

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

Panel Reference	PPSHCC-50
DA Number	DA2020/00621
LGA	Newcastle
Proposed Development	Mixed use development - 14 storey mixed use development comprising; food and drink premises (cafe) at ground floor, shop top housing (38 units including affordable rental housing (19 units)), demolition, signage, associated landscaping and site works.
Street Address	625 Hunter Street, Newcastle (Lot 1 DP 998023)
Applicant/Owner	11 Church Street Pty. Ltd./11 Church Street Pty. Ltd.
Date of DA lodgement	19 June 2020
Number of Submissions	One submission received during the notification period.
Recommendation	Refusal
Regional Development Criteria (Schedule 4A of the EP&A Act)	Pursuant to Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011, the application is referred to the HCCRPP as the development has a capital investment value of more than \$5 million and falls under Clause (5) Private infrastructure and community facilities over \$5 million. The application submitted to Council nominates the capital investment value of the project as \$7,634,997 (including GST).
List of All Relevant Section 4.15 (1)(a) Matters	Environmental planning instruments: s4.15(1)(a)(i) • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy No.55 – Remediation of Land • State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development • State Environmental Planning Policy No. 70 – Affordable Housing (Revised Schemes)(2002 EPI 337) • State Environmental Planning Policy (Affordable Rental Housing) 2009 • State Environmental Planning Policy (Coastal Management) 2018 • State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 • Newcastle Local Environmental Plan 2012 Development Control Plan: 4.15 (1)(a)(iii) • Newcastle Development Control Plan 2012 • Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019
List all documents submitted with this	Appendix A – Reasons for refusal

report for the Panel's consideration	Appendix B - Documents submitted with the application Appendix C – Subsidence Advisory NSW - General Terms of Approval dated 28 April 2020.
Clause 4.6 requests	Nil.
Report prepared by	City of Newcastle (CN)
Report date	11 January 2021

Summary of s4.15 matters**Yes**

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Legislative clauses requiring consent authority satisfaction**Yes**

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards**No**

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions?

No

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment?

N/A

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

Development consent is sought under DA 2020/00621 for a mixed-use development consisting of a 14 storey mixed use development comprising; food and drink premises (cafe) at ground floor, shop top housing (38 units including affordable rental housing (19 units), demolition, signage, associated landscaping, and site works. The built form comprises the erection of two tower elements linked by a central corridor which provides lift and stair access to all units. The rear (southern) portion of the site is proposed to contain an area of ground level communal landscaping. The development includes the following:

- Food and drink premises (cafe) 31.52m².
- The unit mix comprises 26 studio apartments and 12 loft style studio apartments with 50% of the units proposed as infill affordable housing.
- Pedestrian access is provided to the development via Hunter Street through the retained facade of the existing building on site.
- The development does not propose any car parking on site however 38 bicycle spaces are proposed.
- Ground floor containing lobby, lift, fire-stairs, waste facilities, storage and bicycle spaces, communal landscaped area.
- Roof top communal open space located atop the rear tower.
- Excavations for the development will largely comprise excavation for lift well, services and localised piling for footings (pile design subject to detailed design).

The development application is reported to the Hunter and Central Coast Regional Planning Panel in accordance with Part 4 and Schedule 7 *State Environmental Planning Policy (State and Regional Development) 2011*, as the development is a type classified under clause 5, as the development is for the purpose of affordable housing and has a capital investment value of more than \$5 million. The nominated CIV is \$7,634,997 (including GST).

Consultation

The development application was placed on public exhibition, being notified and advertised, for a period of 14 days from 1 July 2020 to 15 July 2020 in accordance with the *Environmental Planning & Assessment Act 1979* (EP&A Act), *Environmental Planning & Assessment Regulations 2000* (EP&A Regs) and the City of Newcastle Community Participation Plan. There was one submission received during the notification period.

Integrated Development

The application was referred to Subsidence Advisory NSW in accordance with the provisions of s4.46 of *Environmental Planning and Assessment Act 1979*:

- Subsidence Advisory NSW - General Terms of Approval dated 28 April 2020.

It is noted that the submitted Acid Sulfate Soils Management Plan provides that dewatering may be required to facilitate the construction, however given basement levels are not proposed this is not likely. Regardless, the applicant has not elected to submit an integrated referral to Water NSW for approval under s.90 of the *Water Management Act 2000*.

Other external referrals

The application did not require referral to any other external agencies for comment.

Pre-conditions to granting development consent

The following legislative clauses apply to the development proposal which require the consent authority satisfaction prior to the granting of development consent:

- Part 4 'Regionally significant development' and Schedule 7 of *State Environmental Planning Policy (State and Regional Development) 2011* – The development is for community facilities (including affordable housing) over \$5 million in value (CIV \$7,634,997 (including GST)). The HCCRPP is the relevant determining authority.
- Clause 7 'Contamination and remediation to be considered in determining development application' of *State Environmental Planning Policy 55 – Remediation of Land* – The site has a history of commercial use and is not identified as contaminated land. CN is satisfied that the development site will be suitable for the proposed development.
- Clause 16A 'Character of local area' of *State Environmental Planning Policy (Affordable Rental Housing) 2009* – Clause 16A provides that the consent authority must not consent to development to which division 1 'in-fill affordable housing' applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area. The proposed development is not compatible with the character of the local area as it fails to provide adequate on-site parking, has not incorporated a satisfactory waste management strategy and will result in lot isolation of both the subject site and adjoining land.
- Clause 7 of *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* – Clause 7 provides that a person must not clear vegetation in any non-rural area of the State without the authority confirmed by a permit granted by the council. The application does not involve tree removal.
- *Clause 14 - Development on land within the coastal use area* – CM SEPP : Clause 14 provides that development consent must not be granted to development on land that is within the coastal use area unless the consent authority is satisfied that the proposed development will not cause an adverse impact on: existing, (i) safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability, (ii) overshadowing, wind funneling and the loss of views from public places to foreshores (iii), the visual amenity and scenic qualities of the coast, including headlands, (iv) Aboriginal cultural heritage, practices and places, and (v) cultural and built environmental heritage. The applicant has failed to demonstrate that the proposal will not adversely impact on Aboriginal cultural heritage or built environmental heritage.
- Clause 16 'Development in coastal zone generally – coastal management programs to be considered' CM SEPP: Clause 16 prescribes that development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land. There are no applicable coastal management programs which apply to the subject site.
- Clause 2.3 'Zone objectives and Land Use Table' of Newcastle Local Environmental Plan 2012 (NLEP2012) – The development site is zoned B4 Mixed Use – 'car parking', 'seniors housing', 'residential flat buildings', 'medical centres', 'food and drink premises', and 'retail premises', are all permissible development types within the B4 zone.
- Clause 4.6(4) 'Exceptions to development standards' NLEP2012 – The development results in variations to both the height standard prescribed under cl.4.3 NLEP2012 and

the Floor Space Ratio (FSR) standards contained within cl.13 Affordable Housing SEPP. The applicant has failed to submit cl.4.6 variation request.

- Clause 5.10(4) 'Heritage conservation' NLEP2012 – Clause 5.10(4) specifies that the consent authority must, before granting consent, consider the effect of the proposed development on the heritage significance of the heritage item or heritage conservation area concerned. The subject site is located within the Newcastle City Centre HCA and is identified as a contributory building within the context of the HCA.
- Clause 6.1(3) 'Acid Sulfate Soils' – Clause 6.1(3) specifies that development consent must not be granted for the carrying out of works under the clause unless an acid sulfate soils management plan has been prepared and provided to the consent authority. An Acid Sulfate Soils Management Plan prepared by Douglas Partners was submitted with the application and identifies that subject to recommendations any disturbance of ASS could be managed during the construction phase.
- Clause 6.3(3) 'Earthworks' provides several matters that the consent authority must consider prior to granting development consent to earthworks. The matters listed under cl.6.3(3) have been considered during the assessment and the proposed works are acceptable.
- Clause 7.5(2) 'Design excellence' provides that development consent must not be granted for development to which this clause applies unless the consent authority considered that the development exhibits design excellence. The proposed development is not considered to exhibit design excellence and has not satisfied the requirements of the City of Newcastle Urban Design Consultative Group (UDCG).

Key Issues

The key issues considered during the assessment relate to:

- Clause 4.6 – Building Height (cl.4.3 NLEP) and Floor Space Ratio (cl.13 Affordable Housing SEPP).
- Access and loading.
- Car Parking.
- Waste Management.
- Heritage impacts.
- Lot isolation.

The development has been assessed under Section 4.15(1) of the EP&A Act 1979 and is not considered satisfactory. Accordingly, it is recommended that the application be refused for the reasons set out in **Appendix A**.

RECOMMENDATION

That DA 2020/00621 for a mixed-use development consisting of a 14 storey mixed use development comprising; food and drink premises (cafe) at ground floor, shop top housing (38 units including affordable rental housing (19 units), demolition, signage, associated landscaping, and site works, at 625 Hunter Street, Newcastle (Lot 1 DP 998023) be refused subject to the reasons in **Attachment A**.

1. INTRODUCTION

This report provides a detailed overview of the development proposal for mixed use development comprising 14 storey mixed use development comprising; food and drink premises (cafe) at ground floor, shop top housing (38 units including affordable rental housing (19 units), demolition, signage, associated landscaping and site works at 625 Hunter Street, Newcastle.

The development application is referred to the Hunter and Central Coast Regional Planning Panel in accordance with Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011, as the development has a capital investment value of more than \$5 million and falls under Clause (5) Private infrastructure and community facilities over \$5 million. The applicant has nominated the CIV as \$7,634,997 (including GST).

2. BACKGROUND

The development site is located at 625 Hunter Street, Newcastle. The site currently contains a vacant, three-storey building, fronting Hunter Street. The building is in significant disrepair and covers half of the site. The rear half of the site is at-grade hardstand, enclosed by the boundary walls of adjoining properties. The development site is zoned B4 Mixed Use under the Newcastle Local Environmental Plan 2012 (NLEP2012).

The development application was lodged with CN on 19 June 2020. The development was presented to the Urban Design Consultative Group (UDCG) on 29 July 2020 (refer to later sections of this report relating to the outcomes of these and other meetings with the UDCG).

On 18 November 2020, a briefing of the application was provided to the Hunter and Central Coast Regional Planning Panel (HCRPP).

3. SITE DESCRIPTION

The subject site is known as 625 Hunter Street, Newcastle and is legally described as Lot 1 DP 998023. The site is generally rectangular in shape and has a total site area of 523m². The site is generally flat. The front (north) and rear (south) boundaries have a length of 10.35m. The side boundaries each have a length of 51m.

The site has a frontage to Hunter Street on the northern boundary of the site and is located to the southern side of Hunter Street near the Hunter New England Health Centre to the north. The site is located within a strip of two- and three-storey commercial buildings which are varied in age and style. Adjacent to the site on both sides are two-storey buildings with a wide street frontage accommodating office space. The Family Hotel is located to the west, on the corner of Hunter and Steel Streets. Across the road is the multi-storey contemporary Hunter New England Health building.

There is a vacant and deteriorated three-storey early twentieth century masonry building on the site, built to the street alignment with zero front and side setbacks. The facade has deteriorated but retains classical architectural elements. Behind the building, the rear half of the site is vacant with a combination of concrete and brick paving. The site is enclosed by high brick walls that display evidence of various former arches, openings and structural members.

The wider area around the site has a mix of commercial, residential and health uses and a range of building heights from two storeys to seven storeys. Directly to the east and west of the site are two storey commercial buildings.

The site is subject to several environmental constraints as mapped on CN's GIS system including:

- Heritage Conservation Area – General.
- Aboriginal Heritage Area
- Flood Prone Land
- Mine Subsidence.
- Acid Sulfate Soils – Level 4.

