



City of
Newcastle



CITY OF NEWCASTLE

Extraordinary Development Applications Committee

Councillors,

In accordance with section 367 of the Local Government Act, 1993 notice is hereby given that an Extraordinary Development Applications Committee Meeting will be held on:

DATE: Tuesday 21 September 2021

TIME: Following the Extraordinary Public Voice Committee

VENUE: Audio visual platform Zoom

J Bath
Chief Executive Officer

**City Administration Centre
12 Stewart Avenue
NEWCASTLE WEST NSW 2302**

14 September 2021

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<p style="text-align: center;">EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE 21 September 2021</p>

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FOR DOCUMENTS MARKED 'DISTRIBUTED UNDER SEPARATE COVER' REFER TO COUNCIL'S WEBSITE AT www.newcastle.nsw.gov.au

NOTE: ITEMS MAY NOT NECESSARILY BE DEALT WITH IN NUMERICAL ORDER

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - DEVELOPMENT APPLICATIONS COMMITTEE 20 JULY 2021

RECOMMENDATION

The draft minutes as circulated be taken as read and confirmed.

ATTACHMENTS

Attachment A: 210720 Development Applications Committee Minutes

Note: The attached minutes are a record of the decisions made by Council at the meeting and are draft until adopted by Council. They may be viewed at www.newcastle.nsw.gov.au

CITY OF NEWCASTLE

Minutes of the Development Applications Committee Meeting held via Audio visual platform Zoom on Tuesday 20 July 2021 at 6.01pm.

PRESENT

The Lord Mayor (Councillor N Nelmes), Councillors M Byrne, J Church, D Clausen, C Duncan, K Elliott, B Luke, J Mackenzie, A Robinson, A Rufo, E White and P Winney-Baartz.

IN ATTENDANCE

J Bath (Chief Executive Officer), D Clarke (Director Governance), F Leatham (Director People and Culture), J Rigby (Acting Director Infrastructure and Property), A Jones (Director City Wide Services), E Kolatchew (Manager Legal), M Bisson (Manager Regulatory, Planning and Assessment), J Vescio (Executive Officer), K Sullivan (Councillor Services/Minutes), A Knowles (Councillor Services/Meeting Support) and G Axelsson (Information Technology Support).

MESSAGE OF ACKNOWLEDGEMENT

The Lord Mayor read the message of acknowledgement to the Awabakal and Worimi peoples.

PRAYER

The Lord Mayor read a prayer and a period of silence was observed in memory of those who served and died so that Council might meet in peace.

ATTENDANCE VIA AUDIO VISUAL MEANS

PROCEDURAL MOTION

Moved by Cr Luke, seconded by Cr Mackenzie

That Council:

- 1 Notes the current Public Health Orders applicable to all of NSW, including the requirement to limit numbers in attendance on Council premises, have been extended to midnight, Friday 30 July 2021;
- 2 Notes tonight's Development Applications Committee meeting of 20 July 2021 is livestreamed on Council's website, providing for access to members of the public;
- 3 Notes the unprecedented public health risks facing the community and, in the interests of public health and safety, permits all Councillors to attend the Development Applications Committee meeting of 20 July 2021 by audio visual means.

**Carried
unanimously**

APOLOGIES

Nil

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillor White

Councillor White declared a non-significant non-pecuniary interest in Item 11 - 110 Elizabeth Street, Tighes Hill - DA2020/00011 - Commercial - Erection of Food and Drink Premises, Hardware and Building Supplies, Vehicle Sales or Hire Premises and Associated Site Works stating that she had an immediate family member working in a building adjacent to the development. Councillor White stated the family member had no interest in the business and was an employee that did not control any of the decisions being made and would remain in the meeting for discussion on the item.

Councillor Clausen

Councillor Clausen declared a non-pecuniary significant interest in Item 13 - 50 Honeysuckle Drive, Newcastle and 726 Hunter Street, Newcastle West - DA2021/00225 - Subdivision - 2 Into 11 Lots stating that one of the two property owners was his employer, and he would manage the conflict by leaving the meeting for discussion on the item.

