that the revised plans provided by the Applicant for the above project at 237 Wharf Road adequately address the remaining recommendations for minor adjustments made by the UDRP. The proposal is now capable of the UDRP's support.'

In summary, the proposal has sufficiently incorporated the recommendations of the UDRP through the assessment process. The proposal has now satisfied the UDRP advice and is considered an appropriate design response consistent with the design quality principles set out in Schedule 9 of the Housing SEPP.

A Housing SEPP Design Verification Statement (refer to **Appendix H**) was submitted in support of the amended proposal verifying the designer under s.29(2) of the *Environmental Planning and Assessment Regulation 2021* ('EP&A Reg2021').

Table 4 addresses compliance with the objective and design criteria of the required topic under s.149(1) of the Housing SEPP. Where an ADG topic area is not specified as a design criteria or it is not possible for the development to satisfy the design criteria, the assessment comments in **Table 4** have regard to the design guidance relevant to that topic area.

The amended proposal was assessed against the ADG. The residential apartment component of the proposal is considered to demonstrate good design and planning practice.

Table 4: Compliance with required topic areas of ADG

3B Orientation	
Objective 3B-1 Building types and layouts respond to the streetscape and site while optimising solar access within the development	
Objective 3B-2 Overshadowing of neighbouring properties is minimised during mid winter	
Comment:	Compliance:
The proposed building is positioned to address Wharf Road at the northern boundary, maximizing solar access within the development. The layout prioritises a strong interface with Wharf Road while ensuring an appropriate address to the southern boundary. This design supports a positive interface should a future laneway, as identified in the NDCP 2012, be realized to the south of the site. The site does not directly adjoin any existing residential development, nevertheless the potential impacts of the proposed development on the solar access of neighbouring properties have been considered. Shadow diagrams demonstrate the impact of overshadowing within and beyond the subject site (see drawing A23 Rev H dated 06/01/2025, for details).	Complies

<p>Overshadowing impacts as a result of the proposal compared to the existing are predominantly limited to the public domain and do not effect surrounding residential or commercial development. This is considered acceptable.</p> <p>The proposal will not result in overshadowing of solar collectors on neighbour buildings as there are none.</p>		
3D Communal and public open space		
<p>Objective 3D-1</p> <p>An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping</p>		
Design Criteria:	Comment:	Compliance:
<p>1. Communal open space has a minimum area equal to 25% of the site.</p>	<p>The total site area equals 2625.2sqm</p> <p>25% of the total site area equals 656.3sqm</p> <p>The proposal has two areas of communal open space;</p> <ul style="list-style-type: none"> • Podium Level (ground) north landscaped terrace (principal useable part) = 240sqm • Podium Level (ground) south landscaped terrace = 190sqm <p>The total communal open space provided is 430sqm, or 16% of the total site area.</p> <p>This does not comply with the communal open space requirements in this part of the ADG.</p> <p>A variation to the minimum communal open space requirements described in this part of the ADG (25% of the site area) is proposed taking into consideration; the high amenity of the communal open spaces provided; the additional communal indoor spaces provided; increased private open space and balconies for apartments; and the city location of the site.</p> <p>This is considered acceptable in this instance as the large useable areas of communal open space are supplemented by the following:</p> <ul style="list-style-type: none"> • Increased private open space for Podium Level (ground) apartments and larger balconies for apartments above, • Over 150sqm of communal indoor facilitates on the Podium Level (ground) including resident lounge, gym, and resident wine cellar and tasting room, • Over 340sqm of deep soil landscaping located within the front, rear, and east side boundary setbacks, and • Over 280sqm of terraced on-structure landscaping areas at ground level which contribute to the amenity of the development for future residents and the public, and • Location of the site in the city centre with excellent proximity to public open spaces (Newcastle harbour foreshore) 	<p>Satisfactory (Merit based assessment)</p>
Design Criteria:	Comment:	Compliance:

<p>2. Developments achieve a minimum of 50% direct sunlight 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>The principal useable part of the communal open space [Podium Level (ground) north landscaped terrace] is orientated north and achieves direct sunlight from 9am until 3pm in mid-winter to over 50% of the area.</p> <p>(see submitted shadow diagrams drawing A23C, Rev G, dated 06/01/2025 for details)</p>	<p>Complies</p>						
<p>Objective 3D-2 Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting</p> <p>Objective 3D-3 Communal open space is designed to maximise safety</p> <p>Objective 3D-4 Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood</p>								
<p>Comment:</p>	<p>Compliance:</p>							
<p>The current proposal includes two areas of communal open space; both of these spaces are internal to the development site.</p> <p>Facilities are provided within communal open spaces and common spaces for a range of age groups, including seating for individuals or groups; outdoor lounging areas; swimming pool; outdoor entertainment space with BBQ; mass and feature planting.</p> <p>The communal areas and the garden have been designed to provide large outdoor spaces, overlooked by the development, that can be enjoyed throughout the year by the residents and their visiting family and friends.</p> <p>Communal open space is readily visible from habitable rooms and private open space areas within the development while maintaining visual privacy.</p> <p>Public open space is not provided.</p>		<p>Complies</p>						
<p>3E Deep soil zones</p>								
<p>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.</p>								
<p>Design Criteria:</p>	<p>Comment:</p>	<p>Compliance:</p>						
<p>1. Deep soil zones are to meet the following minimum requirements:</p> <table border="1" data-bbox="204 1507 635 1753"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>greater than 1500sqm</td><td>6m</td><td>7%</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	greater than 1500sqm	6m	7%	<p>The total site area equals 2625.2sqm; 7% of the total site area equals 183.8sqm; The proposal has one area of deep soil with minimum dimensions of 6m:</p> <ul style="list-style-type: none"> East (side) boundary setback = 240sqm <p>The total deep soil zone provided is 240sqm, or 9% of the total site area.</p>	<p>Complies</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)						
greater than 1500sqm	6m	7%						
<p>Objective 3F-1 Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.</p>								
<p>Design Criteria:</p>	<p>Comment:</p>	<p>Compliance:</p>						

<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>			<p>The site is irregular in shape, with a single street frontage to Wharf Road to the north.</p> <p>The site has three ‘side or rear boundaries’ – the east, south, and west boundaries – to which the minimum separation distances described in this part of the ADG are applicable and are discussed below.</p>													
<table><thead><tr><th>Building height</th><th>Habitable rooms & balconies</th><th>Non-habitable rooms</th></tr></thead><tbody><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></tbody></table>	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>Separation distance to east boundary</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>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 measuring privacy separation distances between neighbouring properties.</p>			<p><i>Up to 12m, being:</i></p> <ul style="list-style-type: none">• <i>Podium Level (ground), Level 01, Level 02</i> <p>At Podium Level (ground) to Level 02, east-facing apartment windows and balconies are setback approx. 15.1m from the east boundary, while apartment private open space on Podium level (ground) have a slightly reduced setback of approx. 13m (scaling from the floor plans).</p> <p>These setbacks exceed minimum separation distance requirements for buildings up to 12m in height (6m for habitable & balconies).</p>	Complies												
			<p><i>Up to 25m, being:</i></p> <ul style="list-style-type: none">• <i>Level 03, Level 04 and Level 05</i> <p>At Level 03 and Level 04, east-facing apartment windows and balconies are setback approx. 15.1m from the east boundary (scaling from the floor plans)</p> <p>At Level 05, the east-facing apartment balcony is setback approx. 16.4m from the east boundary, while east-facing apartment windows are setback 21m (scaling from the floor plans).</p> <p>These setbacks exceed the minimum separation distance requirements for buildings up to 25m in height (9m for habitable & balconies).</p>	Complies												
			<p>Separation distance to south boundary</p>													
			<p><i>Up to 12m, being:</i></p> <ul style="list-style-type: none">• <i>Podium Level (ground), Level 01, Level 02</i> <p>At the Podium Level (ground) to Level 02, south-facing apartment windows have an average setback of 7.5m from the southern boundary, with a minimum of 6m (scaling from the submitted floor plans)</p> <p>At the Podium Level (ground), south-facing private open spaces have setbacks ranging between 3.4m to 5.7m from the southern boundary (scaling from the submitted floor plans).</p> <p>At Levels 01 and 02, south-facing apartment balconies have an average setback of 6m, with a minimum setback of 4.02m.</p>	Satisfactory (Merit based assessment)												

	<p>These setbacks meet the minimum separation distances required for apartment windows in buildings up to 12m in height (6m for habitable rooms and 3m for non-habitable rooms).</p> <p>Portions of the south-facing apartment private open spaces and balconies do not comply with the minimum 6m separation distance required for apartment balconies in buildings up to 12m in height.</p> <p>It is important to recognize that the south-facing building form was designed and articulated to provide an appropriate address to the site's south boundary for a positive interface with the future laneway identified in NDCP 2012. In this context, the minimum separation distances from side or rear boundaries in the ADG would not apply. Therefore, the technical non-compliance can be accepted when considering both visual privacy and the future condition of the site's southern boundary as a secondary frontage.</p>	
	<p><i>Up to 25m, being:</i></p> <ul style="list-style-type: none"> • <i>Level 03, Level 04 and Level 05</i> <p>At Level 03 and Level 04, south-facing apartment windows have an average setback of 7.5m from the southern boundary, with a minimum of 6m (scaling from the submitted floor plans).</p> <p>At Levels 03 and 04, south-facing apartment balconies have an average setback of 6m, with a minimum setback of 4.02m.</p> <p>At Level 05, south-facing apartment windows have setbacks ranging between 9.2m to 8.1m from the southern boundary (scaling from the submitted floor plans).</p> <p>At Level 05, south-facing apartment balconies have an average setback of 7.5m, with a minimum of 6.9m (scaling from the submitted floor plans).</p> <p>These setbacks do not meet the minimum separation distances required for buildings up to 25m in height (9m for habitable & balconies).</p> <p>It is important to recognize that the south-facing building form has been designed and articulated to provide an appropriate address to the site's south boundary for a positive interface with the future laneway identified in the NDCP 2012. In this context, the minimum separation distances from side or rear boundaries specified in the ADG would not apply. The technical non-compliance can be accepted when considering both visual privacy and the future condition of the site's southern boundary as a secondary frontage.</p>	<p>Satisfactory (Merit based assessment)</p>