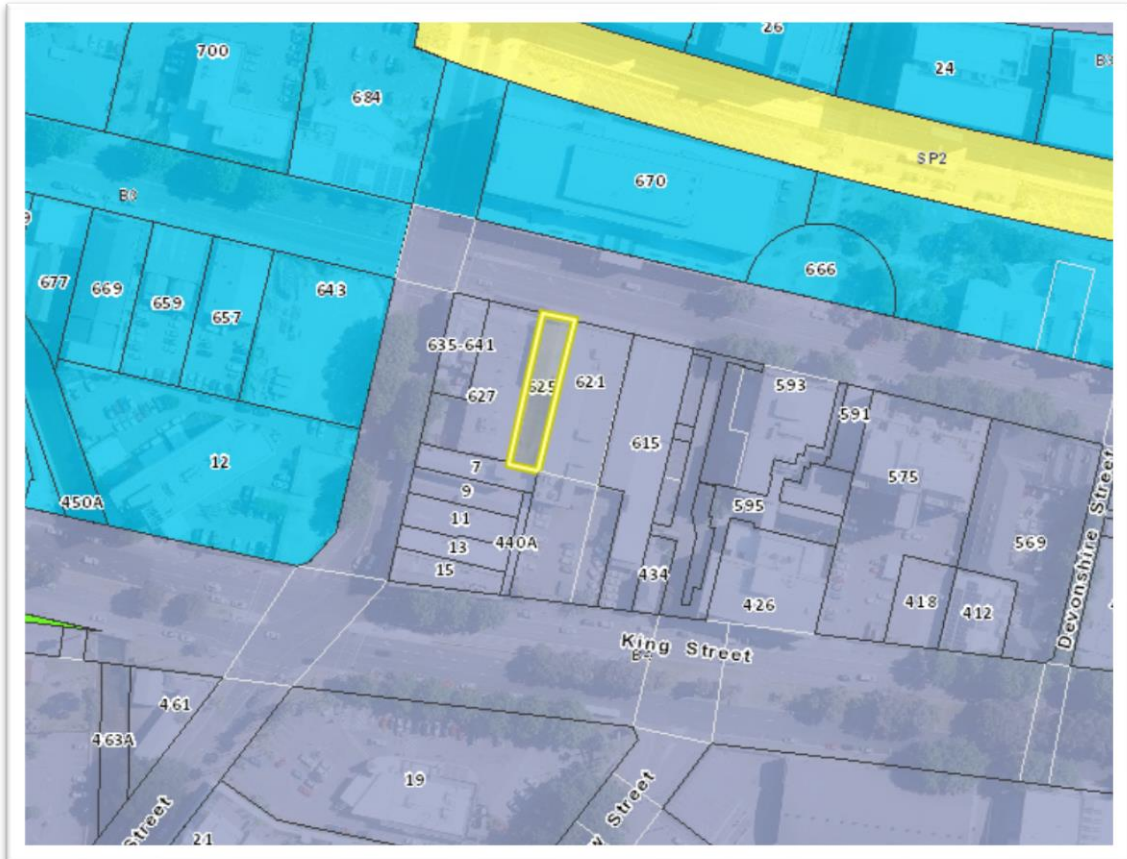


Figure 1: NLEP2012 zoning extract



Figure 2: View from Hunter Street looking south towards the building frontage

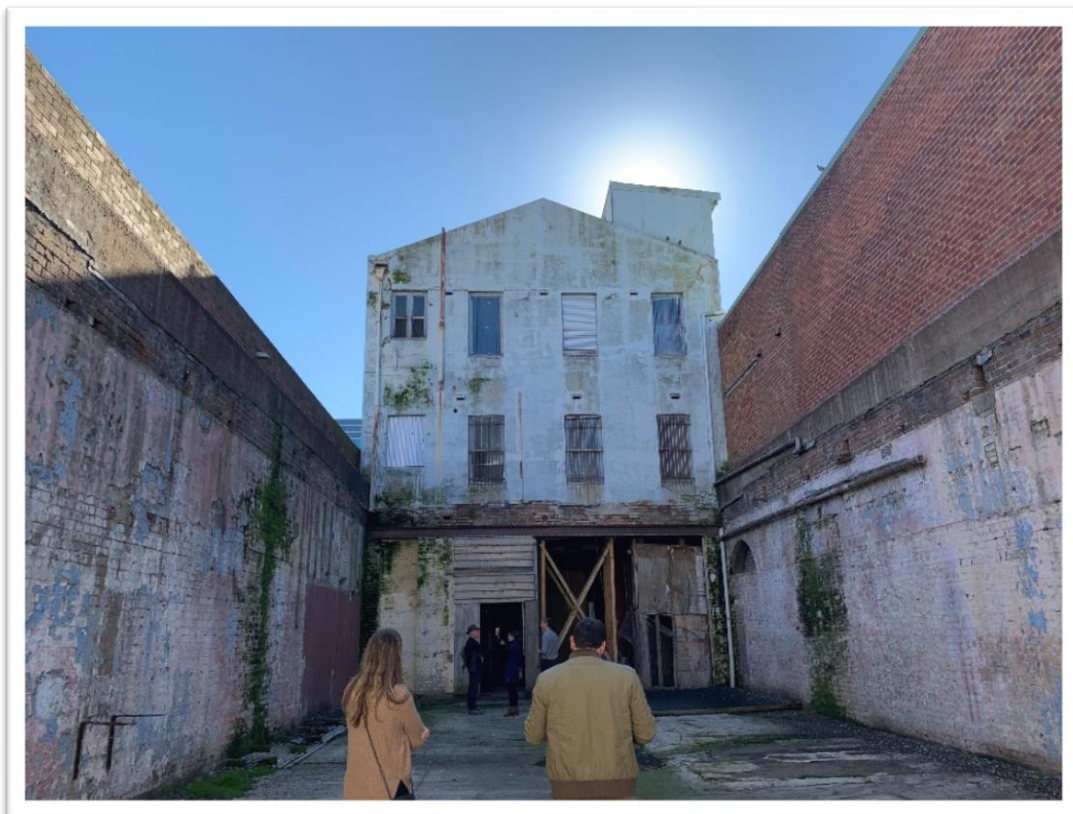


Figure 3: View looking north at the rear of the existing building on the subject site



Figure 4: View looking south east toward the building frontage



Figure 5: View looking south west toward the building frontage

4. PROPOSAL

The development comprises the redevelopment of the existing premises to provide for a 14 storey mixed use development comprising; food and drink premises (cafe) at ground floor, shop top housing (38 units including affordable rental housing (19 units), demolition, signage, associated landscaping, and site works. The built form comprises the erection of two tower elements linked by a central corridor which provides lift and stair access to all units. The rear (southern) portion of the site is proposed to contain an area of ground level communal landscaping. The development includes the following:

- Food and drink premises (café) 31.52m².
- The unit mix comprises 26 studio apartments and 12 loft style studio apartments with 50% of the units proposed as infill affordable housing.
- Pedestrian access is provided to the development via Hunter Street through the retained facade of the existing building on site.
- The development does not propose any car parking on site however 38 bicycle spaces are proposed.
- Ground floor containing lobby, lift, fire-stairs, waste facilities, storage and bicycle spaces, communal landscaped area.
- Roof top communal open space located atop the rear tower.
- Excavations for the development will largely comprise excavation for lift well, services and localised piling for footings (pile design subject to detailed design).

Refer to **Appendix B** for a copy of the floor plans and elevations of the proposal.

5. PLANNING ASSESSMENT

5.1 Environmental Planning and Assessment Act 1979 (EP&A Act)

5.1.1 Section 4.5 – Joint Regional Planning Panels

The application was referred to the Hunter and Central Coast Regional Planning Panel in accordance with Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011, as the development has a capital investment value of more than \$5 million and falls under Clause (5) Private infrastructure and community facilities over \$5 million.

The capital investment value (CIV) of the application is \$7,634,997 including GST.

5.1.2 Section 4.46 – Integrated Development

The proposal is integrated development pursuant to Section 4.46 of the EP&A Act as approval is required from Subsidence Advisory NSW under s.22 *Coal Mine Subsidence Compensation Act 2017*, to erect improvements within a mine subsidence district.

Subsidence Advisory NSW granted General Terms of Approval on 15 June 2020 which included several conditions (refer to **Appendix C**).

5.1.3 Section 4.15(1) Evaluation

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, as follows:

5.1.3.1 The provisions of any environmental planning instrument

State Environmental Planning Policies

State Environmental Planning Policy (State and Regional Development) 2011

State Environmental Planning Policy (State and Regional Development) 2011 sets out the functions of regional panels in determining applications for regional development. Clause 20 of the SEPP requires the Regional Planning Panel to be the determining authority for development included in Schedule 7 of the SEPP. This includes applications for community facilities (including affordable housing) over \$5 million in value. The application is submitted to the Hunter and Central Coast Regional Planning Panel (HCCRPP) for determination as the value of works is over \$5 million. The development has an identified CIV of \$7,634,997 (including GST).

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX) applies to buildings that are defined as 'BASIX affected development', being "development that involves the erection (but not the relocation) of a BASIX affected building," (i.e.: contains one or more dwelling).

The provisions of SEPP BASIX apply to the current development proposal. The applicant submitted a BASIX Certificate, dated 04 June 2020, which lists the commitments to achieve appropriate building sustainability.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) was introduced to facilitate the delivery of infrastructure across the State by improving regulatory certainty and efficiency. The ISEPP simplifies the process for providing infrastructure in areas such as education, hospitals, roads, railways, emergency services, water supply and electricity delivery.

Clause 45 - Development impacted by an electricity tower, electricity easement, substation, power line

Clause 45 of the ISEPP requires certain development applications to be referred to the relevant electricity supply authority, further that any concerns raised by the electricity supply authority are to be considered as part of the assessment.

The development site is not located within or adjacent to an easement for electricity purposes; adjacent to a substation; within 5m of an exposed overhead electricity power line; or a pool within 30m of a structure supporting an overhead transmission line. Clause 45 of the ISEPP does not apply.

Clause 101 – Development with frontage to classified road

Clause 101 provides that new development should not compromise the effective and ongoing operation and function of classified roads. Clause 101 prescribes matter that must be considered by the consent authority prior to granting consent to a development with frontage to a classified road.

The subject site has frontage to Hunter Street. Portions of Hunter Street are part of the classified road network (from intersection of Worth Place to Scott Street), however the proposed development site fronts the portion of Hunter Street which is classified as a local road. As such, clause 101 ISEPP does not apply.

Clause 102 – Impact of road noise or vibration on non-road development

Clause 102 applies to development that is on land in or adjacent to the road corridor for a freeway, tollway or transit way or any other road with an annual average daily traffic volume of more than 20,000 vehicles (based on traffic volume data published on the RMS website. Residential accommodation is development for the purpose of clause 102. The portion of Hunter Street which the development fronts is not identified as a classified road and is not anticipated to exceed 20,000 vehicles daily traffic volume. Clause 102 does not apply.

State Environmental Planning Policy No.55 (Remediation of Land) (SEPP No.55)

This policy requires consideration to be given to previous uses on the site and whether the site needs to be remediated for future uses. Clause 7(1) (b) and (c) of SEPP No.55 require that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation.

The subject site is not identified as contaminated land and has a history of commercial use. The site is not likely to contain contaminated land and further investigation is not warranted. The proposal satisfies the requirements and SEPP55, in particular clause 7 'contamination and remediation to be considered in determining development application', which requires the consent authority is satisfied that the development site is suitable for the proposed development.

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

This policy applies to the development of new residential flat buildings and aims to improve the quality of residential flat development. Clause 28(2) of the SEPP requires the consent authority to take into consideration the advice of a Design Review Panel (constituted under Part 3 of the Policy), the design quality of the development when evaluated in accordance with the design quality principles and the Apartment Design Guide (ADG). An assessment of the development under the design principles is provided below.

CN's Urban Design Consultative Group (UDCG) considered the development proposal on 29 July 2020. Amended architectural drawings were provided on 17 August 2020 in response to the matters raised by the UDCG. Further amended plans dated 23 November 2020 were provided which primarily facilitated the alignment the floor levels of Level 1 & 2 with the openings of the existing facade to Hunter Street, resulting in an increase to the overall building height.

The amended proposal is not considered to sufficiently address the issues raised by the UDCG. As such, the amended plans were not referred to the UDCG for consideration. The amended development is not considered an appropriate design response. The UDCG have not provided their support to the proposal.

A summary of the UDCG advice in relation to the nine Design Quality Principles is provided below.