Councillor Mackenzie

In respect to Item 11 - 110 Elizabeth Street, Tighes Hill - Da2020/00011 - Commercial - Erection of Food and Drink Premises, Hardware and Building Supplies, Vehicle Sales or Hire Premises and Associated Site Works, Councillor Mackenzie stated that he lived in the broader vicinity of the proposal but did not have a pecuniary or non-significant interest and would remain in the meeting for discussion on the item.

Councillor Robinson

In respect to Item 13 - 50 Honeysuckle Drive, Newcastle and 726 Hunter Street, Newcastle West - DA2021/00225 - Subdivision - 2 Into 11 Lots, Councillor Robinson stated that he lived and owned a couple of units in the street and remained in the meeting.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES DEVELOPMENT APPLICATIONS COMMITTEE MEETING 15 JUNE 2021

MOTION

Moved by Cr Mackenzie, seconded by Cr Clausen

The draft minutes as circulated be taken as read and confirmed.

**Carried
unanimously**

DEVELOPMENT APPLICATIONS

ITEM-11 DAC 20/07/21 - 110 ELIZABETH STREET, TIGHES HILL - DA2020/00011 - COMMERCIAL - ERECTION OF FOOD AND DRINK PREMISES, HARDWARE AND BUILDING SUPPLIES, VEHICLE SALES OR HIRE PREMISES AND ASSOCIATED SITE WORKS

MOTION

Moved by Cr Mackenzie, seconded by Cr Duncan

- A. That the erection of two *takeaway food and drink premises*, two *hardware and building supplies* buildings and two *vehicle sale or hire premises* at 110 Elizabeth Street Tighes Hill be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of CN's determination.

For the Motion:

Lord Mayor, Cr Nelmes and Councillors Byrne, Church, Clausen, Duncan, Elliott, Luke, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

Against the Motion:

Nil.

Carried

ITEM-12 DAC 20/07/21 - 7 FORT DRIVE, NEWCASTLE EAST - DA2020/01382 - DWELLING HOUSE - ALTERATIONS AND ADDITIONS INCLUDING DEMOLITION

MOTION

Moved by Cr Mackenzie, seconded by Cr Robinson

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the Newcastle Local Environmental Plan 2012 (NLEP 2012), against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out; and
- B. That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio (FSR), and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the R3 Medium Density Residential zone in which the development is proposed to be carried out; and
- C. That DA2020/01382 at 7 Fort Drive Newcastle East be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and

CITY OF NEWCASTLE

D. That those persons who made submissions be advised of CN's determination.

For the Motion:

Lord Mayor, Cr Nelmes and Councillors Byrne, Church, Clausen, Duncan, Elliott, Luke, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

Against the Motion:

Nil.

**Carried
unanimously**

ITEM-13 DAC 20/07/21 - 50 HONEYSUCKLE DRIVE NEWCASTLE & 726 HUNTER STREET NEWCASTLE WEST - DA2021/00225 - SUBDIVISION - 2 INTO 11 LOTS

Councillor Clausen left the meeting for discussion on the item.

MOTION

Moved by Cr Elliott, seconded by Cr Rufo

- A. That the Development Applications Committee (DAC) note the objection under Clause 4.6 Exceptions to Development Standards of the NLEP 2012, against the development standard at Clause 4.1 Minimum Subdivision Lot Size, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.1 and the objectives for development within the B3 Commercial Core, B4 Mixed Use and RE1 Public Recreation zones in which the development is proposed to be carried out: and
- B. That DA2021/00225 for a two into eleven lot subdivision at 50 Honeysuckle Drive Newcastle be approved and consent granted, subject to conditions of consent as set out in the Draft Schedule of Conditions at **Attachment B**.

A memo dated 20 July 2021 was circulated to Councillors in respect of *Item 13 - 50 Honeysuckle Drive, Newcastle & 726 Hunter Street, Newcastle West*. The memo recommended the item be laid on the table due to issues having to be resolved regarding access.

Councillors Luke and Winney-Baartz moved and seconded a procedural motion for the reasons outlined in the memo.

PROCEDURAL MOTION

Moved by Cr Luke, seconded by Cr Winney-Baartz

Item 13 be laid on the table due to issues to be resolved regarding providing access through proposed lot 2 from the Light Rail to Honeysuckle Drive and to be reported to Council next Tuesday 27 July 2021 at an Extraordinary Development Applications Committee meeting.