	<p>Separation distance to west boundary</p> <p><i>Up to 12m, being:</i></p> <ul style="list-style-type: none"> • <i>Podium Level (ground), Level 01, Level 02</i> <p>At Podium Level (ground) to Level 02, west-facing apartment windows are generally setback 6m from the west boundary, with a minimum setback of 5.4m.</p> <p>At the Podium Level (ground), west-facing private open spaces have a minimum setback of 1.8m from the west boundary (scaling from the submitted floor plans), while apartment balconies at Level 01 and Level 02 are setback a minimum 5.1m.</p> <p>These setbacks result in instances of technical non-compliances with the minimum separation distances required for buildings up to 12m in height (6m for habitable & balconies).</p> <p>Assessment is satisfied that alternative design measures have been incorporated into the development to achieve acceptable visual privacy. Specifically:</p> <ul style="list-style-type: none"> • Terraced, on-structure landscaped areas with mass and feature planting are provided at the Podium Level (ground) along the entire west boundary. These plantings create a privacy buffer between the private open spaces of the apartments and the neighbouring development, ensuring adequate amenity despite the reduced physical separation (see landscape documentation prepared by Terras Landscape Architects dated 11/11/2024, for details). • Fixed vertical screening is provided to the west facing habitable windows and balconies at Level 01 and Level 02. The screening obstructs direct sightlines between the proposed development and the neighbour to the west, while providing these apartments some directional screen views of the harbour towards the north-west. 	Satisfactory (Merit based assessment)
	<p><i>Up to 25m, being:</i></p> <ul style="list-style-type: none"> • <i>Level 03, Level 04 and Level 05</i> <p>At Level 03 and Level 04, west-facing apartment windows are generally setback 6m from the west boundary, with a minimum setback of 5.4m, while the west-facing apartment windows at Level 05 have an increased setback of approx. 10.4m (scaling from the submitted floor plans).</p> <p>At Level 03 and Level 04, west-facing apartment balconies have a minimum setback</p>	Satisfactory (Merit based assessment)

	<p>of 5.1m, while the west-facing apartment balcony at Level 05 is setback 6m.</p> <p>Except for the west-facing apartment windows at Level 05, these setbacks do not meet the minimum separation distances required for buildings up to 25m in height (9m for habitable & balconies).</p> <p>Assessment is satisfied that alternative design measures have been incorporated into the development to achieve acceptable visual privacy. Specifically:</p> <ul style="list-style-type: none"> Fixed vertical screening is provided to the west facing habitable windows and balconies at Level 03 and Level 04. The screening obstructs direct sightlines between the proposed development and the neighbour to the west, while providing these apartments some directional screen views of the harbour towards the north-west. At Level 05, the effected apartment is a 'corner apartment' benefitting from dual aspect, with the non-compliance relating to a 'secondary' portion of the balcony (where the primary balcony area is the portion which achieves the minimum balcony area and depth requirements of Objective 4E-1). This 'secondary' area of the balcony provides further amenity to the apartment and facilitates maintenance/ cleaning access to windows and the building exterior. 	
Objective 3F-2 Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.		
Comment:		Compliance:
<p>Generally, communal open space, common areas and access paths are separated from private open space and windows to apartments.</p> <p>A combination of substantial landscape planting, vertical fencing/ screening, solid walls, and changes in level, have been utilised at the ground plane to separate the private open space and windows of apartments from adjacent communal open space, common areas and public domain.</p> <p>Pergolas and shadowing devices have been incorporated at Podium level (ground) to limit overlooking from balconies above.</p> <p>Apartment balconies and private open space are located in front of living rooms to increase internal privacy, while vertical fins and screening are used between adjacent balconies.</p>		Complies
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.	Analysis of the submitted architectural drawings found 20 out of the total 20 apartments proposed, or 100% , will achieve a minimum of 2 hrs solar access between 9am and 3pm at mid-winter to the living room and private open space. (see submitted shadow diagrams drawing A23B, Rev G, dated 06/01/2025 for details)	Complies
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.	N/A	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.	No apartments receive no direct sunlight between 9 am and 3 pm at mid-winter.	Complies
Objective 4A-2 Daylight access is maximised where sunlight is limited. Objective 4A-3 Design incorporates shading and glare control, particularly for warmer months.		
Comment:		Compliance:
Full height glazing for the maximum practical extent of apartment facade has been provided to maximise daylight access. All apartments benefit from northern aspect, maximising sunlight and daylight access. Where provided to the Level 05 penthouse apartments, skylights are used only as a secondary light source. Internal courtyards and high-level windows (sills of 1,500mm or greater) as light sources are not proposed. All apartments in the development will have access to all areas of communal open space, maximising daylight access for future residents by providing additional options to access northern sun no matter the time of day. The design incorporates shading devices such as eaves, external screening and recessed balconies to shade summer sun but allow winter sun to penetrate living areas. (see submitted shadow diagrams drawings; A23B Rev G dated 06/01/2025; A23C Rev G dated 06/01/2025; and A23D Rev E dated 06/01/2025 for details)		Complies
4B Natural ventilation		
Objective 4B-1 All habitable rooms are naturally ventilated Objective 4B-2 The layout and design of single aspect apartments maximises natural ventilation		
Comment:		Compliance:
All habitable rooms are naturally ventilated via adjustable windows, located in external walls, with suitable effective operable areas. No single aspect apartments are proposed.		Complies
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. 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.	Analysis of the submitted architectural drawings found 20 out of the total 20 apartments proposed, or 100% , are naturally cross ventilated.	Complies								
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.	N/A	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"><thead><tr><th>Minimum apartment buildings</th><th>ceiling and mixed use</th></tr></thead><tbody><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></tbody></table> <p>These minimums do not preclude higher ceilings if desired.</p>	Minimum apartment buildings	ceiling and mixed use	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 areas <p>The site is within the MU1 Mix Use zone. As such increased ceiling heights for ground and first floor described in this part of the ADG are applicable (a minimum ceiling height of 3.3m measured from finished floor level to finished ceiling level).</p> <p>The Podium Level (ground floor) has a floor-to-floor height of 3.9m, which can accommodate the increased minimum ceiling height of 3.3m required. However, Level 01 (first floor) has a floor-to-floor height of 3.2m, which is not able to facilitate the increased ceiling height of 3.3m.</p> <p>Whilst located on land zoned for mixed-use, the proposed development is for a residential flat building only, which is entirely permissible with consent under the NLEP 2012.</p> <p>It is considered impractical for individual apartments on Level 01 (first floor) to be adapted for future commercial use, as it would be challenging to appropriately separate different user groups to manage amenity and safety impacts. Additionally, the likelihood of all four apartments on Level 01 becoming available simultaneously for adaptation is low.</p> <p>It is noted the proposal has had multiple design review sessions with CN's UDRP. On several occasions, the UDRP has emphasized the importance of providing a minimum 3.2m floor-</p>	Satisfactory (Merit based assessment)
Minimum apartment buildings	ceiling and mixed use									
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									

	<p>to-floor height for all apartment levels in order to achieve flush transitions between interiors and balconies, while also meeting the balcony waterproofing standards of the Building Designers and Practitioners Act and complying with the ADG's minimum 2.7-meter ceiling height for living areas - despite this contributing to the exceedance of the maximum building height under the NLEP 2012.</p> <p>It is understood and accepted that maintaining a 3.2m floor-to-floor height across all apartment levels has been prioritized to ensure statutory compliance with construction standards. This has taken priority over increasing the first-floor height for potential future adaptation to non-residential use.</p> <p>Given the ground floor has been designed with increased ceiling heights to allow flexibility for potential future conversion to non-residential use, a ceiling height of less than 3.3m on the first floor is acceptable when viewed in balance.</p>	
	<p>Apartments</p> <p>All storeys containing apartments have a floor-to-floor height of at least 3.2m. As such, a minimum ceiling height from finished floor level to finished ceiling level of 2.7m to habitable rooms and 2.4m to non-habitable rooms can be achieved for all apartments.</p> <p>No two storey apartments or attic spaces are proposed.</p>	Complies
<p>Objective 4C-2 Ceiling height increases the sense of space in apartments and provides for well proportioned rooms.</p> <p>Objective 4C-3 Ceiling heights contribute to the flexibility of building use over the life of the building.</p>		
Comment	Compliance:	
<p>Ceiling heights that increased the sense of space within the apartment and provide well-proportioned rooms can be achieved within the proposed floor-to-floor heights.</p> <p>The Podium Level (ground floor) has a floor-to-floor height of 3.9m, which can accommodate the increased ceiling height to allow flexibility for potential future conversion to non-residential use - contributing to the flexibility of building use over the life of the building.</p>	Complies	
4D Apartment size and layout		
<p>Objective 4D-1 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>	<p>All 20 apartments proposed are provided the minimum internal areas required for the number of bedrooms and bathrooms provided.</p>	Complies

<table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table>	Apartment type	Minimum internal area	3 bedroom	90m ²		
Apartment type	Minimum internal area					
3 bedroom	90m ²					
<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>						
Design Criteria:	Comment:	Compliance:				
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 air may not be borrowed from other rooms.	All habitable rooms within the apartments are provided with a window within an external wall.	Complies				
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.	N/A (all apartments are provided a combined living/ dining/ kitchen area)	N/A				
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.	For habitable rooms (excluding combined living, dining, and kitchen rooms), the maximum permissible depth is 6.75m when the ceiling height is 2.7m. Combined living, dining, and kitchen rooms are subject to Design Criteria 2 (see below). All other habitable rooms have been designed with depths of less than 6.75m (see submitted floor plans drawings; A14 Rev R dated 06/01/2025; A15 Rev N dated 06/01/2025; A16 Rev L dated 06/01/2025; and A17 Rev N dated 06/01/2025, for details)	Complies				
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)	All master bedrooms have a minimum area of 10m ² and all other bedrooms have a minimum area of 9sqm (excluding wardrobe space). The submitted floor plans feature a red dashed square measuring 3 meters by 3 meters, illustrating the minimum area of 9sqm for	Complies				

	apartment bedrooms. The master bedrooms are further labelled to confirm a minimum area of 10 sqm. (see submitted floor plans drawings; A14 Rev R dated 06/01/2025; A15 Rev N dated 06/01/2025; A16 Rev L dated 06/01/2025; and A17 Rev N dated 06/01/2025, for details)	
Design Criteria:	Comment:	Compliance:
2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	All bedrooms have a minimum dimension of 3m (excluding wardrobe space). The submitted floor plans feature a red dashed square measuring 3 meters by 3 meters, illustrating the required minimum bedroom widths. (see submitted floor plans drawings; A14 Rev R dated 06/01/2025; A15 Rev N dated 06/01/2025; A16 Rev L dated 06/01/2025; and A17 Rev N dated 06/01/2025, for details)	Complies
Design Criteria:	Comment:	Compliance:
3. Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> 4m for 3 bedroom apartments. 	All 20 apartments proposed achieve the minimum required widths for living or combined living/dining rooms based on the number of bedrooms provided. (see submitted floor plans drawings; A14 Rev R dated 06/01/2025; A15 Rev N dated 06/01/2025; A16 Rev L dated 06/01/2025; and A17 Rev N dated 06/01/2025, for details)	Complies
Design Criteria:	Comment:	Compliance:
4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	8 of the 20 apartments proposed are cross-through apartments. Details of these apartments are listed below: <ul style="list-style-type: none"> Podium Level (ground) = nil Level 01 = 2 apartments (U#1.02 & U#1.03) Level 02 = 2 apartments (U#2.02 & U#2.03) Level 03 = 2 apartments (U#3.02 & U#3.03) Level 04 = 2 apartments (U#4.02 & U#4.03) Level 05 (Penthouses) = nil All 8 cross-through apartments have internal widths exceeding the 4m minimum required. (see submitted floor plans drawings; A15 Rev N dated 06/01/2025; and A16 Rev L dated 06/01/2025, for details)	Complies
4E Private open space and balconies		
Objective 4E-1 Apartments provide appropriately sized private open space and balconies to enhance residential amenity.		
Design Criteria:	Comment:	Compliance:

1. All apartments are required to have primary balconies as follows:			All 20 apartments proposed have primary balconies that achieve the minimum area and depths required based on the number of bedrooms provided.	Complies
Dwelling type	Min. area	Min. depth		
3+ bedroom	12m ²	2.4m		
The minimum balcony depth to be counted as contributing to the balcony area is 1m.				
Design Criteria:			Comment:	Compliance:
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 15m2 and a minimum depth of 3m.			2 out of the 20 apartments proposed are located at ground level or on a podium (or similar structure). Details of these are apartments are listed below: <ul style="list-style-type: none">Podium Level (ground): 2 apartments (U#G.01 & U#G.02) These 2 apartments have been provided private open space, instead of a balcony, with an area well exceeding the 15sqm and 3m width minimums	Complies

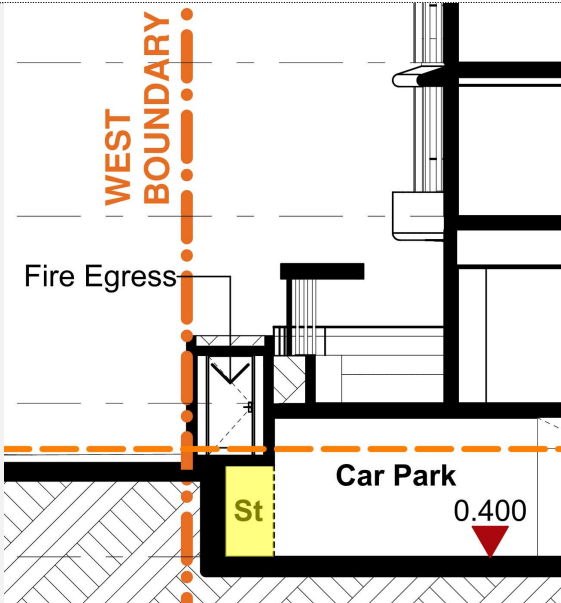
Objective 4E-2	
Primary private open space and balconies are appropriately located to enhance liveability for residents.	
Objective 4E-3	
Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.	
Objective 4E-4	
Private open space and balcony design maximises safety.	

Comments:	Compliance:
Private open space and balconies have been orientated with the longer side facing outwards to optimise daylight access into adjacent rooms. All private open spaces and primary balconies face north. No single aspect is proposed. Private open space and balconies have been designed as an extension of the main living area by being located adjacent to the combined living area, dining, and kitchen areas. Generally, a combination of solid and partially solid balustrades have been selected to respond to the location, with the use of full glass balustrades limited to the two upper most floors (Level 04, and Level 05). They have been designed to allow views and passive surveillance of the street while maintaining visual privacy and allowing for a range of uses on the balcony. The balconies are completely integrated and form part of the façade design. Vertical screening is integrated into the external façade design to control sunlight and direct sightlines. Clothes drying, storage and air conditioning units are not located on balconies. Two screened plant areas are provided at roof level, which are integrated into the building design to mitigate potential visual and acoustic impacts. The design and detailing of private open space and balconies has avoided opportunities for climbing and falls. Horizontal screening has not been proposed.	Complies

4F Common circulation and spaces

Objective 4F-1 Common circulation spaces achieve good amenity and properly service the number of apartments.								
Design Criteria:	Comment:	Compliance:						
1. The maximum number of apartments off a circulation core on a single level is eight.	The building is divided into two segments, each with a circulation core containing one lift (labelled 'Lobby 01', and 'Lobby 02' on the submitted floor plans). Each lobby services a maximum two apartments on a single level.	Complies						
Design Criteria:	Comment:	Compliance:						
2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A	N/A						
Objective 4F-2 Common circulation spaces promote safety and provide for social interaction between residents.								
Comments:		Compliance:						
Internal corridors have been designed to provide clear and well-defined circulation paths. Residential lobby corridor widths are suitable to allow for comfortable movement and access relative to the very minimum number of apartments services per floor (maximum of two apartments). Direct and legible access has been provided between the vertical circulation points (lifts and stairs) and apartment entries by minimising corridor length to give short, straight, clear sight lines.		Complies						
4G Storage								
Objective 4G-1 Adequate, well designed storage is provided in each apartment.								
Design Criteria:	Comment:	Compliance:						
1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table border="1" data-bbox="205 1400 632 1525"> <tr> <th>Dwelling type</th><th>Storage volume</th><th>size</th></tr> <tr> <td>3+ bedroom</td><td>10m³</td><td></td></tr> </table> At least 50% of the required storage is to be located within the apartment.	Dwelling type	Storage volume	size	3+ bedroom	10m ³		Storage located within the apartments All apartments are provided with storage located, and accessed from, within the apartment which is in addition to storage in kitchen, bathrooms and bedrooms. Limited information is provided on the submitted drawings demonstrating the storage located and access from within each apartment is equal to at least 50% of the storage volume required in accordance with the bedroom numbers. However, due to the large apartment sizes which exceed the ADG minimums and the rational internal layout of the apartments, the assessment has identified there is sufficient space available within the apartments to provide the minimum internal storage volumes required. A condition has been recommended requiring each apartment be provided storage located, and accessed from, within the apartment of a volume no less than 50% of the relevant total	Complies (subject to recommended conditions of consent)
Dwelling type	Storage volume	size						
3+ bedroom	10m ³							

	storage volumes described in the part of the ADG. The condition specifies this storage needs to be in addition to any storage provided in kitchens, bathrooms and bedrooms.	
	Storage located external to the apartments	
	<p>Where the total storage volume requirements are not satisfied by the storage located, and access from, within the apartment, storage volume located and access from common areas is provided to achieve the total storage volume required.</p> <p>All 20 apartments will require a designated storage area external to the apartment to meet the minimum storage requirements as outlined in this part of the ADG.</p> <p>A total of 20 individual storage areas are shown accessed from the carparking area on the Basement Level, noting six of these storage areas (labelled 'ST.07 Under' to 'ST.12 Under' on the submitted floor plans) are located at the rear of the western carparks, under the fire isolated egress along the length of the west boundary - this is not overly clear on the submitted floor plans (refer to extract of 'SECTION 02' below for clarity).</p> <p>There is sufficient number of storage areas provided on Basement Level to accommodate the number of apartments needing external storage.</p> <p>A condition has been recommended requiring each apartment to be allocated a storage area within the Basement Level of adequate size to meet the total minimum storage volume described under this part of the ADG. Furthermore, the condition requires these storages areas be individual securable.</p>	Complies (subject to recommended conditions of consent)

	 <p>Extract of 'SECTION 02', showing storage areas located at the rear of the western car parks, under the fire isolated egress, highlight yellow (source: 'SECTION 01 & 02' drawing A21 Rev I dated 06/01/2025)</p>	
Objective 4G-2 Additional storage is conveniently located, accessible and nominated for individual apartments.		
Comments: In addition to the storage volume located within apartments, storage volume for individual apartments accessed from common areas are proposed to achieve the total storage volume required. The individual storage cages, capable of storing larger and less frequently access items, are located in the car parking areas and are capable of being clearly allocated to specific apartments. A condition of consent has been recommended which requires these storages areas be individual securable.		Compliance: Complies (subject to recommended conditions of consent)

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 it comprises a *General development over \$30 million*. Accordingly, the 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 2.11(1) – '*Development on land within the coastal use area*' of the SEPP includes broad provisions addressing the protection of coastal values. It provides that development consent must not be granted to development on land within the coastal use area unless the consent authority is satisfied the proposed development will not cause an adverse impact on: providing existing, safe access to and along the foreshore, beach, headland, or rock platform for the public, including those with disabilities; addressing issues of overshadowing, wind

funnelling, and the potential loss of views from public places to foreshores; preserving the visual amenity and scenic qualities of the coast, including coastal headlands; protecting Aboriginal cultural heritage, practices, and places; and safeguarding cultural and built environment heritage.

The development is located on highly disturbed land and has had commercial land uses for decades. Significant hardstand and an existing commercial building with basement cover the site. The proposal is not considered to have detrimental impacts on the coastal use area under the SEPP and is acceptable, particularly in relation to the biophysical environment, coastal processes, views and public access to the foreshore.

The proposal will have no material impact on environmental, coastal, native vegetation, surf zone or access issues listed above. The historic commercial uses of the site and its highly disturbed nature has resulted in negligible coastal attributes remaining at the site. The proposal has been assessed in terms of Aboriginal heritage and archaeological aspects and is considered acceptable. Overall, the proposal is acceptable in terms of its impacts.

Chapter 4: Remediation of Land

The provisions of Chapter 4 of the Resilience and Hazards SEPP was considered Section 4.6 requires consent authorities to consider whether the land is contaminated. If the land is contaminated, it is to be satisfied 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. A Preliminary Site Investigation ('PSI'), Detailed Site Investigation ('DSI') and RAP were prepared for the site. A copy of the RAP is at **Appendix K**.

The proposal has been assessed by CN's Senior Environment Protection Officer and is acceptable subject to recommended conditions (**Appendix A**).

A PSI prepared by JM Environments dated October 2024 identified the site was near a historical coal loading wharf, where it may have been filled to stabilise the bank and provide depth for coal ships to be loaded. The coal loading wharf operated from at least 1831 until after 1911. From around 1912 the site was used for refrigeration machinery manufacture and cold storage, with the buildings remaining until 1986.

The consultant concluded the site presents a medium to high risk of contamination. It was recommended sampling and analysis of soils be undertaken to characterise the site's suitability for future residential land use.

A Detailed Contamination Assessment prepared by JM Environments dated February 2025 was submitted in accordance with the PSI recommendations. Four boreholes from across the accessible areas of the site identified building material rubble along with ash, coal, railway ballast and other materials. Although no bonded asbestos was identified during fieldwork, asbestos fines/friable asbestos were detected in two soil samples. The asbestos fines/friable asbestos (AF/FA), together with the railway ballast, may have been associated with the former coal loading trains' brake pads.

Based on sampling, the consultant determined the site is not suitable for the proposed development in its present state due to the identified contamination in soil. The consultant concluded the site can be made suitable with the implementation of a remediation action plan.

The applicant submitted a Remediation Action Plan (RAP) prepared by JM Environments dated February 2025. The RAP proposed 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.

Subject to the recommended conditions at **Appendix A**, including remediation and validation testing, it is considered that Section 4.6 of Resilience and Hazards SEPP has been satisfied as the land can be made suitable for residential accommodation from its contaminated state.

State Environmental Planning Policy (Transport and Infrastructure) 2021

The application was referred to Ausgrid under s.2.48 of this policy with regard to the proximity to and connection to its infrastructure/network. No objection was raised to the development. Refer to **Appendix F** for a copy of Ausgrid's response and **Appendix A** for the recommended conditions, which include provision for this consultation.