Design Quality Principles	Assessment
Principle 1. Context and Neighbourhood Character	
<u>UDCG Comment</u> <i>"The subject site located to the southern side of Hunter Street Newcastle West is occupied by the shell of what appears an early Inter War mixed use building retaining a notable Classical Revival street elevation of rendered masonry and painted face brick. The site is enclosed by later commercial/retail buildings to both sides and rear.</i> <i>The site sits within a location of urban renewal. Much of the underutilized retail/commercial building stock from the late 19th and early to mid- 20th Century now being progressively replaced or adapted."</i>	<u>Officer Comments</u> The UDCG comments are noted.
Principle 2: Built Form and Scale	
<u>UDCG Comment</u> <i>"The proposal combines retention of the existing street facade as a screen to a new mixed-use building of 15 levels comprising; a single basement level housing services and storage areas; ground floor lobby, café and landscaped courts; and thirteen levels of residential accommodation. The building is proposed as a central service core with linkways recessed from side boundaries accessing paired studio apartments to the north [street] elevation and to two-level loft apartments to the southern [rear] elevation. The top (13th) floor combines an extensive communal area at the rear with two studio apartments at the street front elevation.</i> <i>The building is set back from the rear boundary enabling external decks to rear apartments. The building rises substantially above existing buildings in the immediate streetscape. Elongated side elevations are articulated with recesses between apartments and the central lift core, generating the impression of slender linked towers rather than a slab-sided building. Recesses either side of the lift core are extensively landscaped.</i> <i>Open balconies to the rear and front elevations progressively realign from west to east with location up the building. The gradual spiral pattern visually relieves the repetition of cantilevered decks on the slender tower.</i> <i>Whilst supporting retention of the street facade, its structural stability in the form indicated is questioned. Acknowledging the deteriorated fabric of the existing building it is recommended that it be linked to activated</i>	<u>Officer Comments</u> The description of the proposal is noted. In respect of the structural stability of the existing street facade, the applicant provided a response to this matter on 20 August 2020. The applicant proposed the erection of structural elements to support the existing facade. Upon review of the updated information, the following request was issued to the Applicant on 3 September 2020: <i>"The development in its current form is not supported. The lowest 3 floors of residential accommodation will have a poor outlook and amenity as their principal open space area will be looking directly towards the retained building façade. In addition, questions remain as to the ability to structurally support the retained facade.</i> <i>Please review this aspect of the development and either demonstrate that the proposed units will have an acceptable level of amenity and outlook or amend the development to extend these lower units to the retained façade."</i> In response, the Applicant provided the following response on 23 November 2020: <i>"The amenity of units Unit 1.1, 1.2, 2.1 and 2.2 has been raised, and we have addressed these concerns by aligning the floor levels of Level 1 & 2 with the openings of the existing façade to Hunter Street. We believe this is a better outcome however this in turn has affected the FFL of all levels, resulting in a minor breach of the height limit. Please find accompanying Clause 4.6 Variation Request, which supports this modification.</i> <i>Balconies of levels 1 & 2 have also been extended to the existing facade, providing structural stability to the</i>

<i>accessible areas extending from the main frontage of the new building.</i> <i>The Group raised concerns about how the proposed design could integrate with the neighbouring sites, yet still retain acceptable amenity in the apartments if for example commercial development was to be built hard against common boundaries. If alternatively, future development on the adjoining sites were to be primarily residential, the proposed small setbacks from the common boundaries would result in separation distances between the bedrooms and potentially similar rooms in such development(s) being unacceptable. Whilst acknowledging this as a common issue in deep, narrow historic subdivisions the Group maintains the need for site amalgamation as the recommended response to SEPP65 guidelines covering separation distances.”</i>	<i>existing facade, which had previously been identified an issue by the UDCG. “</i> The proposed development exceeds the 45m height limit and whilst their response (extracted above) outlines that a cl.4.6 Variation Request was to accompany the amended plans this was never submitted in support of the application. It is noted that the applicant has utilised a ground level taken from the existing building irregular concrete and timber floor (RL2.68) to determine height. However, cl.4.3 NLEP specifies height is taken from existing ground level. The site survey identifies a concrete slab exists at RL2.29 on site, assuming that this is the ground level below the existing floor RL that the applicant has taken to calculate their maximum height, the finished height of the development at its highest point is 47.94m. As such, a cl.4.6 variation request is required and has not been submitted. The applicant must also clearly demonstrate the existing ground level for the purpose of calculating building height under cl.4.3. In terms of the impact of the development on adjoining sites, the Applicant provided the following response on 14 August 2020: <i>“Consideration has been given to the potential impact of the development on the future development of adjoining blocks in respect of overshadowing, overlooking and built form. The two neighbouring sites (621 and 627 Hunter Street) could be developed individually, without reliance on another site. Either residential or commercial schemes could be achieved, which are financially viable and able to meet the ADG or Grade A office space.”</i> This response was accompanied by the following diagrams. Having assessed the response provided by the applicant, it is considered that future development can occur on the two sites adjoining the subject site without impacting on the amenity of the subject development or future development site. The proposed layout and design of the development allows for sufficient solar access and ventilation to the proposed units should both sites adjoining the subject site be built upon.
---	--

Principle 3: Density	
<u>UDCG Comment</u> <i>“The development has an FSR of 0.36:1 the Development utilising the 20% increase in maximum FSR as per the SEPP ARH. The building height is complaint with Council Height Controls.”</i>	<u>Officer Comment</u> Noted – however as detailed elsewhere in this report the applicable FSR under the Affordable Housing SEPP is 3.576:1 (1870.248m²).
Principle 4: Sustainability	
<u>UDCG Comment</u> <i>“The proposed development provides 100% compliance with cross ventilation and achieves solar access requirements to 27 of the apartments [70% of the total].</i> <i>Bathrooms to loft apartments should have ventilation and have natural light through the return walls from the side boundaries.</i> <i>Bathrooms to level 13 Studios should have natural light and ventilation through the roof.”</i>	<u>Officer Comment</u> Following receipt of the UDCG comments, the development was amended to provide windows to all bathrooms in the development.
Principle 5: Landscape	
<u>UDCG Comment</u> <i>“Planting including vertical garden elements to the side and outer face of the lift core will require regular maintenance. Safe, practical access to all proposed soft landscape is crucial, and should be considered at DA stage. Rationalisation of planting to the central core area would reduce the maintenance costs in a building identified as responding to affordable housing.</i> <i>Automated watering needs to be supplied to all planting beds and planters.</i> <i>The proposed BBQ area to the rear ground floor court needs to be further developed to remove smoke and odour impact on apartments above.</i> <i>The linear plan of the ground floor rear courtyard should consider a wider area at the rear providing an additional usable communal area replacing the point seating platforms along the central walkway. The latter could be located within the footprint of the building above – which would provide some weather protection.”</i>	<u>Officer Comment</u> Following the UDCG meeting, the applicant amended the ground level landscaped area. The BBQ area has been relocated to the roof level landscaped area in the amended plans and an area of seating has been provided in the south-west part of the ground level with a pergola proposed over the seating. The revised ground floor area layout has not been considered by the UDCG Panel. In respect of safe access to soft landscaping and automated watering, these issues can be dealt with through the imposition of conditions of consent if the development application was considered acceptable.
Principle 6: Amenity	
<u>UDCG Comment:</u> <i>“The amenity of the linkway from the lift core to apartments in terms of privacy and weatherproofing is of concern.</i>	<u>Officer Comment:</u> The applicant amended the development to provide for metal louvre screens to enclose the linkways in response to the UDCG comments. This will ensure that privacy to bedroom windows is also protected.

<i>Separation distances from the linkways to adjoining sites do not comply with ADG requirements. The Group recommends investigation of alternate forms of enclosure to the linkways in the form of obscure glazing or similar, providing visual and acoustic amenity to future developments to the east and west.</i> <i>Privacy to bedroom windows adjacent to the linkways should also be improved in accordance with the above recommendation.</i> <i>Privacy screening to sides of the rooftop communal area requires further development.</i> <i>Living areas to lofts and studio apartments should include a dining area.</i> <i>The provision of a single lift would impact on occupant's amenity in the event of services shutdowns and interruptions to service, particularly during delivery/removal of occupants' furnishings.</i> <i>The absence of any car-parking or service parking bay is considered a significant limitation to the amenity of the building. Whilst located near the Light Rail route, city amenities and civic buildings, the absence of parking is considered to limit appeal of the apartments to essential workers likely to seek affordable housing and typically reliant on a vehicle for out of hours transport. Whilst supportive of measures to reduce vehicular traffic in this area and recognizing that provision of parking on this narrow site would be difficult, this in combination with the fact that there is a bus stop immediately in front of the site which would make loading/unloading of goods, furniture etc. problematic, raise concerns which will need to be assessed by Council."</i>	This is considered an acceptable response to the UDCG comments. In respect of screening of the rooftop communal area, the applicant has not provided screening to this area. No further assessment has been undertaken by the UDCG Panel. This is an outstanding issue. A dining area has been provided to the kitchen/living room of the proposed "loft" apartments in the south tower in response to the UDCG request. This is considered an acceptable response. The proposed single lift access to the units is retained in the current development plans for the site. This is not supported by the UDCG. Following the UDCG meeting, discussions have been held with the applicant in respect of the provision of car parking for the development. The current scheme provides zero car parking. The provision of zero car parking is a significant departure from CN's car parking controls and is not supported. A detailed assessment of the car parking provision is provided in Section 5.1.3.3 of this report. The lack of a parking area in proximity to the building is also not supported in this instance.
Principle 7: Safety	
<u>UDCG Comment:</u> <i>"Not discussed but subject to operating hours of the street front café appears satisfactory."</i>	<u>Officer Comment:</u> Noted.
Principle 8: Housing Diversity and Social Interaction	
<u>UDCG Comment:</u> <i>"The Group questioned the viability of such a large number of studio and one-bedroom</i>	<u>Officer Comment</u> The development comprises 26 studio apartments and 12 loft style one-bed apartments. The applicant

<i>apartments in view of the recent excess of these in the Newcastle market.</i> <i>The limitation of housing diversity to studios and one-bedroom apartments caters for a limited spectrum of the affordable housing demand in Newcastle.</i> <i>The large roof top communal area provides a good opportunity for social interaction, as does the attractive communal space at ground floor level.</i> <i>Wind shielding of the roof-top area should be provided to enhance its amenity.”</i>	has provided further justification for the proposed unit mix which is satisfactory.
Principle 9: Aesthetics	
<u>UDCG Comment</u> <i>“Subject to recommendations for treatment of the retained facade the Group supports the aesthetic treatment of the development.</i> <i>Details of restoration works to the retained facade should be provided in conjunction with provision of usable floor space behind the façade.</i> <i>Details of the street awning and awning interface with adjacent sites should be provided.</i> <i>Methods of stabilizing the retained boundary walls of the existing structure should be provided.”</i>	<u>Officer Comment</u> No details of the restoration work to the retained facade or the methods of stabilising the retained boundary walls of the existing structure have been provided. Based on the lack of information, this issue is not considered resolved.

Further to the nine Design Quality Principles, the ADG provides greater detail on how residential development proposals can meet these principles through good design and planning practice.

The application has been assessed for compliance with the required topic areas within Parts 3 and 4 of the ADG pursuant to Clause 6A under SEPP65. This assessment only addresses compliance with the objective and design criteria of the required topic area. Where a required topic area is not specified a design criteria, or where it is not possible for the development to satisfy the design criteria, the compliance comments in the following table will have regard to the design guidance relevant to that topic area.

Apartment Design Guide		
3D Communal and public open space		
Objective 3D-1		
An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping		
Design Criteria: Communal open space has a minimum area equal to 25% of the site	Comment: The development provides for a communal open space area of 25% of the site area, equating to 130.75m².	Compliance: Compliant
3E Deep Soil Zones		
Objective 3E-1		

Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality														
Design Criteria: Deep soil zones are to meet the following minimum requirements:	Comment: The development provides for 15% deep soil zone which exceeds the minimum requirements.	Compliance: Compliant												
<table border="1"> <tr> <th>Site Area</th><th>Min. Dimensions</th><th>(% Of Site)</th></tr> <tr> <td>Less than 650 sqm</td><td>-</td><td>7%</td></tr> </table>	Site Area	Min. Dimensions	(% Of Site)	Less than 650 sqm	-	7%								
Site Area	Min. Dimensions	(% Of Site)												
Less than 650 sqm	-	7%												
3F Visual privacy														
Objective 3F-1 Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.														
Design Criteria: 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:	Comment: Separation distances to side boundaries Both proposed towers are to be built to the side setback of the site for the portions of the development. Primarily the side elevations of the unit towers, building to both site boundaries is supportable in this instance to the width of the block. It is also noted that the side setbacks vary from the zero setback ranging from 1.9m up to 4.1m, as the centre component of the development comprising the lift and fire stairs have been inset to the site. Both towers propose no windows to the side boundary to prevent overlooking issues and to ensure that the adjoining sites can be developed. Whilst the development does not comply with the side setback requirements of this control, the proposed setbacks are considered justifiable and supportable.	Compliance: Satisfactory (merits-based assessment)												
<table border="1"> <tr> <th>Building height</th><th>Habitable rooms & balconies</th><th>Non-habitable rooms</th></tr> <tr> <td>up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </table> Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2). Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.	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	The separation distance between the two towers is 17m. The development exceeds the minimum 12m separation distance requirement.	Compliance: Compliant
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												
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: Generally, communal open space, common areas and access paths are separated from private open space and windows to apartments. A combination of landscaping and screening to private open space areas and windows ensures the separation between private open space and windows of apartments from adjacent communal open space.		Compliance: Compliant												