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Extraordinary Development Applications Committee Meeting 21 September 2021

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For the Motion: Lord Mayor, Cr Nelmes and Councillors Byrne, Church, Duncan, Elliott, Luke, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

Against the Motion: Nil.

**Carried
unanimously**

Councillor Clausen returned to the meeting at the conclusion of the item.

ITEM-14 DAC 20/07/21 - 198 LENAGHANS DRIVE BLACK HILL - DA2020/01497 - STAGES 1A AND 1B - 1 LOT INTO 62 LOT SUBDIVISION

MOTION

Moved by Cr Luke, seconded by Cr Mackenzie

- A. That DA2020/01497 for a 3-lot subdivision of the site and a subsequent one lot into 62 lots (in two sub-stages) industrial subdivision be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- B. That those persons who made submissions be advised of CN's determination.

PROCEDURAL MOTION

Moved by Cr Elliott, seconded by Cr Winney-Baartz

Council adjourn for a five minute recess.

Council adjourned at 6.25pm and reconvened at 6.32pm.

The motion moved by Councillor Luke and seconded by Councillor Mackenzie was put to the meeting.

For the Motion: Lord Mayor, Cr Nelmes and Councillors Byrne, Church, Clausen, Duncan, Elliott, Luke, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

Against the Motion: Nil.

Carried

The meeting concluded at 6.35pm.

**MINUTES - EXTRAORDINARY DEVELOPMENT APPLICATIONS COMMITTEE 27
JULY 2021**

RECOMMENDATION

The draft minutes as circulated be taken as read and confirmed.

ATTACHMENTS

Attachment A: 210727 Extraordinary Development Applications Committee

Note: The attached minutes are a record of the decisions made by Council at the meeting and are draft until adopted by Council. They may be viewed at www.newcastle.nsw.gov.au

CITY OF NEWCASTLE

Minutes of the Extraordinary Development Applications Committee Meeting held via Audio visual platform Zoom on Tuesday 27 July 2021 at 9.55pm.

PRESENT

The Lord Mayor (Councillor N Nelmes), Councillors M Byrne, J Church, D Clausen, C Duncan, K Elliott, B Luke, J Mackenzie, A Rufo, E White and P Winney-Baartz.

IN ATTENDANCE

J Bath (Chief Executive Officer), D Clarke (Director Governance), K Hyland (Acting Director Strategy and Engagement), F Leatham (Director People and Culture), J Rigby (Acting Director Infrastructure and Property), A Jones (Director City Wide Services), K Liddell (Director and Interim Chief Information Officer), E Kolatchew (Manager Legal), M Bisson (Manager Regulatory, Planning and Assessment), S Moore (Manager Finance), A Knowles (Councillor Services/Minutes), K Sullivan (Councillor Services/Meeting Support), L Stanhope (Councillor Services/Meeting Support) and G Axelsson (Information Technology Support).

ATTENDANCE VIA AUDIO VISUAL MEANS

PROCEDURAL MOTION

Moved by Cr Byrne, seconded by Cr Duncan

That Council:

1. Notes the current Public Health Orders applicable to all of NSW;
2. Notes tonight's Extraordinary Development Applications Committee Meeting of 27 July 2021 is livestreamed on Council's website providing access to members of the public; and
3. Notes the unprecedented public health risks facing the community and in the interests of public health and safety, permits all Councillors to attend the Ordinary Council meeting of 27 July 2021 by audio visual means.

**Carried
unanimously**

APOLOGIES

MOTION

Moved by Cr Church, seconded by Cr Mackenzie

The apologies submitted on behalf of Councillors Dunn and Robinson be received and leave of absence granted.

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillor Clausen

Councillor Clausen declared a pecuniary conflict of interest in Item 15 – Supplementary Report – 50 Honeysuckle Drive, Newcastle & 726 Hunter Street Newcastle West – DA2021/00225 – Subdivision – 2 into 11 lots - stating that one of the two property owners was his employer, and he would manage the conflict by leaving the meeting for discussion on the item.