During the assessment of this application the concurrence of TfNSW was sought consistent with the requirements of section 2.98 and 2.99 of this policy. TfNSW's response (refer to **Appendix F**) included the following commentary:

"TfNSW has assessed the development proposed by the DA in accordance with the requirements of clause 2.99 (4) of the TISEPP.

TfNSW has reviewed the application and decided to grant its concurrence to the proposed work (DA2023/01154), subject to the consent authority imposing the conditions provided.

The consent authority is also advised that TfNSW's concurrence is not to be amended, replaced or superseded by any concurrence which may be issued by any other authority, without further agreement from TfNSW."

As such the application is considered consistent with this policy subject to the conditions provided with the concurrence included in the recommended conditions at **Appendix A**.

Consideration of the relevant LEP is outlined below:

Newcastle Local Environmental Plan 2012

NLEP 2012 is the relevant local environmental plan applying to the site. The aims of the NLEP under Clause 1.2(2) are:

(2) *The particular aims of this Plan are as follows—*

- 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 consistent with these aims as it facilitates the orderly development providing increased housing choice in close proximity to Newcastle Light rail providing. The proposal will contribute increased housing density in a location that will support the nearby commercial area, further strengthening the role of the Newcastle City Centre as a regional centre for the Hunter Region.

Zoning and Permissibility (Part 2)

The site is zoned MU1 Mixed Use pursuant to Clause 2.2 of the NLEP (refer to **Figure 5** below for an excerpt of the zoning map with the site identified in blue).



Figure 5 - Zoning Map - Source: CN's OneMap 19/02/2025

According to Clause 4 (in the Dictionary), the proposal satisfies the definition of RFB which is a permissible use with consent in the Land Use Table in Clause 2.3.

The MU1 zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *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 minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.*

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

- The residential building is strategically located near business, retail, office, and light industrial areas, contributing to the creation of local employment opportunities without directly housing such uses.
- The design incorporates street-level elements such as landscaping and pedestrian view corridors to promote an inviting environment for surrounding public spaces.
- The building's residential nature and design ensures compatibility with neighbouring uses, preventing disturbances or incompatibility with adjacent commercial uses.
- The development enhances pedestrian engagement through clear street entries, integrated landscaping, and natural surveillance from balconies and terraces, creating an inviting and active frontage.
- While not including commercial spaces, the development supports the mixed-use intent of the MU1 zone by contributing to the surrounding business and retail precincts and fostering economic activity.

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

NLEP 2012 contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 5** below.

Table 5: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Demolition requires development consent (CI2.7)	CI2.7 requires that demolition impacts be considered as part of the planning assessment.	The proposal involves the demolition of all structures which is acceptable, subject to standard conditions.	Yes
Minimum subdivision Lot size (CI 4.1)	No minimum lot size applies to this site under MU1 Mixed Use zone	2,625.2sqm	N/A

Height of buildings (CI 4.3(2))	22 metres - Subject to provisions in Clause 7.5 of the LEP	21.97m	Yes
FSR (CI 4.4(2))	1.5:1 (3937.8m ²)	1.85:1 (4859.2m ² GFA) Being a variation of 23.3% or (921.4m ² GFA)	No (Aa 4.6 request has been submitted with the application. Refer to Appendix E and the detailed assessment below)
Heritage (CI 5.10)	The proposal is considered under this clause as the site is within the Newcastle City Centre HCA and is in the vicinity of a local heritage item.	The proposed development will not detrimentally affect the heritage significance of the HCA nor the local heritage item that is within the vicinity of the site. The proposed development is considered satisfactory in this regard.	Yes
Flood Planning (CI 5.21)	The flood risks for any development are to be minimised 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 s.4.01 NDCP 2012 detailed below.	Yes
Acid sulphate soils (CI 6.1)	Class 4 – Works more than 2 metres below the natural ground surface. Works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface.	The applicant submitted an Acid Sulfate Soils Management Plan (ASSMP) prepared by RCA Australia meeting the requirements of CI6.1(3). Refer to Appendix J for the ASSMP. The ASSMP assessed Acid Sulphate Soils (ASS) at depth and that they will need to be managed during construction. The ASSMP provides management protocols for use during the	Yes

		<p>proposed earthworks for the redevelopment of the Site.</p> <p>A condition addressing the implementation of the ASSMP is included within the recommended conditions at Appendix A.</p>	
Earthworks (CI 6.2)	<p>(3) Before granting development consent for earthworks, the consent authority must consider the following matters -</p> <p>(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development,</p> <p>(b) the effect of the proposed development on the likely future use or redevelopment of the land,</p> <p>(c) the quality of the fill or the soil to be excavated, or both,</p> <p>(d) the effect of the development on the existing and likely amenity of adjoining properties,</p> <p>(e) the source of any fill material and the destination of any excavated material,</p> <p>(f) the likelihood of disturbing relics,</p> <p>(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.</p> <p>(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</p>	<p>The proposed earthworks do not exceed that required to construct the proposed development. It is considered the proposal is acceptable in terms of its earthworks impacts.</p>	Yes

Newcastle City Centre objectives (CI7.1)	That development demonstrates it meets the Newcastle City objectives	The proposal is considered consistent with the intended strategic planning outcomes for the Newcastle City Centre.	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.	The proposal has a maximum height of 21.97m and so is not subject to this clause	N/A
Design Excellence (CI 7.5)	The proposal does not require a design competition; however, it seeks a 10% height increase under Clause 7.5(6) of the NLEP 2012. As a result, the building's design must demonstrate design excellence.	<p>The proposed design has been reviewed by CN's UDRP and has its endorsement as having achieved design excellence. The proposal has demonstrated the relevant provisions of cl7.5 have been met.</p> <p>In accordance CI7.5(2), this assessment concludes the development" exhibits design excellence" and it is supported.</p>	Yes

The proposal is considered to be generally consistent with the NLEP 2012.

CI 4.6 Request

The Development Standard to be varied and extent of the variation.

The proposal involves a cl4.6 variation request (see **Appendix E**) to cl4.4 –FSR under NLEP 2012. The variation sought is for 23.3%, being 921.4m² of GFA beyond the development standard (calculations of the proposal's FSR are detailed in **Figure 6**).

The development standard as established by cl4.4 set the maximum FSR at 1.5:1 while the proposal seeks an FSR of 1.85:1.

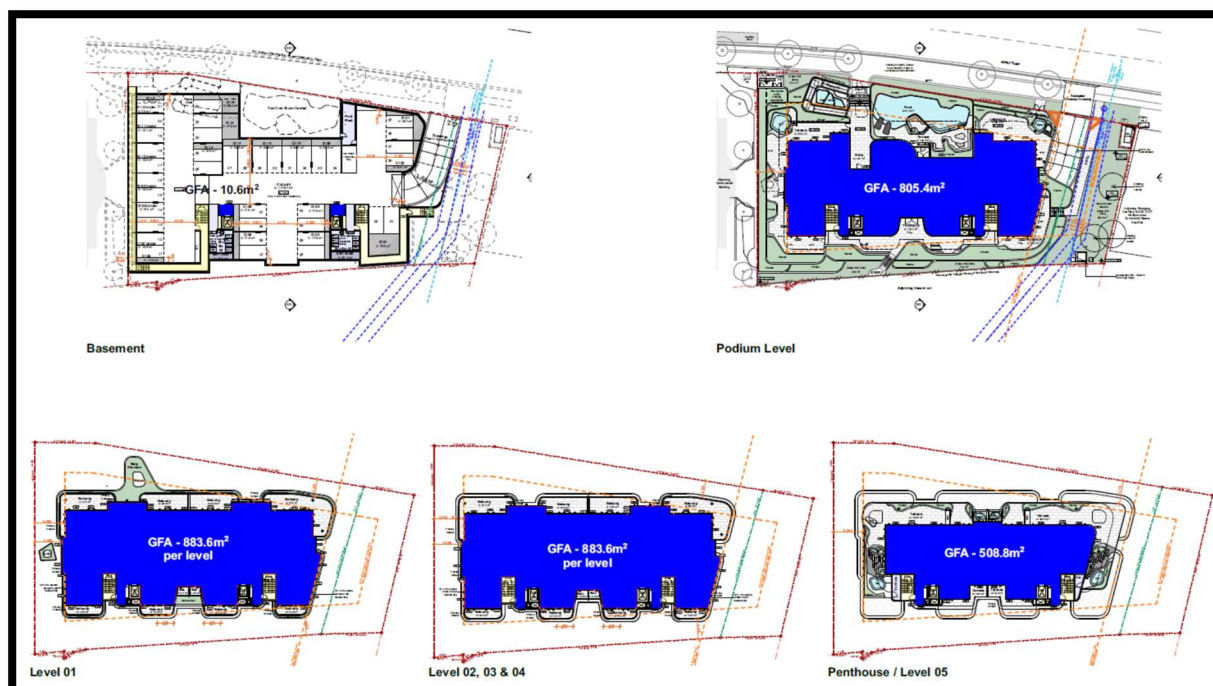


Figure 6: GFA Calculations: Source 4.6 request prepared by DWC and Dated 4/11/2024

The cl 4.6 assessment below should be read with the detailed cl4.6 variation requests made by the applicants in **Appendix E**.

Preconditions to be satisfied.

Cl 4.6(2) of the NLEP 2012 provides this permissive power to grant development consent for a development that contravenes the development standard is subject to conditions. Clause 4.6(3) establishes two preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard. The two preconditions include:

1. Under cl 4.6(3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
2. Under cl 4.6(3)(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

These matters are considered below having regard to the applicant's cl 4.6 request.

Cl 4.4 – Floor Space Ratio NLEP 2012

The allowable FSR for the site is 1.5:1 under NLEP 2012

Cl 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The applicant submitted a cl 4.6 written request seeking to vary the FSR, detailing the cl 4.4 variation as follows:

- 1.85:1 being a variation of 23.3% or 921.4m²

The applicant's variation request is summarised as follows:

- 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 is the variation is reasonable and strict compliance is unnecessary as the objectives of the standard and the objectives of the associated zone (i.e. M1- Mixed Use) are 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 location is intended to underpin new job opportunities for Greater Newcastle and help to meet the expected demand for diverse housing options close to jobs and services.
- iv. The City Centre is identified as a strategic centre, intended to service the Hunter region with higher order administration, education, health services, cultural and recreational facilities with high density commercial and residential uses.
- v. The proposed development is characterised as residential, consistent with the types of uses encouraged within a strategic centre and catalyst area.
- vi. The proposed development is of a density that is consistent with the established centres hierarchy.
- vii. With the exception of the western boundary, the development provides a minimum 6m setback at each boundary consistent with NDCP 2012 provisions. The western setback is in response to the >15m setback on the eastern side of the lot.
- viii. The proposed variation to the development standard does not hinder the objectives of the adjoining character areas being met.
- ix. By way of facilitating access to the foreshore, the proposal, regardless of FSR ensures connectivity identified in the NDCP 2012 Network Access Map which further compliments potential future connections within the foreshore precinct. The proposal also does not remove any existing public access.
- x. The development as proposed does not interfere with existing or possible future additional pedestrian foreshore links.
- xi. The proposal maintains the view corridor between the harbour and the city with the side setbacks ensuring a visual connection. The building has been sited and designed to protect the view corridor by increasing the eastern side setback from the required 6m to approx. 15,285m to ensure the views and vistas along Brown Street from King can be established.
- xii. The height is compliant with the height of building maps under clause 7.5(6) under the NLEP 2012, as it is below the 22m height limit and therefore height is not considered to unreasonably impact the visual connection with the foreshore.
- xiii. The proposal is intended to act as a gateway and link between the eastern foreshore area and Honeysuckle to the west.