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: 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.	Comment: The applicant's calculations indicate that the development results in 27 units or 71% of the apartments in the development receiving the required 2hrs of direct sunlight. However, proposed unit 11.04 also fails to achieve the required solar access requirements. This results in only 26 units (or 68.4%) of the development complying with the control.	Compliance: Non-compliant.
Design Criteria: 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.	Comment: N/A	Compliance: N/A
Design Criteria: 3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	Comment: Based on the applicants ADG calculations a total of 29% of the units (11 total) fail to achieve direct sunlight mid-winter. Further, as detailed above proposed unit 11.04 also fails to achieve the required solar access requirements, bringing the total non-compliance to 31.6% (12 units).	Compliance: Non-compliant
Objective 4A-2 Daylight access is maximised where sunlight is limited.		
Comment: Full height glazing for the maximum practical extent of apartment frontages has been provided to maximise daylight access.		Compliance: Compliant
Objective 4A-3 Design incorporates shading and glare control, particularly for warmer months.		
Comment: The design incorporates shading devices such as eaves, external screening, and balconies, to shade summer sun but allow winter sun to penetrate living areas.		Compliance: Compliant
4B Natural ventilation		
Objective 4B-1 All habitable rooms are naturally ventilated		
Comment: All habitable rooms are naturally ventilated via adjustable windows with suitable effective operable areas.		Compliance: Compliant
Objective 4B-2 The layout and design of single aspect apartments maximises natural ventilation		

Comment: All proposed apartments are dual aspect units.		Compliance: Compliant												
Objective 4B-3 The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.														
Design Criteria: 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.	Comment: A total of 89% or 34 of the units are naturally cross ventilated. There are four studio apartments (located within the existing façade on level 1 & 2 fronting Hunter Street) which do not achieve compliance.	Compliance: Compliant												
Design Criteria: 2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Comment: N/A	Compliance: N/A												
4C Ceiling heights														
Objective 4C-1 Ceiling height achieves sufficient natural ventilation and daylight access.														
Design Criteria: 1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <table border="1"><tr><th colspan="2">Minimum ceiling height for apartment and mixed-use buildings</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table> These minimums do not preclude higher ceilings if desired.	Minimum ceiling height for apartment and mixed-use buildings		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	Comment: The proposed ground level has a floor-to-floor height of 3.7m. The first floor and all levels above ground level have floor to floor heights of 3.1m. Whilst the first-floor level does not achieve the 3.3m floor to ceiling height the height of the first floor is considered high enough to promote future flexibility of use and is acceptable.	Compliance: Satisfactory (merits-based assessment)
Minimum ceiling height for apartment and mixed-use buildings														
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope													
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use													
Objective 4C-2 Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms.														

Comment: 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.		Compliance: Compliant											
Objective 4C-3 Ceiling heights contribute to the flexibility of building use over the life of the building.													
Comment: A greater floor-to-floor height is provided to the Ground Floor, allowing for a greater ceiling height and promoting future flexibility of use.		Compliance: Compliant											
4D Apartment size and layout													
Objective 4D-1 The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.													
Design Criteria: <table><tr><td>Apartments are required to have the following minimum internal areas: Apartment type</td><td>Minimum internal area</td></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.		Apartments are required to have the following minimum internal areas: Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Comment: All residential units are in excess of the apartment size requirement for studio apartments ranging in size from 47.1-48.66m ² .	Compliance: Compliant
Apartments are required to have the following minimum internal areas: Apartment type	Minimum internal area												
Studio	35m ²												
1 bedroom	50m ²												
2 bedroom	70m ²												
3 bedroom	90m ²												
Design Criteria: 1. 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.		The development provides for 100% of habitable rooms to have a window(s) of at least 10% of the floor area of that room.	Compliant										
Objective 4D-2 Environmental performance of the apartment is maximised.													
Design Criteria: 1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.		Comment: The development provides for a compliant habitable room depth for this control.	Compliance: Compliant										
Design Criteria: 2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.		Comment: All apartment units have habitable room depths of less than 8m from a window.	Compliance: Compliant										

Objective 4D-3																	
Apartment layouts are designed to accommodate a variety of household activities and needs.																	
Design Criteria: 1. Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space)	Comment: The development comprises studio apartments only. This control is not strictly relevant. However, due to the loft design, all of the 12 loft apartments comply with the minimum bedroom area for master bedrooms.	Compliance: Non-compliant															
Design Criteria: 2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	Comment: All bedrooms have a minimum dimension of 3m (excluding wardrobe space).	Compliance: Compliant															
Design Criteria: 3. Living rooms or combined living/dining rooms have a minimum width of: • 3.6m for studio and 1-bedroom apartments. • 4m for 2 and 3 bedroom apartments.	Comment: All combined living/dining rooms have a minimum width of 3.6m.	Compliance: Compliant															
Design Criteria: 4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	Comment: N/A	Compliance: N/A															
4E Private open space and balconies																	
Objective 4E-1																	
Apartments provide appropriately sized private open space and balconies to enhance residential amenity.																	
Design Criteria: 1. All apartments are required to have primary balconies as follows: <table border="1" data-bbox="209 1397 703 1668"> <thead> <tr> <th>Dwelling type</th><th>Minimum area</th><th>Minimum depth</th></tr> </thead> <tbody> <tr> <td>Studio</td><td>4m²</td><td>-</td></tr> <tr> <td>1 bedroom</td><td>8m²</td><td>2m</td></tr> <tr> <td>2 bedroom</td><td>10m²</td><td>2m</td></tr> <tr> <td>3+ bedroom</td><td>12m²</td><td>2.4m</td></tr> </tbody> </table> The minimum balcony depth to be counted as contributing to the balcony area is 1m.	Dwelling type	Minimum area	Minimum depth	Studio	4m ²	-	1 bedroom	8m ²	2m	2 bedroom	10m ²	2m	3+ bedroom	12m ²	2.4m	Comment: All apartments achieve the minimum area for balconies for studios.	Compliance: Compliant
Dwelling type	Minimum area	Minimum depth															
Studio	4m ²	-															
1 bedroom	8m ²	2m															
2 bedroom	10m ²	2m															
3+ bedroom	12m ²	2.4m															
Design Criteria: 2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	Comment: N/A	Compliance: N/A															
Objective 4E-2																	

Primary private open space and balconies are appropriately located to enhance liveability for residents.			
Comments: All private open space and balconies have been orientated with the longer side facing outwards to optimise daylight access into adjacent rooms. The private open space and balconies have been designed as an extension of the main living area by being located adjacent to the living areas.		Compliance: Compliant	
Objective 4E-3 Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.			
Comments: Solid, partially solid or transparent balustrades have been selected to respond to the location. 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. Full width full height glass balustrades have generally been avoided. Projecting balconies have been integrated into the building design and the design of soffits.		Compliance: Compliant	
Objective 4E-4 Private open space and balcony design maximises safety.			
Comments: The design and detailing of private open space and balconies have avoided opportunities for climbing and falls. Horizontal screening has not been proposed.		Compliance: Compliant	
4F Common circulation and spaces			
Objective 4F-1 Common circulation spaces achieve good amenity and properly service the number of apartments.			
Design Criteria: 1. The maximum number of apartments off a circulation core on a single level is eight.	Comment: The maximum number of apartments off a circulation core on a single level is 4.	Compliance: Compliant	
Design Criteria: 2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Comment: A total of 38 units are served from a single lift.	Compliance: Compliant	
Objective 4F-2 Common circulation spaces promote safety and provide for social interaction between residents.			
Comment: Internal corridors have been designed to provide clear and well-defined circulation paths. Direct and legible access has been provided between the vertical circulation points (lifts) and apartment entries by minimising corridor or gallery length to give short, straight, clear sight lines.		Compliance: Compliant	
4G Storage			
Objective 4G-1 Adequate, well designed storage is provided in each apartment.			
1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:		Compliance: Compliant	
<table><tr><td>Dwelling type</td><td>Storage size volume</td></tr></table>	Dwelling type		Storage size volume
Dwelling type	Storage size volume		

Studio	4m ³		
1 bedroom	6m ³		
2 bedroom	8m ³		
3+ bedroom	10m ³		
At least 50% of the required storage is to be located within the apartment.			
Objective 4G-2			
Additional storage is conveniently located, accessible and nominated for individual apartments.			
Comment: Additional storage is provided in the ground level storage area of the development. These areas are easily accessible and are nominated for each apartment.			Compliance: Compliant

State Environmental Planning Policy (Coastal Management) 2018

State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP) aims to protect and manage the New South Wales coast and foreshores and requires the consideration of specific criteria based on the type of coastal area affected.

Clause 5 – Land to which the policy applies – The CM SEPP applies to land the whole or any part of which is within the ‘coastal zone’. The site is mapped as being within the ‘coastal use area’.

Clause 14 - Development on land within the coastal use area : Clause 14 provides that development consent must not be granted to development on land that is within the coastal use area unless the consent authority is satisfied that the proposed development will not cause an adverse impact on: existing, (i) safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability, (ii) overshadowing, wind funneling and the loss of views from public places to foreshores (iii), the visual amenity and scenic qualities of the coast, including headlands, (iv) Aboriginal cultural heritage, practices and places, and (v) cultural and built environmental heritage.

The site is located within a well-established urban setting, with development existing on the site for many years, there are no likely impacts of the development upon maintaining public access to the foreshore, overshadowing, wind funneling and loss of views from public places to the foreshore, or the visual amenity and scenic qualities of the coast.

The proposed development is not yet satisfactory in relation to potential adverse impacts to Aboriginal objects. The site is in proximity to known Aboriginal sites and is also in proximity to previous excavations where high volumes of Aboriginal objects have been found. Sufficient documentation has not been provided to demonstrate that the due diligence process has been followed or that conservation of Aboriginal objects has been considered.

In addition, the applicant has failed to provide sufficient information to demonstrate that the proposed development has been appropriately designed to manage or avoid adverse impacts to built environment heritage. Concern is raised in relation to the extent of demolition proposed and the inadequate retention of fabric to be considered adaptive reuse of the building. It is considered that a design outcome could be achieved on this site that involves better integration between the contributory building and the proposed development and retains a greater proportion of the existing building.

Clause 15 - Development in coastal zone generally – development not to increase risk of coastal hazards: Clause 15 specifies that development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. The proposed development is located within the city centre and due to its siting is not considered likely to cause increased risk of coastal hazards.

Clause 16 - Development in coastal zone generally – coastal management programs to be considered: Clause 16 prescribes that development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land. There are no applicable coastal management programs which apply to the subject site.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The Vegetation SEPP works together with the *Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016* to create a framework for the regulation of clearing of native vegetation in NSW. Part 3 of the Vegetation SEPP contains provisions which stipulate that Council's DCP can make declarations with regards to certain matters, and further that Council may issue a permit for tree removal.

The subject site is devoid of any native vegetation or significant trees. There are no street trees within proximity to the site frontage. The development does not require tree removal and is therefore not inconsistent with the provisions of the Vegetation SEPP.

State Environmental Planning Policy (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (Affordable Housing SEPP) aims to provide a consistent planning regime for the provision of affordable rental housing and to facilitate the effective delivery of new affordable rental housing by providing incentives.

The application proposes that 50% of the residential component of the development as infill affordable housing to provide options for low-income earners, service works and university students. An assessment of the development against the relevant development standards of the Affordable Housing SEPP is detailed below:

Infill Affordable Housing		
Relevant clause	Proposed	Complies
Cl. 10. Development to which the division applies.	The proposed development is a mixed-use development (shop top housing) located within a B4 Mixed Use zone.	Yes – The development is permissible in the zone. Further, the land is located within accessible area in the Newcastle region. The provisions of Affordable Housing SEPP apply.
Cl. 13. Floor Space Ratio (FSR) - allows for the provision of bonus floor space ratio (FSR) based on the existing FSR calculation for this site.	This site has a maximum FSR of 3:1 as prescribed under cl. 7.1A NELP 2012. Clause 13 allows for the addition of 19.2% bonus FSR on the basis that the proposal has less than 50% of the GFA dedicated to affordable housing.	No - the development has a proposed FSR of 4.2:1 (2198.22m ²).