Councillor Clausen retired from the meeting at 9.57pm.

REPORTS BY COUNCIL OFFICERS

**ITEM-15 SUPPLEMENTARY REPORT - 50 HONEYSUCKLE DRIVE
NEWCASTLE & 726 HUNTER STREET NEWCASTLE WEST
- DA2021/00225 - SUBDIVISION - 2 INTO 11 LOTS2010
DEVELOPMENT APPLICATIONS COMMITTEE MEETING
STANDARD**

MOTION

Moved by Cr Mackenzie, seconded by Cr Duncan

- 1 That DA2021/00225 for a two into 11 lot subdivision at 50 Honeysuckle Drive Newcastle, and 726 Hunter Street, Newcastle West be Approved, and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**.

For the Motion:

Lord Mayor Councillor Nelmes, Councillors Byrne, Church, Duncan, Elliott, Luke, Mackenzie, Rufo, White and Winney-Baartz.

Against the Motion:

Nil.

**Carried
unanimously**

The meeting concluded at 10.00pm.

DEVELOPMENT APPLICATIONS

ITEM-16 DAC 21/09/21 - 120 PARRY STREET NEWCASTLE WEST AND 16 HALL STREET NEWCASTLE WEST - DA2020/00322 - DEMOLITION (EXISTING BUILDING) AND MIXED USE DEVELOPMENT (EIGHT STOREY) COMPRISING GROUND FLOOR BUSINESS, RESIDENTIAL (30 APARTMENTS), CAR PARKING AND ASSOCIATED APARTMENTS

APPLICANT: PARRY & HALL PROJECTS PTY LIMITED
OWNER: PARRY & HALL PROJECTS PTY LIMITED
NOTE BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / MANAGER REGULATORY, PLANNING AND ASSESSMENT

PART I

PURPOSE

An application (DA2020/00322) has been received seeking consent for the demolition of existing buildings and the erection of an eight-storey mixed-use development comprising ground floor business premises and a residential flat building (30 apartments), car parking, and associated site works at 120 Parry Street and 16 Hall Street Newcastle West.

The submitted application was assigned to Development Officer, Elle Durrant for assessment.

The application is referred to the Development Applications Committee (DAC) for determination for the following reasons:

- i) The value of the proposed development exceeds \$10 million, being \$12,811,710, and,
- ii) The proposed variation to the height of buildings development standard of Newcastle Local Environmental Plan 2012 (NLEP 2012) being more than a 10% variation. A 20% variation is proposed at the Parry Street tower (south) and a 16% variation proposed at the Hall Street tower (north).

The original proposal was publicly notified between 1 May 2020 to 15 May 2020.



Subject Land: 120 Parry Street Newcastle West & 16 Hall Street Newcastle West

A total of 26 submissions were received during the first notification period.

In response to issues raised early in the assessment process, several amendments to the proposal were made and the amended proposal was re-notified between 24 December 2020 to 25 January 2021. The second round of notification resulted in 21 submissions.

The most recent amendments to the proposal occurred in May 2021, in response to the issues raised by objectors at the meeting of the Public Voice Committee held on 20 April 2021, and in response to the advice of the Urban Design Review Panel meeting on 28 April 2021. The current amended proposal was re-notified between 26 May 2021 to 9 June 2021 and a total of 12 submissions were received.

The concerns raised by the objectors in respect to the current proposal include height, frontage widths, building setbacks, solar access, isolated lot, overshadowing, view/ outlook, visual and acoustic privacy, streetscape, bulk and scale, parking, flood management, mine subsidence, waste management and excavation.

Details of the submissions received are summarised at **Section 3.0** of Part II of this report and the concerns raised are addressed as part of the Planning Assessment at **Section 5.0**.

A copy of the plans for the proposed development is appended at **Attachment A**.

The proposal was considered at a meeting of the Public Voice Committee held on 20 April 2021. The concerns raised at the Public Voice session included bulk and scale, Clause 4.6 variation request, impacts of excavation works on neighbouring buildings, operation and maintenance of mechanical car stacker and waste servicing.

Details of the concerns raised during Public Voice and the assessment response is included at **Section 5.8**.