In assessing the applicant's response to the cl4.4 objectives, they have adequately demonstrated the proposal meets these objectives notwithstanding the proposed FSR variation. It is accepted the operation of cl7.5 results in the circumstance where, the resultant building has a greater gross floor area than permitted under the cl4.4 FSR maps. It is further acknowledged the proposal's setbacks, design, height, bulk and scale result in reasonable impacts having regard to amenity, overshadowing, views, privacy and visual appearance.

Notwithstanding the cl4.6 request indicates it also relies on the third limb of Wehbe, no submission has been included to argue this limb.

CN considers the application adequately addresses the required matters. The cl 4.6 variation request is solely accepted on the basis of the first limb Wehbe as discussed above in terms of cl 4.6(3)(a).

Cl 4.6(3)(b) there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant's cl4.6 request identifies the environmental planning grounds of the development that justify the variation of the development standard. These are summarised as follows:

- i. The high visibility and prime location of the site demands a higher quality architectural response than a less prominent site would. The proposal successfully meets both challenges whilst making a positive contribution to the built form and desired character.
- ii. The design protects the Brown Street viewing corridor, minimises overshadowing and has extensive landscaping.
- iii. The visual impact is assessed to be moderate from this location due to the proposed vegetation and integration with existing development.
- iv. The view impacts are attributable to the height, however the proposal complies with the maximum building height for the site.
- v. The building is not considered to be excessively bulky as confirmed by UDRP review.
- vi. The FSR breach is not the result of the reasonable impacts of the development rather it is the product of a high quality residential accommodation. With large unit sizes adding to the variety of housing options.
- vii. The additional housing provided by the FSR variation is consistent with orderly and economic planning principles and that this location further enables the vitalisation of Newcastle City Centre.

The applicant's cl 4.6 request is made on a number of grounds which include the architectural design, the limited extent of the impacts (e.g. overshadowing) from the proposal, the design outcomes achieved in this instance (eg protection of the public view corridors), and meeting the strategic planning outcomes of the Newcastle Central City.

On balance, it is considered there are sufficient environmental planning grounds to find the request adequately addresses the required matters under cl 4.6(3)(b). The submitted cl.4.6 FSR variation is considered acceptable, and the proposal is supported 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

CN's Heritage Officer has assessed the proposal, and it is considered acceptable as below.

Demolition of existing building

The existing building is identified as a neutral building within the HCA. It was constructed well outside of the key period of significance of the HCA, is not of a character that would ordinarily be protected by the conservation area guidelines and is assessed as being of little significance

in the Heritage Impact Statement (HIS). Its removal is acceptable and will not detract from the established significance of the Newcastle City Centre HCA.

HCA - Design of proposed infill building

The buildings which predominate Wharf Road are characterised by wide blocks, extensive glazing and planted setbacks, in a contemporary style and the proposal is consistent with this. The proposal is in an isolated section of the HCA noting the road and former rail corridors surrounding it. The building and its neighbours largely define their context. The streetscape of Wharf Road is different to that of Hunter and Scott streets, which are defined by contributory and heritage-listed buildings.

While the site is within the Newcastle City Centre HCA, this area is recommended for excision from the HCA in CN's *Draft Newcastle City Centre HCA Review* (2023). Land parcels in street blocks north of the rail line and west of Brown Street have been comprehensively and intensively redeveloped with mixed-use medium to high rise buildings. This area no longer reinforces the special built character of Honeysuckle.

The proposal utilises rendered masonry and curved forms to complement the existing forms and finishes of its immediate neighbours (which are also identified as neutral). The repetition of similar forms and finishes will assist in integrating the proposed development into the existing character of Wharf Road.

The Desired Future Character Statement set out in the NDCP 2012 identifies views and vistas to and from significant cultural landmarks in the HCA to be preserved. The proposed development will not disrupt these identified view lines.

Aboriginal Heritage

A basic search of AHIMS found 1 recorded site within a 200m buffer. An extensive search has also been completed which confirms the recorded site is outside of the development site area.

The Due Diligence Code of Practice defines disturbed land as having been the subject of human activity that has changed the land's surface, being changes that remain clear and observable. The existing building on the site has basement carparking, which would have resulted in large scale excavation. The RAP also identifies the land was previously filled to support loading of coal onto ships at an adjoining wharf.

As such the site can be considered "substantially disturbed".

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

Several draft State environmental planning policies or updates have been exhibited and are/or under consideration by the Department of Planning, Housing and Infrastructure, however, they are not relevant to the application.

(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 2012* ('the NDCP 2012')

Table 6 below outlines the relevant provisions of the NDCP 2012:

Note, the proposal was lodged in December 2023 and is subject to the savings provisions in NDCP 2023 that require it to be assessed against the provisions of NDCP 2012.

Table 6: NDCP 2012 provisions

Newcastle Development Control Plan 2012	Comply
Part 3 - Landuse Specific Provisions	
Section 3.03 – Residential Development This section applies to RFBs however, the operation of the ADG (SEPP Housing 2021) and s.6.01 of the NDCP2012 below prevail over controls within Section 3.03.	Yes
Part 4 - Risk Minimisation Provisions	
Section 4.01 - Flood Management - The proposal is considered to be acceptable with regards to flood management.	Yes
Section 4.02 - Bush Fire Protection - The Site is not within an identified bushfire risk area.	N/A
Section 4.03 - Mine Subsidence - SANSW has issued its General Terms of Approval (GTA's). These are included with the recommended conditions at Appendix A .	Yes
Section 4.04 - Safety and Security - The proposal is considered to be adequate in relation to the provisions of Crime Prevention Through Environmental Design (CPTED).	Yes
Section 4.05 - Social Impacts - The development is not expected to result in any increased social impacts and is considered appropriate in this context.	Yes
Part 5 - Environmental Protection Provisions	
Section 5.01 Soil Management - Acceptable with ASSMP and erosion and sediment control practises to be implements via recommended conditions.	Yes
Section 5.02 Land Contamination - refer to comment under SEPP Resilience and Hazards in 3.1(a) of this report.	Yes
Section 5.03 Vegetation Management - Proposed tree removal is supported by the submission of arborist report, and is considered acceptable in the circumstances.	Yes
Section 5.04 Aboriginal Heritage - These matters were addressed under Clause 5.10 of the NLEP 2012 in 3.1(a) of this report.	Yes

Section 5.05 Heritage Items - These matters were addressed under Clause 5.10 of the NLEP 2012 in 3.1(a) of this report.	Yes
Section 5.06 Archaeological Management - These matters were addressed under Clause 5.10 of the NLEP 2012 in 3.1(a) of this report.	Yes
Part 6 - Locality Specific Provisions	
Section 6.01 Newcastle City Centre - The proposal is consistent with the objectives and provisions of the Hunter Street Live-work units key precinct and the overall requirements of the section.	Yes
Section 6.02 Heritage Conservation Areas - These matters were addressed under Clause 5.10 of the NLEP 2012 in 3.1(a) of this report.	Yes
Part 7 - Development Provisions	
Section 7.02 Landscape, Open Space and Visual Amenity - Sufficient landscaping, open space and adequate amenity.	Yes
Section 7.03 Traffic, Parking and Access - The proposal is consistent with the Design and parking provisions of this section of the NDCP 2012.	Yes
Section 7.06 Stormwater - Subject to conditions, the proposal is consistent the relevant aims and objectives of the NDCP 2012.	Yes
Section 7.08 Waste Management - Suitable provision are in place to ensure efficient waste management in a manner suitable with the foreshore visual amenity.	Yes
Section 7.09 Advertising and Signage - No advertising or signage proposed with Development.	N/A
Section 7.10 Street Awnings and Balconies - No street awnings or balconies over the street are proposed.	N/A
Section 7.11 Development Adjoining Laneways - Design and setbacks found to be acceptable given the proposed laneway.	Yes

Section 3.03 – Residential Development

This section applies to RFBs and the submitted proposal meets this definition. Notwithstanding this, the operation of the ADG (SEPP Housing 2021) and Section 6.01 below prevail over controls within Section 3.03.

Section 4.01 – Flood Management

It is important to note that the development application was lodged on the same day, but prior to, the adoption by Council of the Throsby, Styx & Cottage Creek Flood Study (Rhelm, 2023). As such, the proposal was prepared and assessed having regard to the Newcastle City-wide Floodplain Risk Management Study and Plan (June 2012) and NDCP 2012 applicable at the time of lodgement.

The site is affected by Local Catchment Flooding during both the 1% Annual Exceedance Probability (AEP) and Probable Maximum Flood (PMF) events. CN's Senior Development Engineer assessed the proposal and is acceptable as detailed below.

Under NDCP 2012, Section 4.01 'Flood Management' the development is subject to:

- a) Floor levels of any occupiable rooms in a new development shall not be lower than the flood planning level (2.6m AHD). The ground floor level is at 3.6m AHD being above the minimum floor level.
- b) Basement entry points shall be above the PMF level of 3.4m AHD, whilst the vehicle access point shall be above the flood planning level of 2.6m AHD. The proposal is compliant.
- c) On-site flood refuge is not required as the site is within 40m of the perimeter of the PMF extent.
- d) The development site is classified entirely flood fringe with no filling constraints for development.

As noted above, Council has now adopted a more recent flood study (Rhelm, 2023) applicable to the land. Under that flood study, a portion of the site is now identified as containing small, isolated sections flood storage area during a local catchment flood event as shown in Figure 7 below. Under NDCP 2012, flood storage areas are not to be filled by more than 20% of the overall site area. This proposal includes fill to the newly identified flood storage area of approximately 80% exceeding the NDCP 2012 limit. CN's Senior Development Engineer has considered the likely effects of filling the flood storage area of this site and has determined any effect to be negligible in the context of the overall floodplain and advised that the proposal can be accepted on merit with regard to impacts on flood storage.