	In this respect, a rate of 48% has been applied (1056.825m²) on the assumption that there is an even split of affordable housing/residential units. This allows the development to achieve a total FSR of 3.576:1 or 1870.248m². This is a 19.2% increase in the existing FSR of 3:1.	
Cl.14. Standards that cannot be used to refuse consent.		
(1)(b) site area – 450m ²	Site area exceeds 450m ² being 523 ²	Yes
(1)(c) 30% site area landscaped.	36% of the site area is landscaped.	Yes
(1)(d) deep soil – 15%, 3m dimension, and 2/3 located at rear of site.	The rear proportion of the site has been designed to accommodate deep soil landscaping. Minimum dimensions exceeding 3m are achieved.	Yes
(1)(e) 70% of dwellings achieve 3hrs direct sunlight between 9am-3pm mid-winter.	Only 68.4% of proposed dwellings achieve the required solar access.	No – failure to achieve adequate solar access is a reason for refusal.
(2)(a) parking if: at least 0.5 parking spaces are provided for each dwelling containing 1 bedroom, at least 1 parking space is provided for each dwelling containing 2 bedrooms, and at least 1.5 parking spaces are provided for each dwelling containing 3 or more bedrooms.	A total of 26 studio apartments and 12 loft style studio apartments are proposed, and 50% of the development is to be infill affordable housing. Car parking rates under the SEPP apply as follows: - 19 studio apartments x 0 = 0 spaces.	Yes – As the development comprises studio apartments car parking does not need to be provided for the affordable housing component of the development. However, the remaining residential units are required to provide car parking in accordance with NDGP2012. As the development does not provide any car parking spaces on site the proposal is not acceptable with respect to the element of the development which is not subject to the provisions of the Affordable Housing SEPP.
Cl.15. Design requirements.	The clause does not apply as SEPP 65 – Design Quality of Residential Apartment Development applies to the development.	N/A
Cl. 16. Continued application of SEPP 65.	The development has been assessed against the provisions of SEPP 65.	Yes
Cl.16A. Character of local area.	A consent authority must not consent to development unless it has taken into consideration whether the design of the development is compatible with the character of the local area.	No - The proposed development is not compatible with the character of the local area as it fails to provide adequate on-site parking, has not incorporated a satisfactory waste management

		strategy, and will result in lot isolation of both the subject site and adjoining land.
Cl. 17. Must be used for affordable housing for 10 years.	The applicant has identified that suitable conditions of consent to ensure compliance with the clause.	Yes – subject to conditions of consent.
Cl.18. Subdivision	Development carried out under Division 1 'in-fill affordable housing' can be subdivided with the consent of the consent authority.	N/A - subdivision is not proposed.

Regional Environmental Plans

Regional Environmental Plan

There are no regional environmental plans that are relevant to this proposal.

Local Environmental Plans

Newcastle Local Environmental Plan 2012 (NLEP 2012)

Clause 1.3 – Land to which Plan applies

Newcastle Local Environmental Plan 2012 (NLEP2012) applies to land identified upon the 'Land Application Map'. The subject development occurs within this area.

Clause 2.3 Land Use Table - Zoning

The site is zoned B4 Mixed Use under the LEP. The proposed development is defined as commercial premises (food and drink premises) and shop top housing (mixed-use development) under the LEP and is permissible in the zone. The development fails to meet the objectives of the zone in that:

- The proposal has not been designed and sited to be suitable in the context of the locality. Insufficient access and car parking have been provided. Further, the development has not suitably catered for waste management.

Clause 2.7 Demolition

Clause 2.7 provides that demolition of a building or work may be carried out only with development consent. Development consent for demolition of parts of the existing structure is proposed under the application.

Clause 4.3 Height of Buildings

The Height of Buildings Map has a maximum height limit for the site of 45m. The proposed development exceeds the 45m height limit. It is noted that the applicant has utilised a ground level taken from the existing building irregular concrete and timber floor (RL2.68) to determine height, which would result in an overall height of 47.55m.

However, cl.4.3 NLEP specifies height is taken from existing ground level. The site survey identifies a concrete slab exists at RL2.29 on site, assuming that this is the ground level below the existing floor RL that the applicant has taken to calculate their maximum height, the finished height of the development at its highest point is 47.94m.

As the development exceeds the maximum allowable 45m height limit a cl.4.6 variation request is required and has not been submitted. The applicant must also clearly demonstrate the existing ground level for the purpose of calculating building height under cl.4.3. Without this supporting information the proposed development is not acceptable with respect to building height and cl.4.3.

Clause 4.4 Floor Space Ratio

The maximum floor space ratio (FSR) for the site is 5:1 under cl.4.4 NLEP. However, the subject development is subject to the city centre provisions of NLEP, including cl.7.1A which prescribes a FSR of 3:1. In addition, as the development includes affordable housing, bonus FSR provisions contained under cl.13 of the Affordable Housing SEPP apply. Clause 13 allows for the addition of 19.2% bonus FSR on the basis that the proposal has less than 50% of the GFA dedicated to affordable housing.

In this respect, a rate of 48% has been applied (1056.825m²) on the assumption that there is an even split of affordable housing/residential units. This allows the development to achieve a total FSR of 3.576:1 equating to 1870.248m² a 19.2% increase in the existing FSR of 3:1.

The development proposes a FSR of 4.2:1 (2198.22m²) which exceeds the applicable floor space ratio provisions applicable to the site.

Clause 4.6 Exception to Development Standards

The objectives of clause 4.6 'exceptions to development standards', are (subclause (1):

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Height: Clause 4.3(2) of the LEP specifies that a 45m height applies to the subject site. The proposed development results in an overall building height of 47.94, including the lift overrun (assuming that the applicable ground level for the site is RL2.29 as explained above). This equates to a variation of 5.6% (2.94m). However, the variation could exceed this as the survey provided does not clearly demonstrate the existing ground levels applicable to the site.

FSR: Clause 13 of the Affordable Housing SEPP prescribes a maximum allowable FSR of 3.576:1. The development results in an FSR of 2198.22, which equates to an exceedance of 327.972m², or 17.53%.

The applicant has not submitted the required cl.4.6 variation requests and the application fails on this basis.

Clause 5.5 Development within the Coastal Zone

The proposed development will not impact on access to the foreshore. It also will not impact on the amenity of the foreshore through overshadowing or loss of views from a public place. The site is void of significant vegetation therefore the development will not have a negative impact on existing ecosystems or biodiversity in the area. An adequate stormwater management system has been proposed as part of the development to minimise any impacts from water and effluent disposal.

Clause 5.10 Heritage Conservation

Clause 5.10 specifies, amongst other things, that development consent is required to erect a building on land on which a heritage item is located or that is within a heritage conservation

area (cl.5.10(2)(e)(i)). Further, cl.5.10(4) specifies that the consent authority must, before granting consent, consider the effect of the proposed development on the heritage significance of the heritage item or heritage conservation area concerned.

The site is not a listed heritage item and is not identified as an archaeological site. An AHIMS search did not identify any Aboriginal sites or listed Aboriginal Places within 50 metres of the property. Heritage items in the vicinity are identified below.

The site is located within the Newcastle City Centre Heritage Conservation Area (HCA). This is listed as Conservation Area C4 in Schedule 5 of the Newcastle LEP.

Table 1: Heritage Items in the vicinity.

Item	Address	Significance	Listing	Item No.
Commandant's Farm	684 Hunter Street	Local	Newcastle Local Environmental Plan 2012 (NLEP)	A8
Hunter Water Board Building	593 Hunter Street	Local	NLEP	1497



Figure 6: Heritage context – NLEP extract

There is a three-storey early twentieth century masonry building on the site, built to the street alignment with zero front and side setbacks. The facade has deteriorated but retains classical architectural elements. The facade is divided into three bays by brick pilasters with decorative Corinthian capitals below a rendered parapet. The building retains its original timber framed windows which are arranged across the bays of the facade. The awning has been removed, however the cast iron rings remain where the awning would have been suspended from. At the ground level, the original shopfront has been removed and the opening has been boarded up. Internally, the ground floor is in poor condition but does retain elements of the original fitout,

including a terrazzo floor at the former entrance, pressed metal ceilings, original timber beams, and cast-iron decorative columns.

Behind the building, the rear half of the site is vacant with a combination of concrete and brick paving. The site is enclosed by high brick walls that display evidence of various former arches, openings and structural members.

The existing building is identified as a Contributory 1 building in the HCA. Contributory buildings are buildings that contribute to the character of the heritage area, and Contributory 1 buildings are identified as those buildings that clearly reflect a Key Period of Significance for the HCA and are key elements of the HCA (e.g., buildings that are largely unaltered as viewed from the street).

The proposed development is not yet satisfactory with regard to the objectives of Clause 5.10, being to conserve the environmental heritage of the City of Newcastle and conserve the heritage significance of heritage conservation areas (including associated fabric, setting and views) and to conserve Aboriginal objects of heritage significance.

Concern is raised in relation to the extent of demolition proposed and the inadequate retention of fabric to be considered adaptive reuse of the building. It is considered that a design outcome could be achieved on this site that involves better integration between the contributory building and the proposed development and retains a greater proportion of the existing building.

The proposed development is not yet satisfactory in relation to potential adverse impacts to Aboriginal objects. The site is in proximity to known Aboriginal sites and is also in proximity to previous excavations where high volumes of Aboriginal objects have been found. Sufficient documentation has not been provided to demonstrate that the due diligence process has been followed or that conservation of Aboriginal objects has been considered.

Clause 6.1 Acid Sulfate Soils

Clause 6.1 seeks to ensure that development does not disturb, expose or drain acid sulfate soils (ASS) and cause environmental damage. Certain works outlined within cl.6.1(2) is noted as requiring development consent when carried out on land shown on the Acid Sulfate Soils Map. The subject site is identified as containing Class 4 Acid Sulfate Soils (ASS), according to cl.6.1(2) works more than 2 metres below the natural ground surface require development consent. Earthworks associated with the development are limited to the lift will, services and any associated pile driving.

The subject site is identified as containing Class 4 Acid Sulphate Soils (ASS). Given the nature of the development, an ASS management plan was provided and has been considered acceptable. Had the development application been recommended for approval conditions of consent would have been identified in respect to this matter.

Clause 6.1(3) specifies that development consent must not be granted for the carrying out of works under the clause unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority. However, cl.6.1(4) provides that despite subclause (2) where consent under the clause is not required if: (a) a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and (b) the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.

An Acid Sulfate Soil Management Plan (prepared by Douglas Partners, dated July 2020) was submitted with the application, the ASS Management Plan was undertaken to assess the potential presence of ASS within the footprint of the development to confirm (if any) treatments were required as part of the excavations. ASS testing has not been undertaken on site as part

of the Management Plan, rather the assessment relied on previous investigations undertaken in vicinity of the site to provide indicative ASS conditions and subsequent ASS management measures for the subject site and the proposed development.

The ASS Management Plan identifies that based on site levels and subsurface conditions encountered on nearby sites, it is likely that ASS will be encountered/disturbed during construction works for the proposed development. Further, in lieu of site-specific acid sulfate information, it is considered that there is the potential for oxidising ASS during construction.

As the presence and depth of ASS within the site can be variable, Douglas Partners have identified that pre-construction site-specific ASS testing would be required. The submitted ASS Management Plan is sufficient and the risks posed by ASS on site during construction could be appropriately managed. Had the application been recommended for approval conditions of consent would have been identified in respect to this matter. Furthermore, the submission of the ASS Management Plan satisfies the precondition contained in cl.6.1(3) NLEP.

Clause 6.2 Earthworks

Clause 6.2 aims to ensure that earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. The clause specifies that consent is required for earthworks unless the works are exempt development, or ancillary to other development for which development consent has been granted.

The proposed development involves earthworks, inclusive of the excavation to works required to facilitate services and lift shafts. Clause 6.3(3) provides several matters that the consent authority must consider prior to granting development consent as outlined below.

Matter	Comment
Disruption/detrimental effect on drainage patterns and soil stability.	Detailed stormwater management plans have been provided with the development application. An Acid Sulfate Soils Management Plan has also been provided. The proposed earthworks are unlikely to adversely impact drainage patterns and soil stability.
Effect on future use or redevelopment of the land.	The proposed earthworks do not adversely impact the future use or redevelopment of the land and will facilitate the development proposed under the subject application.
The quality of fill and/or soil to be excavated.	The site is not identified as contaminated land, however the site has been identified as likely containing Acid Sulfate Soils (ASS). Notwithstanding, the soil to be excavated from the site could be appropriately managed having regard to the recommendations of the submitted ASS Management Plan and standard conditions of consent.
The effect of the development on the existing and likely amenity of adjoining properties.	Detailed assessment of the effect of the development on existing and likely amenity of adjoining properties has been provided elsewhere in this report. The earthworks associated with the development are unlikely to result in unreasonable impacts to the amenity of adjoining properties.
The source and any fill material and destination of any excavated material	The source of fill material and destination of excavated material could be addressed by conditions of consent had the application been recommended for approval.
The likelihood of disturbing relics.	The subject site is not identified as an archeological site.