Issues

- 1) Height of Building – The proposed development has a building height of 29m and does not comply with the building height of 24m as prescribed under Clause 4.3 of NLEP 2012. The variation is 20%. The Applicant has submitted a Clause.4.6 Variation Request.
- 2) Matters raised in the submissions including height, frontage widths, building setbacks, solar access, isolated lot, overshadowing, view/ outlook, visual and acoustic privacy, streetscape, bulk and scale, parking, flood management, mine subsidence, waste management and excavation.

Conclusion

The proposed development has been assessed having regard to the relevant heads of consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act1979) and is acceptable subject to compliance with appropriate conditions.

RECOMMENDATION

Vote by division

- A. That the DAC note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.3 Height of Buildings, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.3 and the objectives for development within the R4 High Density Residential zone in which the development is proposed to be carried out; and
- B. That DA2020/00322 for the demolition of existing buildings and the erection of an eight-storey mixed-use development comprising ground floor business use and residential flat building (30 apartments), car parking, and associated site works at 120 Parry Street and 16 Hall Street Newcastle West be approved and consent granted, subject to compliance with the conditions set out in the Draft Schedule of Conditions at **Attachment B**; and
- C. That those persons who made submissions be advised of CN's determination.

Political Donation / Gift Declaration

Section 10.4 of the EP&A Act1979 requires a person to disclose "*reportable political donations and gifts made by any person with a financial interest*" in the application within the period commencing two years before the application is made and ending when the application is determined. The following information is to be included on the statement:

- a) all reportable political donations made to any local Councillor of Council; and
- b) all gifts made to any local Councillor or employee of that Council.

The applicant has answered **NO** to the following question on the application form:

Have you, or are you aware of any person having a financial interest in the application, made a 'reportable donation' or 'gift' to a Councillor or Council employee within a two-year period before the date of this application?

PART II

1.0 THE SUBJECT SITE

The subject site consists of two adjoining allotments described as Lots 126 & 121, Sec J, DP 978906, backing on to one another with a physical address of 120 Parry Street and 16 Hall Street Newcastle West respectively. Combined, the lots are rectangular in shape and have a total area of 1102.8m² with a 13.7m frontage to both Parry and Hall Streets. The subject site is relatively flat, with a gentle fall to the Parry Street boundary (south).

Both lots, 120 Parry Street and 16 Hall Street, currently contain separate single storey industrial/ commercial premises. Whilst both premises are currently vacant, they were until recently occupied with long term tenants (Carpet Court and Duncan and West Automotive Repairs). The subject site is devoid of any vegetation.

The subject site is zoned R4 High Density Residential. The surrounding area over recent years has been undergoing a transition from single or double storey commercial and industrial uses into a mixed-use precinct characterised by ground level commercial uses with residential apartments above. The influx of large-scale residential developments bringing with them associated cafes, bars, and restaurants to serve the increasing residential population.

The adjoining land either side of 120 Parry Street has been recently developed for similar sized mixed-use developments; the land adjoining to the west (122 Parry Street) contains an eight-storey mixed-use development with ground level commercial and 30 residential apartments above; and the land adjoining to the east (118 Parry Street) contains an eight-storey mixed-use development with ground level commercial and 12 residential apartments above.

The existing development on either side of 16 Hall Street comprises low scale, single-storey commercial/industrial type buildings that extend to the common side and rear boundaries; the land adjoining to the west (18 Hall Street) contains an existing single storey light industrial/ commercial building currently occupied by a cabling business; and the land adjoining to the east (14 Hall Street) has development consent (DA2017/00932, approved 21 December 2018) for an eight storey mixed-use development comprising ground floor commercial and 33 residential apartments above.

Number One and Number Two Sports Grounds are located to the south of the subject site, behind a row of fig trees that extend generally along the length of Parry Street, west of the intersection with Union Street.

2.0 THE PROPOSAL

The development application seeks consent for the demolition of existing buildings and erection of an eight-storey mixed-use development comprising ground floor business tenancy with residential flat building (30 apartments), car parking and associated site works.