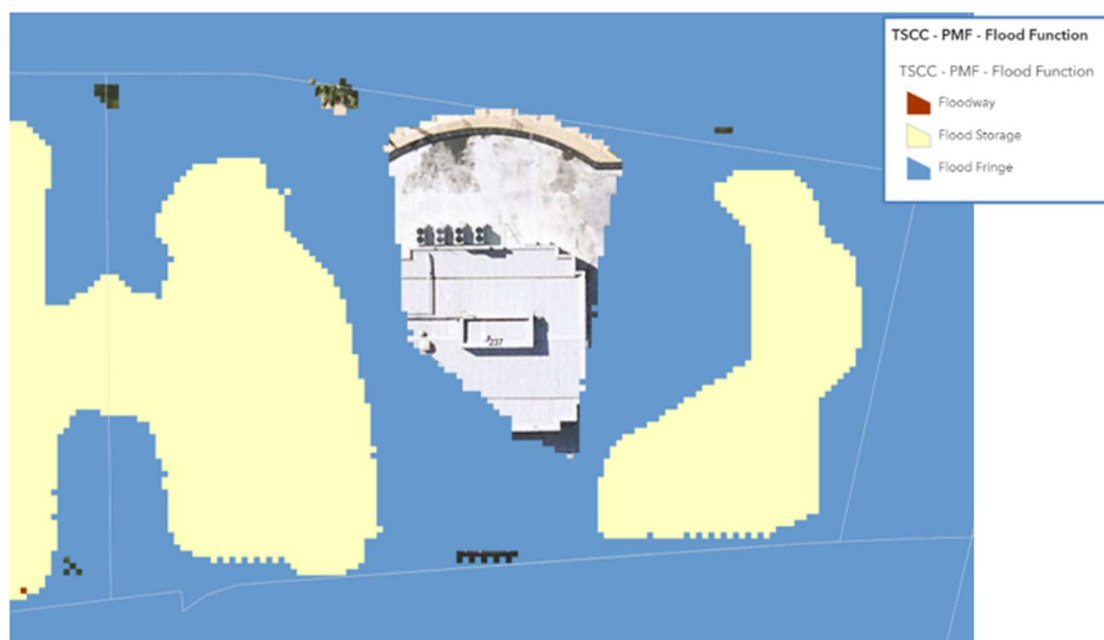


Figure 7 - Flood Storage Extent, Source: Throsby, Styx & Cottage Creek Flood Study (Rhelm, 2023)

The proposed development has satisfactorily addressed flooding impacts and the risks associated with flooding on the site and the surrounding areas. The ground floor areas comply with flood planning level requirements and the proposal is considered to be acceptable with regard to flood management subject to recommended conditions for verification of floor levels at **Appendix A**.

Section 4.04 – Safety and Security

The applicant submitted an assessment against the CPTED principles in the Statement of environmental effects. The proposal is considered to be adequate in relation to the provisions of Section 4.04 and CPTED.

The proposal has been designed with an acceptable level of casual surveillance and there are limited opportunities for hidden areas within the public spaces. The ground floor foyer provides direct visual connection between the 'private' internal spaces of the building and the 'public' shared spaces. CCTV will be utilised around building entrances, car park and the communal areas to supplement natural surveillance.

Access control measures may be put in place to restrict public access to certain parts of the site such as residential units and the basement carparking area. It is considered the layout of the development provides clear separation between public and private areas.

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

Section 4.05 – Social Impact

The proposal will enhance the local area by providing additional housing options and contributing to the vibrancy of the neighbourhood while supporting surrounding businesses and amenities. It is expected that during construction, and in operation, the proposal will provide positive economic inputs to the broader Newcastle area and beyond.

The development is not expected to result in any increased social impacts and is considered appropriate for the MU1 Mixed Use zone and the Newcastle City Centre. Overall, the proposal is acceptable having regard to social and economic impacts.

Section 5.01 – Soil Management

The proposed earthworks do not exceed that required for construction. Temporary measures to minimise soil erosion and appropriate mitigation measures will be implemented prior to any building works commencing on the site, in line with the recommendations of the erosion and sedimentation plans submitted with the application.

It is considered 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 recommended conditions at Appendix A.

Section 5.02 – Land Contamination

Land contamination has been investigated and is considered suitable as addressed under SEPP (Resilience and Hazards) 2021 **in 3.1(a) of this report.**

Section 5.03 – Vegetation Management

A tree assessment report (Arborist Report) by Terras landscape architects assessed 65 trees, 42 within the site and 12 on the adjoining site to the west and 11 on land owned or controlled by CN. Of the 42 onsite trees assessed, 29 trees are to be removed as they cannot be retained with the proposed building footprint and associated infrastructure. The report recommends a minimum of 18 compensatory tree plantings in association with the 14 trees to be retained.

The landscape plans with the development include the planting of 31 new trees of appropriate species within the site. The proposal will enable enhancement of the biodiversity and amenity value for vegetation within the site.

In addition to the onsite trees, the proposal will impact five trees located on the road reserve along the northern boundary, with removal confirmed as acceptable by CN. Additionally, 12 trees on the western neighbouring lot, under the same ownership as the development site will be removed with consent. No trees on the two neighbouring lots under our control will be removed. The removal of these trees is considered acceptable to enable the development.

CN has recommended the palms trees along Wharf Road be removed and replaced by the developer to provide an improved outcome for Urban Forest in the Public Domain.

The proposal is considered acceptable in terms of the trees to be removed, the compensatory plantings and the consistency with CN's policies for Urban Forest in the Public Domain.

Section 6.01 – Newcastle City Centre

The proposal falls within the Newcastle City Centre map under s.6.01 of the NDCP 2012.

The proposal is located in the "Civic" character area adjacent to the "Foreshore" character area under this section. The primary locations in the Civic area are identified as Wheeler Place and Civic Theatre, with connections to the foreshore enhancing the space. The proposal is located at the edge of the "Civic" area and therefore has a supportive role while providing a transitional element to the foreshore. The proposed 20 units provide additional housing within the existing building's footprint and does not disturb the existing sense of connection to the foreshore and aligns with its context and character.

General controls

Street Wall Height, Building Setbacks & Building Separation

The proposal has been reviewed by CN's UDRP as detailed in the SEPP Housing 2021 discussion in 3.1(a) of this report. The UDRP endorsed the design and it is considered acceptable under ADG provisions which prevail over those of the NDCP 2012. The proposal is generally consistent with the provisions of 6.01.03 for, *street wall height, building setbacks, building separation, building depth and bulk, Building exteriors and landscaping*.

Overall, the proposal is satisfactory in terms of urban design outcomes.

Public Domain

The proposal is limited to the private site, except for a relocated driveway away from public infrastructure and the replacement of existing street trees. The development was designed to address the future laneway that wraps along the south to the east of the site and appropriately responds to ensure a positive and safe environment should the laneway be constructed. The development is considered to have a neutral to positive impact on the public domain.

Views and vistas

Preserving significant views around the city is critical to place-making, wayfinding and to retain Newcastle's unique character. The site is located with its eastern edge in the identified Brown Street view corridor. The development uses the existing building footprint maintain views.

A view loss analysis by Terras concludes *"the proposal will have a low-moderate accumulative visual impact on the surrounding area"* and is confirmed by CN's own review (refer to section 3.2 of this report).

Addressing the street

The proposal is not located in an area identified for active street frontage under this section of the NDCP 2012. The street frontage is consistent with residential development and provides an elevated ground floor which is softened with landscaping in the street setback while still enabling surveillance of the street.

Public Artwork

Under the NDCP 2012 public artwork is required to be provided on private builds where the development is over 45m in height. As the development is only 22m high no provision of public artwork is required nor proposed.

Sun access to public spaces

The development being located south of the foreshore has no overshadowing of this high valued public space. Further, the design enables at least 2 hours of solar access for adjoining properties.

Infrastructure

The proposal is acceptable in respect to the assessment made under section 4.01 Flooding and section 7.06 Stormwater.

Key Precincts - Hunter Street Live-work units

The proposal is in the Hunter Street Live-work units key precinct. Developments in this precinct are to improve the pedestrian interface with Hunter Street, provide active street frontages, respect heritage and the amenity of adjoining residential development.

The proposal does not have a frontage to Hunter Street but contributes to the precinct by providing a built form that transitions between the foreshore and the city while respecting its location within the Heritage Conservation Area (HCA). Although the development does not adjoin any residential properties, it maintains a considerate design approach in line with ADG and the precinct's objectives.

While not directly on Hunter Street, the proposal has access and an elevation that will present to the proposed future laneway at the rear that will enhance and strengthen Hunter Street as Newcastle's "Main Street".

Overall, the proposal is consistent with the objectives and provisions of the Hunter Street Live-work units key precinct and the requirements of Section 6.01.

Section 7.02 – Landscape, Open Space and Visual Amenity

The proposal is a category 3 development under this section as it is over two million dollars in value. The documentation provided is acceptable in terms of category 3 and results in good landscape design outcome.

The proposal is acceptable having regard to the mixture of vegetation and deep soil plantings and the context of the built form of the development and its location within the City Centre. As detailed in the assessments within the "SEPP Housing 2021" in 3.1(a) and "DCP 5.03 Vegetation Management" above, the existing street trees on wharf Road are recommended for replacement with more appropriate species types. These replacements are included in the recommended conditions at **Appendix A**.

Overall, the landscape design for the proposal is acceptable and this section of the DCP has been satisfactorily addressed.

Section 7.03 – Traffic, Parking and Access

The proposal is considered to be acceptable as provided within the detailed assessed below.

Traffic Generation

The proposal is supported by a traffic report prepared by Seca solutions. The traffic impact of the 20 units is assessed as up to 10 vehicle trips during the peak traffic hour. These additional vehicle trips are acceptable and are not significant in relation to the total number of vehicles on the surrounding road network.

Parking:

The NDCP 2012 establishes separate parking rates for the city centre. Notably no minimum or maximum visitor parking numbers are specified and a maximum rate for residential uses is 2 spaces per dwelling for dwellings greater than 100m².

The proposal includes 38 car parking spaces with no visitor parking. Provision of 38 spaces is within the maximum allowable rate in the NDCP 2012 and is acceptable.

A visitor parking space is considered appropriate with existing time restricted parking in the city centre managing on street parking. Considering there are 20 apartments, it is anticipated there will be demand for a visitor space and therefore, the proposal will need to include a visitor space. The visitor space is provided via recommended condition that will require 1 visitor space and 37 apartment spaces of the available 38 spaces.

Design and layout of parking and access

Vehicle access to the site is off Wharf Road. The width of the entry and exit driveway is 6.2m in both the road reserve and access ramp which is acceptable. The design and layout of the driveway and basement parking demonstrate compliance with AS2890.1, and are acceptable subject to conditions recommended in **Appendix A**.

Section 7.06 Stormwater

NDCP 2012, s.7.06 is addressed with the proposed stormwater management plan as follows:

Storage Volume

The storage volume of 42.6kL will be reused for toilet flushing and irrigation, ensuring compliance.

Water Quality

The proposed water quality provisions, including a filter basket and Spelfilters, are considered acceptable given the "relatively clean" catchment with minimal parking and mostly roof/landscape areas. The absence of a MUSIC model is not deemed problematic in this case.

Culvert and Easement

The culvert running through the site was surveyed, and a 4m easement is proposed to protect the culvert for future maintenance. Whilst the basement is clear of the culvert a stormwater pit housing water quality devices is proposed within the easement as well as a raised concrete planter. A recommended condition is included in **Appendix A** requiring these to be located clear of the 4m wide easement, resulting in minor design amendments at the Construction Certificate stage.