Impact to any watercourse, drinking water catchment or environmentally sensitive area.	The development will not adversely impact any watercourse, drinking water catchment or environmentally sensitive area.
Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.	Had the application been recommended for approval conditions of consent could have been recommended to avoid, minimise or mitigate the impacts of the development.

Consideration has been given to the matters prescribed under cl.6.3(3) and the proposed earthworks are acceptable.

Part 7 Newcastle City Centre

Clause 7.1 Objectives of Part

The site is located within the Newcastle City Centre but is not identified as a key site. There are several requirements and objectives for development within the City Centre, which includes promoting the economic revitalisation of the City Centre, facilitating design excellence and protecting the natural and cultural heritage. The proposed development is considered against the relevant clauses of Part 7 below.

Clause 7.3 Minimum Building Street Frontage

Clause 7.3 applies to buildings erected on land zoned B3 Commercial Core and is not applicable to the proposed development which is located on land zoned B4 Mixed Use.

Clause 7.4 Building Separation

Clause 7.4 specifies that buildings 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. For the purposes of cl.7.4 a separate tower or other raised part of the same building is taken to be a separate building.

The proposed development exceeds 45metres in height and as such cl.7.4 applies. The proposed towers are separated by 17m which does not comply with the development standard contained in cl.7.4. The variation equates to 7m or 70%. The applicant has not submitted a cl.4.6 variation request in respect to the variation and the application fails on this basis.

Clause 7.5 Design Excellence

Clause 7.5 applies to the erection of a new building or to significant alterations to an existing building and states that a consent authority must not grant consent to development within the Newcastle City Centre unless the development exhibits design excellence.

As outlined within the SEPP 65 assessment section of this report the proposed development has been considered by the Newcastle Urban Design Consultative Group (UDCG) on 29 July 2020. The UDCG identified several issues with the design of the development and did not support the proposal in its current form. The application was not significantly amended and as such was not reported back to the UDCG. The UDCG have not determined the current proposal to exhibit design excellence.

Further to the above, subclause 7.5(4) provides that development consent must not be granted to certain types of development unless an architectural design competition has been held in relation to the proposed development, this includes (b) a building that will be higher than 48m, and (c) 'development having a capital value of more than \$5M on a site identified as a 'key site'. The development has a height of approximately 47.94m, and whilst the proposed

development has a CIV greater than \$5M it is not located on a 'key site' and therefore cl.7.5(4) does not apply.

It is noted that clause 7.5(5) specifies that subclause (4) does not apply if the Director-General certifies in writing that the development is one for which an architectural design competition is not required. The Government Architect NSW (delegate of the Director-General) has not been requested to provide a design waiver as the development does not strictly trigger the provisions of cl.7.5(4). However, as the height of the proposed development is 47.94m, based on an assumed ground level of 2.29AHD (existing concrete slab), had the development been recommended for approval the applicant would have been required to provide further evidence demonstrating the height of the proposed development was below 48m relative to ground level, or alternatively seek a design competition waiver.

In addition, clause 7.5(6) outlines that the consent authority may grant consent to the erection or alteration of a building to which the clause applies that has a floor space ratio of not more than 10% greater than that allowed by cl.7.10, or a height more than 10% greater than that allowed by cl.4.3, but only if the design of the building or alteration has been reviewed by a design panel. The proposed development has been reviewed by the UDCG and has not been determined to be satisfactory, as such the application cannot rely on the bonus provisions under cl.7.5(6). It is noted that had the UDCG considered the development to achieve design excellence the bonus provisions would have resulted in an applicable building height of 49.5m applying to the site.

The applicant has failed to satisfy the design excellence provisions contained in cl.7.5.

Clause 7.6 Active street frontages in Zone B3 Commercial Core

Clause 7.6 applies to buildings erected on land zoned B3 Commercial Core and is not applicable to the proposed development which is located on land zoned B4 Mixed Use.

Clause 7.9 Height of buildings

Clause 7.9 applies to buildings erected on land identified as being located in either 'Area A' or 'Area B' on the 'Height of Buildings Map'. The subject site is not mapped as being either 'Area A' or 'Area B', clause 7.9 does not apply.

Clause 7.10 Floor space ratio for certain development in Area A

Clause 7.10 applies to land in 'Area A' as shown on the 'Floor Space Ratio Map' and prescribes the maximum floor space ratio (FSR) for a building, other than a commercial building, on land with a site area greater than 1,500m². The subject site has an area of 523m² and as such cl.7.10 does not apply.

Clause 7.10A Floor space ratio for certain other development

Clause 7.10A applies to land located in the city centre with an area less than 1,500m². The clause prescribes that the floor space ratio (FSR) for a building on such land is whichever is the lesser of (a) the FSR identified on the 'Floor Space Ratio Map' or (b) 3:1. The subject site has a FSR of 5:1 as identified on the 'Floor Space Ratio Map', therefore a FSR of 3:1 is applicable due to the application of cl.7.10A.

However, as discussed within the Affordable Rental SEPP section of this report, as the proposed development includes infill affordable housing bonus FSR provisions contained under cl.13 of the Affordable Housing SEPP apply. Clause 13 allows for the addition of 19.2% bonus FSR on the basis that the proposal has less than 50% of the GFA dedicated to affordable housing.

In this respect, a rate of 48% has been applied (1056.825m²) on the assumption that there is an even split of affordable housing/residential units. This allows the development to achieve a total FSR of 3.576:1 (a 19.2% increase in the existing FSR of 3:1).

The development proposes a FSR of 4.2:1 (2198.22m²) which exceeds the applicable floor space ratio provisions applicable to the site.

5.1.3.2 *Any draft environmental planning instrument that is or has been placed on public exhibition*

There are no draft environmental planning instruments relevant to the proposed development which have been placed on public exhibition.

5.1.3.3 *Any development control plan (and development contributions plan)*

The main planning requirements of relevance in the Newcastle Development Control Plan 2012 (DCP) are discussed in detail below.

3.03 *Residential Development*

The objective of this section is to improve the quality of residential development. This can be achieved through a design that has a positive impact on the streetscape through its built form, maximising the amenity and safety on the site and creating a vibrant place for people to live in a compact and sustainable urban form. The controls contained in section 3.03 apply to both shop top housing and affordable housing.

The following comments are made concerning the proposed development and the relevant provisions of Section 3.03:

Principal controls (3.03.01)

A. Frontage widths

The NDCP2012 requires a site frontage width of 15m for a residential flat building in the B4 zone. The proposal does not meet the required frontage width with the site having a frontage to Hunter Street of 10.3m.

The restricted frontage width contributes to the failure of the development to cater for adequate on-site parking and waste collection. The development site is not sufficiently wide to ensure that the future development respects the desired character of the surrounding area, the amenity of adjoining development and provides good internal site amenity.

Furthermore, the applicant has not adequately demonstrated that the development will not result in the creation of any isolated sites that have less than the minimum developable site frontage. In particular, the redevelopment of the subject site itself would result in the isolation of the subject site and adversely impacts future holistic development potential of the surrounding sites.

B. Front setbacks

The controls under Section 6.01 Newcastle City Centre (NDCP 2012) and the Apartment Design Guideline (ADG – SEPP 65) prevail over these controls. Discussion of the setbacks is included as part of the Section 6.01 Newcastle City Centre (NDCP 2012).

C. Side and rear setbacks

The controls under Section 6.01 Newcastle City Centre (NDCP 2012) and the Apartment Design Guideline (ADG – SEPP 65) prevail over these controls. Discussion of the setbacks is included as part of the Section 6.01 Newcastle City Centre (NDCP 2012).

D. Landscaped Area

The NDCP2012 requires that developments in the B4 zone incorporate a minimum of 20% landscaped areas, including a 10% deep soil zone. Landscaped areas will cover 36% of the site, exceeding NDCP2012 landscaping requirements. In addition, 13% of the landscaped areas comprises 1m deep planting zones which will allow for the planting of trees as proposed. The proposed landscaping is acceptable.

Siting the development (3.03.02)

A. Local character and context

A detailed site analysis was submitted with the development application. Whilst the UDCG panel had concerns in respect of the impact of the development on the amenity and privacy of future adjoining buildings, the applicant demonstrated the development will not unreasonably impact on the amenity and privacy of adjoining dwellings. The proposed development is acceptable with respect to local character and context.

B. Public domain Interface

Private open space is located behind the front building line and windows and balconies overlook the street. Street access and the building entries are clearly defined. The proposed development is in accordance with this control and is acceptable.

C. Pedestrian and vehicle access

The development proposes no vehicular access to the building. The failure to provide adequate parking, access and servicing to the site results in the development being unacceptable in respect to this section of NDCP.

D. Orientation and siting

The proposed development will not result in an unacceptable level of overshadowing to surrounding properties. The applicant has advised that apartments have been orientated and designed to optimise solar access to living areas and areas of private open space. However, the development fails to achieve compliance with the ADG solar access requirements as detailed above. As such, the proposal is not satisfactory.

E. Building Separation

Adequate separation between buildings is required for landscape, daylight access, and to reduce visual bulk. The development has been designed in accordance with the requirements under the Apartment Design Guideline (ADG – SEPP 65) and is acceptable with respect to building separation.

Amenity (3.03.03)

Many of the controls in 3.03.03 specify an acceptable solution is compliance with the relevant components for the Apartment Design Guideline (ADG – SEPP 65). The application satisfies the relevant controls under the ADG as detailed elsewhere within this report. Accordingly, only the relevant additional controls contained within 3.03.03 have been discussed below:

Car and bicycle parking

The requirements for car and bicycle parking are detailed under section 7.03 Traffic, Parking and Access.

Acoustic privacy, Noise and Pollution

The applicant has submitted an Acoustic Report prepared by RCA Australia (dated 5 June 2020) which assessed the design requirements for the subject site to ensure that the proposed development would meet the internal noise objectives for residential spaces as well as assessing the potential for the development to adversely impact on neighbouring residential receivers.

The Acoustic Report identifies that whilst there are currently no existing adjacent residential receivers, if there were residential receivers in proximity to the site, the primary potential to cause a noise disturbance would be from external mechanical plant such as air conditioning units. The noise generated from the proposed ground floor food and drink premises is also identified as a potential noise source.

Consideration has also been given to the internal noise criteria for habitable rooms when a residential development is planned adjacent to existing busy roads or rail corridors as the development fronts Hunter Street. The Acoustic Report provides several recommendations, including use of glazing, inclusion of 200mm concrete slab at first floor, and solid balustrading to block AC condenser unit noise.

Subject to the recommendations provided within the Acoustic Report, and limitations placed upon operating hours of the food and drink premises, the acoustic impacts of the proposed development upon future residential receivers are acceptable. Use of glazing and limitations on operating hours will also ensure that the acoustic impacts to future occupants of the development are acceptable.

Configuration (3.03.04)

A. Universal design

The proposal is considered satisfactory in regard to *Livable Housing Design Guidelines* (LHDG) 'silver level' universal design features. A total of 26 of the 38 proposed apartments have been designed to promote flexibility and to meet the changing needs of residents over time by incorporating Livable Housing Guideline's silver level universal design features, representing 68% of the total number of apartments.

B. Communal area and open space

Approximately 25% of the site area is dedicated communal open space, this comprises a rear courtyard at ground level and roof top terrace. The communal open space areas receive sufficient solar access. There would be adequate daylight and natural ventilation to all common circulation spaces above ground and appropriate lighting will be provided to each space. Had the application been recommended for approval, required lighting to satisfy Crime Prevention Through Environmental Design (CPTED) requirements can be resolved through conditions of consent.

C. Architectural design and roof form

The roof design integrates well with the overall building design. Plant and other systems are appropriately screened via features integrated into the roof design. Had the application been recommended for approval a condition of consent would have been recommended to ensure that plant and services were constructed and installed so as not to be visible from the public domain.

D. Visual appearance and articulation

The performance criteria require that façade design is consistent with the desired character of the area and that development does not unreasonably impact on the amenity and privacy of adjoining dwellings. Further, building elements are to be integrated into the overall building form and facade design.

The proposed building is significantly articulated. The main building entry from Hunter Street is clearly defined via framed elements and the retention of the existing building facade. A balanced composition of materials and colours are proposed. The development is satisfactory in respect to this control.