The proposed development is massed into two separate towers; one on each lot addressing their respective street frontages (Parry Street and Hall Street). The development contains a variety of apartment typologies as follows:

- i) Eight x one-bedroom apartments
- ii) Three x two-bedroom apartments
- iii) Seventeen x three-bedroom apartments
- iv) Two x four-bedroom apartments

Each tower is provided with a separate ground floor lobby for pedestrian access from their respective street frontages.

The Parry Street tower includes a ground floor business tenancy with an area of 20sqm. Additionally, the ground floor comprises areas to be shared between the two proposed towers including services, waste storage, and a secured central parking area with vehicle access provided from the Hall Street frontage.

The two towers are connected at the first floor by a central podium that will provide a landscaped communal open space area for residents. Rooftop terraces are proposed on both towers. The Parry Street rooftop is a private terrace, whilst the Hall Street rooftop is a communal terrace that will be available to all residents within the development.

A total of 45 car spaces are provided including one accessible space for the business tenancy. The 44 residential car spaces are provided within two mechanical car stackers (7 car stacker spaces will be dedicated to residential visitor parking and the remaining 37 allocated to the residential apartments). Two motorbike spaces and a total of 27 Bicycle spaces are provided.

The proposal has been amended during the assessment process in response to assessment matters, including issues raised by CN's Urban Design Review Panel (UDRP) and concerns identified in submissions and during the Public Voice session.

A copy of the current plans as amended are included at **Attachment A**.

The various steps in the processing of the application to date are outlined in the Processing Chronology (refer to **Attachment C**).

3.0 PUBLIC NOTIFICATION / PUBLIC VOICE COMMITTEE

The original proposal was publicly notified for a period 14 days, between 1 May 2020 to 15 May 2020, in accordance with CN's Community Participation Plan (CPP). A total of 26 submissions were received during the first notification period.

Amendments and additional information were requested by CN early in the assessment. In response, several amendments to the original proposal were made at various stages and the remainder of the additional information was submitted by December 2020.

The December 2020 amended proposal was re-notified, between 24 December 2020 to 25 January 2021. A total of 21 submissions were received during the second notification period.

The most recent amendments to the proposal occurred in May 2021, specifically to address the concerns of objectors raised at the meeting of the Public Voice Committee held on 20 April 2021, and in response to the advice of the UDRP meeting held 28 April 2021.

The additional information and current amended architectural documentation submitted in May 2021 was re-notified for a period of 14 days, between 26 May 2021 to 9 June 2021. A total of 12 submissions were received during the third notification period.

The concerns raised by the objectors in respect of the current amended proposal development are summarised as follows:

a) Statutory and Policy Issues:

- i) Height of building: the proposal does not comply with height of building development standard of 24m under NLEP 2012.
- ii) Frontage widths: the subject site does not comply with the site frontage width control under NDCP 2012 Section 3.03 Residential Development.
- iii) Building setbacks: the proposal does not comply with front, side and rear boundary setback controls under NDCP 2012 Section 3.03 Residential Development.
- iv) Solar access: the proposal does not achieve the solar access requirements under SEPP65 and the Apartment Design Guide.
- v) Isolated lot: the proposal will result in the creation of an isolated lot at 18 Hall Street.

b) Amenity Issues:

- i) Overshadowing: the proposal will overshadow the principle useable area and landscaping areas of the communal open space at 122 Parry Street.
- ii) Overshadowing: the proposal will overshadow the north facing balconies of apartments '101', '201', '301', '401', '501', and '601' at 122 Parry Street.

- iii) Views/ outlook: the blank side boundary walls of the Parry Street tower will result in loss of views/ outlook towards the northeast from the communal open space and north facing balconies of apartments '101', '201', '301', '401', '501', and '601' at 122 Parry Street.
- iv) Acoustic: the operation of the mechanical car stacker and associated equipment will result in unacceptable levels of noise for neighbouring residential receivers.
- v) Acoustic: the Hall Street tower communal rooftop terrace will result in unacceptable levels of noise for neighbouring residential receivers.
- vi) Overlooking: the Hall Street tower communal rooftop terrace will overlook the apartments and communal open space at 122 Parry Street.

c) Design and Aesthetic Issues:

- i) Streetscape: the floor levels of the Parry Street tower do not align with the existing adjoining buildings.
- ii) Bulk and scale: the depth of the Parry Street tower is inconsistent with the existing adjoining buildings.