Access Driveway

The proposed driveway provides a 2m clearance on both sides of the culvert, addressing previous concerns about potential conflicts and access restrictions for future maintenance.

Overall, the stormwater management plan, including storage, water quality, and infrastructure considerations, is acceptable with the provisions of this section of the NDCP 2012.

Section 7.08 Waste Management

The proposal includes a waste storeroom at the front of the site, adjacent to the existing loading zone. Two full sized waste storerooms will be constructed in the basement, however a bin tug will be used by building managers to temporarily place bins in the ground floor bin enclosure prior to collection by CN's waste collection service. Bins will need to be moved to the ground floor bin store area before CN's waste vehicle arrives to ensure they are not waiting for bins to be moved from the basement on arrival.

As an existing loading zone exists in front of the neighbouring property, Newcastle Council Traffic Committee approval for a new loading zone is not required.

Section 7.11 Development Adjoining Laneways

The proposed development does not adjoin a laneway. However, both the NDCP 2012 and the NDCP 2023 identify a proposed laneway to the south of the site (refer to **Figure 8**).

The laneway has not been constructed to date with CN in discussion via the "Rail Bridge Row" development project currently at EOI stage for design options. Given the unknown nature of such a project the design has been prepared with consideration for but not reliance on a laneway to the south of the site. This includes pedestrian access for the site to and from the south which also enables access to the rear landscaping. The development is considered acceptable with regard to this section of the DCP.

G. Hunter Street Live-Work Units

Figure 6.01-43: Hunter Street Live-Work Units Key Precinct

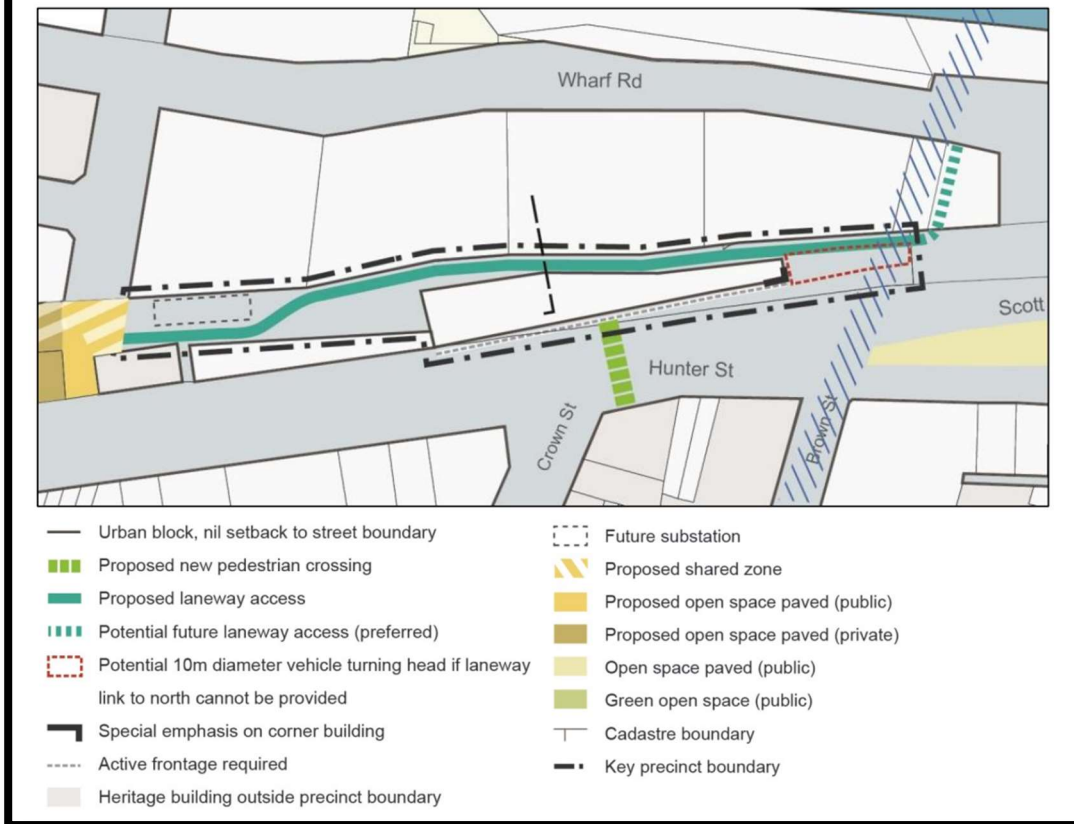


Figure 8 - Hunter Street Live-Work Units Key Precinct - Source (DCP 2012)

Contribution Plans

The following contribution plan is relevant pursuant to s.7.18 of the EP&A Act (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *S7.11 Development Contributions Plan 2022*

This Contribution Plan was considered and is applicable to the proposal. The required contribution has been included with the recommended conditions at **Appendix A**.

The following contribution plan is relevant under s.7.24 of the EP&A Act (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *Housing Contribution Plan.*

This Contribution Plan was considered and is applicable to the proposal. The required contribution has been included with the recommended conditions at **Appendix A**.

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

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

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

EP&A Regulation 2021, s.61 contains matters that must be considered by a consent authority in determining a development application, with the following matter relevant to this proposal:

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

These provisions of the EP&A Regulation 2021 were considered and are addressed in the recommended conditions at **Appendix A**.

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 in this report.

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

- Private View Loss

The proposal received submissions raising loss of views from neighbouring properties. The proposal as amended has altered the overall height of the development resulting in reduced bulk. The applicant submitted a View Loss Assessment (refer to **Appendix I**) to address the view loss impacts of the proposal.

However, regarding impacts of the proposal on views currently available over the site from nearby properties, it is noted that any additional building height will result in a degree of view loss from properties along Hunter Street and Brown Street. An inspection confirmed the type and extent of affected views. The impact of the amended proposal on existing views from neighbouring properties is detailed below.

209 Hunter Street

An assessment of view impact of the proposal in accordance with the planning principle established in *Tenacity Consulting v Warringah* (2004) NSWLEC 140 is below:

Step 1 - The first step is the assessment of views to be affected

(Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.)

The existing views over the site from 209 Hunter Street include views to the northwest towards the harbour and the west towards Newcastle West. Properties to the east within the RFB at 209 Hunter Street also enjoy harbour views to the northeast that are largely unaffected by this proposal.

The extent the water views and interface between land and water depends on the apartments' location and the higher the apartment, the greater the opportunity for views to the harbour. Considering this and the minimal change in views for levels below the 5th floor of 209 Hunter Street, the assessment focus was on those properties along the western edge of 209 Hunter Street from the 5th floor up (Units 503,603 and 703).

Pictures 1, 2, & 3, relate to views from Unit 703. Pictures 4, 5 & 6 relates to views from Unit 503.



Picture 1 - View obtained from the balcony of unit 703 while seated facing north



Picture 2 - View obtained from the balcony of unit 703 while standing facing West



Picture 3- View obtained from the bedroom of unit 703 while standing facing northwest



Picture 4- View obtained from the balcony of unit 503 while seated facing north



Picture 5- View obtained from the balcony of unit 503 while standing facing West



Picture 6- View obtained from the living of unit 503 while standing facing northwest

Step 2 - The second step is to consider from what part of the property the views are obtained. *(For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic).*

Views whilst standing and sitting are obtained from the balconies of all three units. These views are over a side boundary with an angular view to reach toward to the north, the balconies within these units and the bedroom of unit 703 are designed to take advantage of view to the north where possible.

From each balcony views to the north feature the harbour with some view loss evident due to the proposal. Views to the west are of the city skyline and are not impacted by this proposal.

Step 3 - The third step is to assess the extent of the impact. *(This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas, though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating).*

The proposed development impacts views to the north of the property, including higher-value views of the harbour. The impact is most significant for units 503, 603 and 703, as these units currently benefit from harbour views over the development site and further west. These units will experience near total loss of the harbour view including the land to water interface of the shipyard in Carrington. While not a part of this development further loss could be reasonably expected by future development to the west of the development site consistent with NLEP 2012 height provisions. However, these views are obtained at an acute angle in relation to the siting of 209 Hunter Street, making their protection challenging.

Despite the impact to the north, units 503, 603, and 703 retain expansive panoramic views of the city skyline to the west, providing a substantial visual amenity. When considering the overall impact on each affected property, rather than just the specific loss of the harbour view, the extent of view loss is assessed as moderate.

Step 4 - *The fourth step is to assess the reasonableness of the proposal that is causing the impact.*

(A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, 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.)

The proposal is not wholly compliant with the planning controls in respect to the FSR and the western boundary setback. The building is compliant with height and southern and eastern setbacks being the closest to 209 Hunter Street.

While it is acknowledged there will be a view loss impact to units at 209 Hunter Street, it is considered the proposal is reasonable and the existing view angles over the site are such that a fully compliant development on the site would result in similar view loss impacts. The existing views available from the more western units of 209 Hunter Street retain largely unaffected views to the west. Given this, it is considered that the proposal is not inconsistent with the view sharing principles.

Unit 706, 11 Perkins Street

An inspection was conducted at this site. While some views of shipping movements within the shipyard will be impacted, the development will retain significant views of the river and its interface with the land. This retention aligns with view-sharing principles, and any view loss is considered insignificant or minor.

While it is acknowledged certain properties will experience view loss impacts, it is considered the proposal is reasonable and that a redevelopment of the site fully compliant with the suite of planning controls would result in similar view loss impacts. The proposal is therefore considered acceptable with respect to view impacts and view sharing principles.

- Construction Impacts – Appropriate conditions are recommended to address any potential construction impacts (refer to Appendix A).
- Cumulative impacts – Overall it is considered the cumulative impacts of the proposal are acceptable.
- Public Domain – The proposal is satisfactory in terms of the public domain especially in regard to streetscape and urban design outcomes. The proposal represents a significant redevelopment of a site.

On balance, the proposal is considered to result in minimal adverse impacts to the natural, built and social environment. The development is located upon a site suitably zoned for residential accommodation.

The development has been designed to generally satisfy applicable SEPP's and Council's NLEP2012 and NDCP2012 requirements. Accordingly, it is considered the proposal will not result in any significant adverse impacts in the locality.

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

Having regard to the existing site conditions, the locality, the context/character of the area and the intended strategic planning outcomes for the Newcastle City Centre, the site is suitable for the proposed development, subject to the recommended conditions at **Appendix A**.

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 2012 and NDCP 2012) plus the controls under the ADG, as detailed within the report. The proposal is an expected outcome of CN's intended strategic planning goals for the Newcastle City Centre in terms residential development.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The proposal was referred to various agencies for comment, concurrence and or advice as required by the EP&A Act, as outlined below in **Table 7**. No outstanding issues remain from concurrence and referral requirements subject to the imposition of the recommended conditions.