*Environment (3.03.05)**A. Energy efficiency*

The applicant has demonstrated that the high-density living limits the ability to provide dedicated outdoor clothes drying areas. However, each apartment has access to private balconies/terrace to utilise if required. Given the nature of the proposal this is considered acceptable.

B. Water management and conservation

Each dwelling is proposed to be fitted with appropriate meters. Further, the proposed stormwater management is satisfactory subject as detailed elsewhere within this report.

C Waste management

The proposed waste management strategy is discussed in detail under Section 7.08 below.

Commercial Uses - Section 3.10

This section encourages commercial development that attracts pedestrian traffic and activates street frontages.

Street activation (3.10.05)

The provision of ground level cafe space will activate this part of Hunter Street by promoting increased activity within the locality. Except for the fire booster at the north-western corner of the building, glazing is proposed for the full length of the retail façades to provide a visual connection into the uses at ground floor level. The proposed development complies with this control.

Utilities and services (3.10.09)

Mailboxes are provided in the building's lobby at ground floor level. The shared waste storage area is concealed within an enclosed room at ground level. The proposed development complies with this control.

Flood Management - Section 4.01

A flood information certificate FL2018/00098 has previously been prepared for this site. The site has a minimum floor level of 2.84m AHD and is within an L4 risk to life category and requires refuge.

The proposed building has a ground floor of 2.810m AHD. The ground floor includes a commercial Café space, electrical room and lifts. The ground floor is 0.37m above the 1% AEP

level of 2.34m AHD and is acceptable when considering accessibility and accessibility from the street level.

The site is also located within a flood storage area however the site has previously had no flood storage capacity and as such there will be no increase to the flooding impact as a result of the proposed development.

Mine Subsidence - Section 4.03

The site is located within a proclaimed Mine Subsidence District and the application was lodged as integrated development. General Terms of Approval have been granted by Subsidence Advisory NSW.

Safety and Security - Section 4.04

This section applies to the proposal given the nature and scale of development, with components of common space. The applicant has not submitted a CPTED Assessment, however, has addressed Section 4.04 within the Statement of Environmental Effects (prepared by Willana Urban and dated June 2020), and states that the proposed development has adopted CPTED principles into the design with opportunities for passive surveillance, lighting, active frontages and minimal areas for anti-social behaviour.

The safety aspects of the proposed development were not specifically discussed by the Urban Design Consultative Group (UDCG) during its consideration of the application. The minutes provided by the UDCG noted that whilst not discussed, subject to the operating hours of the street front café being addressed, the development appeared satisfactory having regard to the safety principles contained within the ADG.

The proposed development is satisfactory in respect to the requirements of section 4.04. Had the development application been recommended for approval conditions of consent would have been recommended in respect to, hours of operation of the proposed food and drink premises and the installation of lighting and CCTV cameras.

Section 4.05 - Social Impact

The proposed development requires the submission of a Social Impact Comment (within the SEE) pursuant to CN's *Social Impact Assessment Policy of Development Applications*, as the development could 'possibly' have a significant impact on the existing housing stock in the locality, particularly low-rental housing. The development will result in an additional 19 affordable rental housing units.

The submitted SEE does not include a SIC given the nature of the proposed development an social impact assessment, in the form of a SIC, should have been provided. On this basis, the application is not satisfactory.

Soil Management - Section 5.01

A Soil and Erosion Management Plan (prepared by Marline) has been submitted with the application and details prevention and sediment control measures which are proposed to be implemented during the construction stage. Had the application been recommended for approval conditions of consent would have been recommended in respect to soil and erosion management.

The development proposes earthworks to facilitate the lift well and other services below ground. The Acid Sulfate Soils (ASS) Management Plan (prepared by Douglas Partners) identifies that dewatering may be required for during construction, however reference was made to basement car parking within this report and there is no basement provided in the

current design. Nevertheless, the application was not lodged as integrated development under the *Water Management Act 2000*.

Land Contamination - Section 5.02

The site is not identified as being within an area of contaminated land. As discussed, within SEPP 55 discussion above, the subject site is suitable for the proposed development.

Section 5.03 - Tree Management

The site is devoid of any trees or significant vegetation. Tree removal is not required or proposed under the subject application.

Aboriginal Heritage - Section 5.04

A search of the Aboriginal Heritage Information Management System (AHIMS) found 12 Aboriginal sites within a 200m curtilage of the site. It is also noted that previous excavations in proximity to the subject site have found high volumes of Aboriginal objects. Due to the location and the extent of excavation required to facilitate the proposed development (including lift well and services), there is potential for similar objects to exist at the subject site.

Section 5.04 of the NDCP requires sufficient documentation to be provided to demonstrate that the due diligence process has been followed. The applicant has been requested to provide a desktop assessment to address the likelihood of subsurface materials and inform whether a more detailed assessment was required. To date a desktop assessment has not been provided. The application has failed to adequately address s.5.04 NDCP and is not satisfactory.

Heritage Items - Section 5.05

The site is not a listed heritage item and is not identified as an archaeological site. However, the subject site is located within the Newcastle City Centre HCA and is identified as a contributory building within the context of the HCA. As outlined, within cl.5.10 NLEP discussion above, the proposed development is not satisfactory in particular having consideration to the requirement to conserve the heritage significance of heritage conservation areas (including associated fabric, setting and views) and to conserve Aboriginal objects of heritage significance.

Archaeological Management - Section 5.06

The site is not listed in the Newcastle Archaeological Management Plan 1997 or NLEP 2012 as an '*Archaeological Site*'. Section 5.06 DCP2012 does not apply. Had the application been recommended for approval conditions of consent would have been recommended that required the applicant ensure that if unexpected archaeological deposits or relics are discovered, work must cease in the affected area(s) and the Heritage Council of NSW must be notified.

Newcastle City Centre - Section 6.01

Character Areas (6.01.02)

The subject site is within the '*West End*' character area. An assessment against the relevant provisions of Section 6.01 is provided below:

Criteria	Comment
----------	---------

A1 - Street Wall Heights	The development retains the street wall height of the existing building (15.4m) with the proposed north tower being setback approximately 6m above the street wall height. The proposed street wall height is appropriate on this site due to the building's relationship with surrounding development and the scale of the proposed podium level being consistent with the surrounding buildings.
A2 - Building Setbacks	A zero front setback to the street is required. At the podium level a zero setback is provided. The façade of the development then has a setback ranging from zero to 2m due to the building oscillation (twist). There is a 6m setback to the glass line of the units. The rear setback ranges from 11-12m to balconies due to the buildings oscillation, and 17.8m rear setback to glass line of units. The proposal achieves the ADG front and rear setback requirements however it does not meet the required side setbacks. Given the narrow width of the site, achieving the required side setbacks of 6m is not achievable. The development proposes zero setbacks to both side boundaries. The development has been assessed in respect of potential impact on the feasibility of development on the adjoining lots. The development is not considered to adversely impact on the potential redevelopment of adjoining lots and is acceptable.
A3 - Building Separation	The development proposes two towers which achieve a separation distance requirement over 12 metres, being 17m. This is in line with ADG requirements and ensures a development which achieves adequate daylight ventilation, outlook, view sharing and privacy.
A4 - Building Depth and Bulk	Building depth and floorplate sizes are required to relate to the desired urban form and skyline of the city centre. The building separation distances are compliant with the ADG requirements and residential solar access and natural ventilation outcomes have been determined to be satisfactory as detailed within the SEPP 65 assessment of this report. The proposal accords with the maximum Gross Floor Area, the maximum building length controls and the maximum building depth controls and is considered acceptable.
A5 - Building Exteriors	The proposed materials used for the building exteriors compliment desired future character of the area and present a high-quality design and finish. The façade is also suitably articulated.
A6 - Heritage Buildings	This section relates to the assessment or alteration work of heritage items listed in sch. 5 NLEP and does not apply to the subject development.
A7 - Awnings	This section specifies that continuous street awnings are to be provided to provide shelter for public streets where most pedestrian activity occurs. The control applies to all new developments in areas requiring active street frontage (per figure 6.01-25). The development site does not require a continuous awning. The section also requires that development addresses the streetscape by providing a consistent street frontage in the city centre.

	The proposed development includes an awning over part of the street frontage and through the inclusion of a ground floor food and drink premises adequately addresses the streetscape.
A8 – Design of parking structures	The development does not include car parking structures.
A9 - Landscaping	New development is required to incorporate landscaping and communal open spaces that respects the desired character of the streetscape, adjoining land and public spaces. As detailed elsewhere within this report, the landscaping and communal open space proposed is satisfactory.
B1 - Access Network	The NDCP2012 map does not identify any existing or desired new connections through the site. Nevertheless, the proposal includes active uses at ground level, promoting access and public use of the public footpath fronting the site.
B2 - Views and Vistas	The control requires that significant views around the city are preserved to achieve place-making, wayfinding and to retain the unique character of Newcastle. The subject site is not associated with any identified views or vistas. The proposed development is not considered to result in unreasonable view loss to neighbouring residential development. A view impact analysis is provided elsewhere within this report (refer below to likely impacts discussion).
B3 - Active Street Frontage	The site is not identified within the applicable DCP maps as being required to contribute to active street frontages, nor is it within an identified 'activity node'. Notwithstanding, the development includes an active street frontage.
B4 - Addressing the street	The proposal contributes to the safety, amenity and quality of the public domain through the provision of ground level food and drink premises. With the exception of the fire booster at the north-western corner of the building, glazing is proposed for the full length of the retail façades to enhance activation.
B5 - Public Art	Significant development is required to incorporate public artwork. In respect to development on key sites and development over 45m in height, 1% of the capital cost of the development is required to be allocated towards public artwork for the development. Council (through the Public Art Representative Group (PARG)) is required to be consulted on the location and design of public artworks associated with the development. The development exceeds 45m in height. The application has identified that the height of the proposal is 47.94m. Details of public art have not been provided and CN requires that public art be considered and addressed during the assessment of relevant development applications to ensure suitable design and integration. The proposal is not acceptable due to insufficient information.
B6 - Sun Access to Public Spaces	New development is required to be designed to ensure that reasonable sunlight access is provided to new and existing public spaces. As detailed elsewhere within this report, the overshadowing impacts of the proposed development have been assessed and the development does not result in

	unreasonable overshadowing to either existing or proposed public spaces.
B7 – Infrastructure	The proposed stormwater system has been designed to comply with Section 7.06 of the NDCP2012. The proposal will otherwise connect to the existing water and sewer network servicing the site.
B8 – Site amalgamation	The site is not located on former rail corridor land.

Heritage Conservation Areas - Section 6.02

Infill development in heritage conservation areas (6.02.07)

Section 6.02 provides a framework for the conservation of the special qualities within each of Newcastle's Heritage Conservation Areas. Specific controls are specified within s.6.02 to ensure that development activity within each heritage conservation area is commensurate with heritage significance and produces good design and livable streetscapes. Section 6.02.07 outlines that all new development within the conservation area is to be treated as 'infill' and outlines controls which are determined acceptable for infill development within a heritage conservation area.

The building is identified as a contributory building within the Newcastle City Centre Heritage Conservation Area (HCA). Contributory buildings are to be retained, recycled and adaptively reused (DCP 6.02.07.4). While in principle no objection is raised to the concept of a mixed-use tower development on this site and the adaptive reuse of the existing building is supported, concern was raised regarding the proposed integration of the existing building with the proposed tower element (i.e. facadism).

The extent of fabric proposed to be retained is limited to the external skin of the street frontage with the proposed tower set back and apart from the façade. Concern is raised that the extent of the contributory building to be retained was not adequate with regard to the requirement for adaptive reuse. It was requested that alternative solutions be investigated for the interface between the contributory building and the proposed tower that includes better integration of the lower-level apartments with the existing building. On this basis the application is not considered to be acceptable.

Landscape Open Space & Visual Amenity - Section 7.02

General controls (7.02.02)

The proposal involves a high level of landscaping for a multi-storey development within a CBD location. Approximately 36% of the site area is proposed for landscape planting with 13% proposed for 1m deep mass planting. The development is considered acceptable.

Green walls and roof space (7.02.06)

The planting proposed on structures is of an appropriate soil and species type.

Traffic, Parking & Access - Section 7.03

Traffic studies & plans (7.03.01)

A Traffic Impact Assessment (prepared by Seca Solution dated 05 June 2020) has been provided with the development application. Had the application been recommended for

approval a condition of consent would have been recommended to require a construction traffic management plan.