Table 7: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Transport for NSW	SEPP (Transport and Infrastructure) 2021, s2.99	GTAs issued	Y
Referral/Consultation Agencies			
Transport for NSW	SEPP (Transport and Infrastructure) 2021, s2.98(2)	Supported	Y
Ausgrid	SEPP (Transport and Infrastructure) 2021, s2.48	Comments provided with no objection raised	Y
Integrated Development (S 4.46 of the EP&A Act)			
SANSW	Section 22 of the Subsidence Act	Concurrence provided with conditions on submission of proposal (refer to Appendix F)	Y

4.2 Council Officer Referrals

The proposal was referred to various CN officers for technical review as outlined **Table 8**.

Table 8: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	CN's Engineering Officer reviewed the submitted stormwater concept plan and considered that there were no objections subject to conditions. The Officer also assessed the proposal against the flood controls of the NDCP 2012 and supports its design and location. Conditions have been recommended.	Y
Traffic	CN's Traffic Engineering Officer reviewed the proposal and advised no objections, subject to conditions.	Y

Health	CN's Health Officer reviewed the submitted land contamination documents and noise impacts to the development. Subject to recommended conditions, the proposal is suitable having regard to the site conditions.	Y
Waste	CN's Waste team in consultation the Development Engineers raised no objection to the proposed collection method or volume of storage.	Y
Heritage	CN's Heritage Officer reviewed the HIS and proposal and advised the development is acceptable. subject to recommended conditions.	Y
Urban Design Review Panel (UDRP)	CN's UDRP considered the proposal on 16 January 2025 and advised of support for the proposal that it has design excellence.	Y

The issues raised by CN officers are considered in Section 5. Key Issues of this report.

4.3 Community Consultation

The proposal was notified under CN's Community Participation Plan from 20 December 2023 to 25 January 2024 and again for amended plans from 21 January to 5 February 2025. The notification included the following:

- Notification letters sent to adjoining and adjacent properties (127)

A total of 17 submissions were received from the initial notification period with a further 9 received from the renotification (21 January to 5 February 2025).

CN received a total of 21 unique submissions to the proposal, including a submission from CN which raised concerns about height and character as a direct neighbour of land to the south. These issues and the issues raised in other submissions are considered in **Table 9**, a submitters list is included in **Appendix G**.

Table 9: Community Submissions

Issue	No of submissions	Council Comments
View loss	11	<p>The view loss has been addressed in this report. While the proposal will impact views it is consistent with height controls and the public view corridor provisions.</p> <p>Overall, the impacts on views and view sharing are acceptable in this instance.</p> <p>Outcome: This issue has been satisfactorily addressed by the proposed design.</p>

Brown Street viewing corridor compromised	5	<p>The proposal maintains the existing public Brown Street view corridor with no further encroachment into the western boundary setback than the existing building.</p> <p>Outcome: This issue has been satisfactorily addressed by the proposed design.</p>
<p>Height of development</p> <p>Desired tiered approach for development as approaching the waterfront</p>	19	<p>The proposal is consistent with development standards for height in Newcastle City Centre, an area afforded an additional 10% in height to encourage design excellence. The UDRP confirmed the proposal's achieved design excellence through collaboration with the.</p> <p>The proposal complies with NLEP 2012 height controls using a tiered approach to height.</p> <p>Outcome: This issue has been satisfactorily addressed by the proposed design.</p>
FSR Variation sought is not appropriate	11	<p>The proposal complies with the height limits and setback controls (including an increased setback to the west for a public view corridor). The Cl.4.6 request (section 3.1(a) of this report) found compliance with the FSR would not improve the proposal or reduce its impact. Flexibility to this control has been applied and the proposal is of a suitable bulk and scale making a positive contribution to the Newcastle City Centre.</p> <p>Outcome: This issue has been satisfactorily addressed by the proposed design.</p>
Visual impact of the building on the street	8	<p>The proposal's height and FSR were found to be acceptable and UDRP confirmed design excellence.</p> <p>Outcome: This issue has been satisfactorily addressed by the proposed design.</p>
Traffic impact on wharf road	10	<p>The proposal has been reviewed and there no impacts from the additional vehicle trips generated by this development. The proposal requires no road upgrades.</p> <p>Outcome: This issue has been satisfactorily addressed subject to the imposition of recommended conditions.</p>
Overshadowing	5	<p>The development will reduce the total amount of solar access afforded to neighbours. As noted previously in 3.1(d) of this report, the proposal has enabled the retention of at least 2 hours of solar access for adjoining properties. This is consistent with the requirement for residential development and is considered reasonable in the circumstances.</p>

		Outcome: The development is compliant.
Insufficient parking	2	<p>The proposal is consistent with the NDCP 2012 and complies with the maximum permitted parking. Parking rates in the city are deliberately lower as part of NSW planning and CN's push for more sustainable methods of transport. Locations like the city centre with abundant public transport options are key to these initiatives.</p> <p>Outcome: This issue has been satisfactorily addressed subject to the imposition of recommended conditions.</p>
Unappealing roof top services	1	<p>The roof top services are consistent with a residential flat building and appropriate for the development.</p> <p>Outcome: This issue has been satisfactorily addressed by the proposed design and the recommended conditions.</p>
Balconies outside of Building envelopment	2	<p>The amended design reduced balcony depth to retain the Brown Street viewing corridor while providing suitable POS for each unit.</p> <p>Outcome: This issue has been satisfactorily addressed by proposed design</p>
The establishment of precedent	3	<p>Planning decisions are based on the development controls and the merit of the proposal.</p> <p>Outcome: This assessment is unlikely to create a precedent.</p>
Survey Detail	4	<p>The survey has been provided by a suitably qualified surveyor and is of a standard that can be relied upon.</p> <p>Further, the information has been reviewed in details and there is no concern with the levels provided on the survey.</p> <p>Outcome: The survey is considered satisfactory.</p>
The consideration of design Excellence	4	<p>The UDRP is an independent panel of qualified architects engaged in accordance with the Housing SEPP to review and provide comment of proposed developments to CN.</p> <p>Outcome: The design is considered to have achieved design excellence.</p>
Foreshore character and access	2	<p>The proposal is contained on private land and will not impact access or the safety of the foreshore.</p> <p>Outcome: This issue has been satisfactorily addressed by the proposed design.</p>

Reduced open space and vegetation	2	<p>As discussed in the ADG assessment in 3.1(a) of the report, the proposal incorporates suitable landscaping and open space within the design.</p> <p>Outcome: This issue has been satisfactorily addressed by the proposed design</p>
Loss of Privacy	1	<p>The proposal has compliant building separation consistent with ADG and DCP requirements to ensure suitable privacy between residential developments.</p> <p>Outcome: This issue has been satisfactorily addressed by the proposed design</p>
Tree Removal	2	<p>The number of trees to be removed by the proposal through design amendments. The trees to be removed will be offset by compensatory plantings.</p> <p>The Arborist report provided with the proposal identifies sufficient soil depths will support the newly planted trees.</p> <p>Outcome: This issue has been satisfactorily addressed, with conditions recommended.</p>
Increased noise	1	<p>The noise associated with the introduction of 20 residential units at the site is not inconsistent with city centre location. Standard noise controls under NSW legislation will apply to the proposal.</p> <p>Outcome: This issue is satisfactorily addressed with the proposal being in context with the locality.</p>
Inadequate storm water drainage	1	<p>The proposal includes a stormwater management design which will capture and control the discharge of stormwater. Stormwater information submitted demonstrates the proposal will not have negative impacts on downstream properties.</p> <p>Outcome: This issue is satisfactorily addressed through the design and the recommended conditions.</p>
Wind Tunnel	1	<p>The building design and location provides a significant setback from the western boundary, and articulation to break up the facade. Wind tunnelling effects are minor from this development</p> <p>Outcome: This issue has been satisfactorily addressed by the proposed design.</p>
Property value	5	<p>The impact of development on property values is not a consideration under the EP&A Act.</p> <p>Outcome: While amenity for neighbouring and nearby properties has been considered, the direct</p>

		impact on property value cannot be considered in the assessment of this application.
Consideration of DCP 2023	4	The Application was lodged in December 2023 and is subject to the savings provisions within the NDCP 2023 requiring the application to be assessed against the provisions of DCP 2012. As assessment of the proposal has demonstrated it is generally in accordance with the NDCP 2012.

5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

Contamination

The site has a history of industrial use, including coal loading and refrigeration machinery manufacturing, which has resulted in contamination. A PSI identified asbestos and other contaminants, leading to a DSI. The DSI confirmed the presence of friable asbestos and other pollutants, making the site unsuitable for residential use in its current state. A RAP was proposed, including excavation and disposal of contaminated soil, which will be validated post-remediation to ensure site suitability.

View Loss

The proposal will impact views to the north, particularly for some units in nearby residential buildings with existing harbour views. A view loss assessment indicated significant loss for units 503 and 703 at 209 Hunter Street. These views of the harbour are at an acute angle making protection challenging. Affected units retain expansive city skyline views to the west, and overall view loss for the whole of each property is considered moderate and acceptable within the merits of this application.

Floor Space Ratio

The proposal seeks to exceed the NLEP 2012 FSR limit of 1.5:1 by 23.3%, proposing an FSR of 1.85:1. A cl 4.6 variation request was submitted, arguing that strict compliance is unnecessary as the proposal meets strategic planning objectives. The increased FSR is justified based on the site's location within the Newcastle City Centre, the quality of the proposed design, and alignment with broader planning goals.

Design Merit

The proposal has been reviewed against the ADG and the Housing SEPP 2021. It meets key design quality principles, including orientation, solar access, and visual privacy. The UDRP endorsed the design, confirming it meets design excellence requirements. Some variations, such as communal open space provisions, were assessed on merit and found acceptable given the site's location and overall design response.

Flooding

The site is identified as flood-prone land, requiring assessment under Newcastle's flood planning controls. The proposal includes flood management measures such as elevated floor

levels and drainage provisions to mitigate risks. The assessment found the flood response measures satisfactory, ensuring the development will not exacerbate local flood risks.

Submissions

A total of 26 submissions were received via two notifications, with 21 considered unique. Key concerns raised included view loss, the FSR exceedance, building height, and visual impacts. The amended proposal addressed concerns relating to height, impacts on stormwater infrastructure, view loss. The assessment determined the proposal aligns with strategic planning objectives, and mitigation measures (such as improved setbacks and design modifications) address potential impacts, and ensure the development is acceptable.

6. CONCLUSION

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

The key issues outlined in Section 5 have been resolved satisfactorily through amendments to the proposal and/or addressed in the recommended draft conditions at **Appendix A**.

7. RECOMMENDATION

That Development Application (DA2023/01154) for construction of RFB, including ancillary development (pools) and demolition of existing structures, at 237 Wharf Road, Newcastle 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 **Appendix A**.

The following appendices are provided:

Appendix A - Conditions of consent

Appendix B - Architecture plans

Appendix C - Landscape Plans

Appendix D - Urban Design Review Panel (UDRP) comments

Appendix E - Clause 4.6 Request to vary Development Standard

Appendix F - External Referral Comments Ausgrid, TfNSW (Rail) and SANSW

Appendix G - Submitters List

Appendix H - Design Verification Statement

Appendix I - Applicant submitted view loss Assessment

Appendix J - Acid Sulfate Soils Report

Appendix K - Remediation Action Plan