Parking Rates (7.03.02)

On-site parking demand and provision

Car parking is required to be provided in accordance with the rates set out in the DCP, or where applicable relevant SEPP controls. It is noted that due to consideration given to car parking rates under the relevant SEPPs the car parking rates adopted for the development are lower than the DCP required rate. The required car parking rates are detailed below.

Use	Control	Requirement
Food and drink premises = 84.53m² Applicable Rate: DCP2012	Car: 1 space per 6.5 sq.m gross floor area for developments except for residential development	13 spaces
	Motorbike: 1 space per 20 car spaces	1 space
	Bicycle: 1 space per 100m ² GFA	1 space
Residential accommodation – shop top housing /residential flat buildings – Applicable Rate: DCP2012	Car: Small (less than 75m ² or 1 bedroom) average 0.6 spaces per dwelling. Visitor – 1 space for the first 3 dwellings plus 1 space for every 5 thereafter or part thereof for visitors.	A total of 38 small units are proposed, 50% of which are allocated to affordable housing and as such parking is assessed under the Affordable Housing SEPP provisions (below). The remaining 19 units require that parking be provided as follows: Resident - 19 units x 0.6 = 12 (rounded from 11.4 spaces). Visitor – 5 spaces (rounded from 3.2 spaces).
	Motorbike: 1 space per 20 car	1 space
	Bike: 1 space per dwelling for residents and 1 space per 10 dwellings for visitors.	38 spaces.
Affordable housing – Development cannot be refused on the basis of car parking under cl. 14(2)(a) parking if: at least 0.5 parking spaces are provided for each dwelling containing 1 bedroom, at least 1 parking space is provided for each dwelling containing 2 bedrooms, and at least 1.5 parking spaces are provided for each dwelling containing 3 or more bedrooms.	A total of 26 studio apartments and 12 loft style studio apartments are proposed, and 50% of the development is to be infill affordable housing. As suggested by the applicant, whilst cl.14(2)(a) of the Affordable Housing SEPP does not apply to studio apartments. It would be reasonable to interpret the intent is that a '0 rate' of parking applies to studio apartments. On this basis the following rates apply: 19 studio apartments x 0 = 0 spaces.	Nil – under Affordable Housing SEPP. It is noted that had DCP2012 provisions prevailed an additional 12 residential spaces and 5 visitor spaces would be required.

Applicable Rate: Affordable Housing SEPP		
Requirements for delivery and service vehicles	Commercial premises less than 20,000m ² – 1 space per 4,000m ² GFA.	1 space
Applicable Rate: CN DCP 2012	Residential flat buildings – less than 200 units – 1 space per 50 units.	1 space
Total Off-Street parking	Car:	30 – less allowance for historic shortfall applied to café (detailed below) = 17 spaces
	Bicycle:	39 (Class 2) 1 (Class 3)
	Motorbike:	2
	Wash Bay	1
	Delivery and services	2
Provided	Car	0
	Bicycle:	38
	Motorbike:	0
	Wash Bay	0
	Delivery and services	0

The previous use of the site as a commercial premises includes an approximate historical deficiency of 25 spaces. This historical deficiency can be applied to the commercial areas of the new development however it will not apply to the apportionment of the development which is a change of use to residential units. Residential parking is generally longer term and requires untimed parking. There is no parking along the frontage of the site and there is no untimed public parking nearby to the site.

The development provides sufficient bicycle storage at basement and ground level. However, the development provides for zero motorbike parking spaces on site and does not meet the required parking rates.

It is noted the site is readily accessible to public transport with the light rail and bus stop adjacent and is within walking distance to Market Town and the University of Newcastle however the deficiency in parking is significant and would be a departure from the DCP parking requirement. In addition, the applicant has not provided details as to how the proposed units will be acceptably serviced in respect of deliveries including the delivery of furniture and other bulky items.

On this basis the lack of car parking is not supported and is unacceptable.

Travel demand management (7.03.03)

Development is required to be designed to facilitate increased modal share to public transport and encourage consideration of alternatives to private vehicle ownership, use and parking.

The development site is located within 400m of a number of bus stops and light rail, which are accessible by suitably graded pedestrian footpaths. A Green Travel Plan has not been provided with the development.

Bicycle storage will be provided at ground level for residential visitors and commercial staff/patrons to encourage trips by cycling.

Design & layout of parking & access (7.03.04)

The development does not provide for vehicular access or car parking on site.

Section 7.05 - Energy efficiency

Business development (7.05.01)

The proposed retail components (i food and drink premises) incorporate several measures to maximise energy efficiency such as awnings above building facades. Had the development been recommended for approval conditions of consent would have been recommended in respect to this matter.

Stormwater- Section 7.06 & Water Efficiency - Section 7.07

The Applicant has submitted a Stormwater Services Plans (prepared by Marline) which detail the required stormwater devices to adequately cater for stormwater management on site.

The site has an area of 523m² and is considered 100% impervious (13m³ storage required). The stormwater plan drawing SW-400 shows that a 18m³ storage tank is to be installed and connected to gardens and toilets.

The storage provided is considered adequate for the site. Had the application been recommended for approval, conditions of consent would have been recommended in respect to this matter.

Waste Management - Section 7.08

Waste management facilities are provided at ground level of the development. The proposal for waste management requires the waste bins to moved to the kerb for on-street collection.

The proposed waste management strategy would result in approximately 6 x 1,100 litre bins on the Hunter Street kerb for at least 1 day of the week, and 1 x 660 litre and 1 x 1,100 litre bins on the Hunter Street kerb on a second day of the week. The frontage of the site is approximately 10.3m. As a result, the majority of the street frontage would contain waste bins on collection days.

In addition, a bus stop including seating is located directly to the west of the site frontage. The provision of waste bins on the kerb is considered likely to have a significant impact for the users of the bus stop.

Whilst it is recognised that the site has a number of constraints in respect of waste management including no on-site parking and no vehicular access, the development will result in waste collection facilities that will have a significant impact on the amenity of adjoining properties and on the streetscape. As such, the proposed waste management proposal is not supported.

Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019

As the proposed development has an estimated cost of works over \$100,000 the application attracts a section 7.12 local infrastructure contribution pursuant to s.4.17 of the EP&A Act and the 'Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019' (s.7.12 Plan). The subject site is located on land to which 'Part B (City Centre)' of the s.7.12 Plan applies.

In accordance with Part B of the s.7.12 Plan a local infrastructure contribution of 3% of the cost of development is payable to City of Newcastle, in accordance with clause 25J of the EP&A Regs. However, section 10 cl.3 of the Plan identifies costs and expenses which 'are not' to be included in any estimate or determination of the proposed cost of carrying out the development and includes at (l) *the cost of any development that is provided as affordable housing*.

Further, under Section 7.32(3(b) of the EP&A Act, a condition can only be imposed by a council to levy a developer contribution for affordable housing if the developer contribution for affordable housing is in an LEP and the condition is in accordance with an affordable housing contribution scheme. Newcastle is land to which the provisions of *State Environmental Planning Policy No. 70 – Affordable Housing (Revised Schemes)(2002 EPI 337)* applies. However, NLEP2012 does not include a clause with respect to affordable housing conditions.

Development contributions are therefore not applicable to the affordable housing component of the development. The applicant has not submitted a QS report which clearly identifies the development cost applicable to the affordable housing component. Had the application been recommended for approval, the applicant would have been required to pay a 3% contribution based on the estimated cost of the development, less the proposed affordable housing component.

5.1.3.4 Planning agreements

No planning agreements are relevant to the proposal.

5.1.3.5 The regulations (and other plans and policies)

Environmental Planning and Assessment Regulation 2000 (EP&A Regs)

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act and Regulation 2000*, as follows:

- *Clause 92 Additional matters that consent authority must consider –*
 - *Cl.92(1)(b) –* The development proposes the demolition of existing structures on site. Had the application been recommended for approval the demolition of structures would have been conditioned to ensure compliance with the provision of AS2601.

Hunter Regional Plan

The Hunter Regional Plan provides an overarching framework to guide land use plans, development proposals and infrastructure funding decisions. The NSW Government's vision for the Hunter is to be the leading regional economy in Australia with a vibrant new metropolitan city at its heart.

The proposed development provides an additional range of housing along with food and drink premises, within a city centre location and is consistent with the objectives of the Hunter Regional Plan. However, the application is not satisfactory as it fails to provide for adequate parking, access, and servicing to the site.

Lower Hunter Regional Strategy

The primary purpose of the Lower Hunter Regional Strategy is to ensure that adequate land is available and appropriately located to accommodate the projected housing and employment needs of the Region's population over the next 25 years.

The proposal will contribute to both provision of increased housing within the Newcastle City Centre and the availability of affordable housing within the inner city. Other than the lack of

parking and inadequate waste servicing strategy, the proposal would meet the planning outcomes envisioned within the Lower Hunter Regional Strategy.

5.1.3.6 Coastal management plan

No Coastal Management Plan applies to the site or the proposed development.

5.1.3.7 The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including NLEP 2012 and NDCP 2012 considerations. The following additional matters are considered relevant and warrant further consideration:

Wind tunnelling

The Newcastle area is subject to strong winds, particularly during winter. As the proposed development is a tall building with a large surface area, there is a potential for the proposed development to influence wind movement, including through the creation of downward drafts from the façade impacting the ground plane below.

The applicant has not provided a wind tunnelling assessment. The impacts of the proposal upon wind movement have not been able to be adequately assessed. On this basis the application is considered to have provided insufficient information.

View loss and visual impact

Whilst the site does not directly adjoin any existing residential development, given the height of the proposal, the potential impacts of the proposed development on the views of existing residential development within the vicinity to the subject site have been assessed.

There is currently limited high density residential development within the vicinity of the subject site, the nearest existing residential eleven storey Marketown Shopping Centre development containing the 'Spire Apartments', located to the south approximately 140m from the subject site. The 'Verve Apartments' are also within 160m to the west of the development site.

Whilst, the development is within the mid-ground of the long distance views afforded from these existing residential developments towards the Newcastle Harbour and foreshore, the development is anticipated by the land zoning and applicable development controls. Views enjoyed through and over the subject site by the nearest residential developments are not unreasonably impacted.

Public domain works

Given the scale and nature of the proposal the following public domain works are required in connection with the development:

Works	Reason
Reconstruct new pedestrian foot path across site frontage.	To enhance pedestrian amenity and safety due to increased pedestrian demand from development.
Reconstruct kerb and gutter	To improve streetscape and facilitate compliant footway grades.
Reconstruct bus stop	To enhance amenity and safety due to increased public transport demand from development.

Had the application been recommended for approval conditions of consent would have been provided in respect of these requirements and the works would have been subject to separate approval under *Section 138 of Roads Act*.

5.1.3.8 The suitability of the site for the development

The site is located within the Newcastle City Centre and is zoned B4 Mixed Use. The land uses proposed under the subject development application are permissible within the zone. However, the site is not considered to be suitable for the proposed development.

Whilst the site is in proximity to public transport, services, and residential accommodation, it is considered that insufficient car parking, access arrangements and waste management are available to the development.

5.1.3.9 Any submissions made in accordance with this act or the regulations

The development application was placed on public exhibition for a period of 14 days from 1 July 2020 to 15 July 2020 in accordance with the EP&A Act, EP&A Regs and the City of Newcastle Community Participation Plan. There was one submission received during the notification period which has been addressed below:

Issue	Response
Gross deficiency in required car parking	The development proposes zero on-site car parking spaces which equates to a shortfall of 23 car parking spaces. The lack of on-site car parking is not acceptable, and the application is being recommended for refusal.
Non-compliance with required side setbacks under NDCP 2012	Response: The development has been assessed in respect of setbacks against the NDCP 2012 and the ADG. Given the site width, it is not considered achievable to provide for the 6m setback to each side boundary. The applicant has demonstrated that the proposed setbacks to both side boundaries are acceptable and will not result in impacting on the future redevelopment of adjoining lots in respect to this issue.

5.1.3.10 The public interest

The development is not in the public interest as it will not allow for the orderly and economic development of the site due to the lack of car parking, insufficient waste management and impact on the character of the heritage conservation area.

6. CONCLUSION

The proposal is unacceptable when assessed against the relevant heads of consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and cannot be supported.

7. RECOMMENDATION

That the Hunter and Central Coast Regional Planning Panel, as the consent authority, refuse development consent DA 2020/00621 for a 14 storey mixed use development comprising; food and drink premises (cafe) at ground floor, shop top housing (38 units including affordable rental housing (19 units), demolition, signage, associated landscaping, and site works at 625 Hunter Street, Newcastle, pursuant to Section 80 of the EP&A Act subject to the reasons for refusal in **Appendix A**.