d) Traffic and Parking Issues:

- i) Operation and maintenance of mechanical car stacker: mechanical failure of the car stackers will increase demand for on-street car parking.
- ii) Demolition and construction impacts: the proposal will result in disruptions to public domain during demolition and construction.

e) Miscellaneous:

- i) Flood management: the impact of water inundation in heavy rain events on the underground mechanical car stacker pit. Additionally, the submissions identified ongoing water egress issues occurring in the basement of 122 Parry Street.
- ii) Mines subsidence: the Mines Subsidence Assessment Report submitted with the development application, and subsequently amended during the assessment process, is inadequate.
- iii) Waste management: servicing from Parry Street not achievable.
- iv) Earthworks and water table: excavation for the development may make changes to the water table which has potential settlement effects for the neighbouring buildings.

The concerns raised by objectors are addressed as part of the Planning Assessment at **Section 5.0**.

Public Voice Committee

The proposal was considered at a meeting of the Public Voice Committee held on 20 April 2021. The two objectors who spoke at the Public Voice session were owners and residents of the neighbouring development to the west at 122 Parry Street. The concerns raised by the objectors included bulk and scale, Clause 4.6 variation request not supportable, impacts of excavation works on neighbouring buildings, operation and maintenance of mechanical car stacker not practical, and waste servicing not achievable.

Following the Public Voice session and subsequent consultation with CN, the applicant engaged in consultation with the objectors by meeting with the neighbour representatives who spoke at the Public Voice session, along with CN staff, to discuss the concerns raised in more detail.

In response, additional information and the current amended proposal was submitted in May 2021. The concerns raised by objectors during the Public Voice session are addressed as part of the Planning Assessment at **Section 5.0**.

4.0 INTEGRATED DEVELOPMENT

The proposal is integrated development pursuant to Section 4.46 of the EP&A Act1979 as approval is required from the Subsidence Advisory NSW under section.22 *Coal Mine Subsidence Compensation Act 2017*, due to the development being within a mine subsidence district.

Conditional approval for the proposed development has been granted by Subsidence

Advisory NSW via 'General Terms of Approval' (GTA) and stamped approved plans dated 24 May 2021 (copy appended at **Attachment D**). This satisfies the requirement for approval of Subsidence Advisory NSW under section.22 of the *Coal Mine Subsidence Compensation Act 2017*.

5.0 PLANNING ASSESSMENT

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15(1) of the EP&A Act1979, as detailed hereunder.

5.1 Provisions of any environmental planning instrument

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

State Environment Planning Policy No 55 – Remediation of Land (SEPP 55) requires that where land is contaminated, the consent authority must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

A Detailed Site Contamination Assessment, prepared by RCA Australian was submitted with the development application. The Site Contamination Assessment, comprising a desktop assessment of the historical use of the site and consideration of potential contamination as well as soil sampling at five locations at the site, determined that no soil contamination was identified above the adopted land-use criteria across the development site.

However, the Site Contamination Report notes that Asbestos Containing Materials (ACM) was identified within the existing buildings onsite which would need to be removed prior to any demolition works and recommended that a hazards materials assessment be undertaken to inform the demolition works prior to this being undertaken.

The site was found to be acceptable for the proposed development consistent with the provisions of SEPP 55 and CN requirements subject to the relevant conditions included in the recommended Draft Schedule of Conditions (refer to **Attachment B**) addressing classified waste removal/ disposal.

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

State Environment Planning Policy (Vegetation in Non-Rural Areas) 2017 (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. The Vegetation SEPP seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of the state, and to preserve the amenity of non-rural areas of the state through the appropriate preservation of trees and other vegetation.

The site is within a well-established city centre location. The development application does not seek consent for the removal of any trees on the site.

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 (Ausgrid) and any concerns raised by the electricity supply authority are to be considered as part of the assessment. This includes development 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.

The proposed development is located within 5m of an exposed overhead electricity powerline and within proximity to underground power mains. More specifically, the proposal includes the reconfiguration of an existing power pole within the Parry Street frontage to allow for the required clearance distances; and relocation of a single power pole in the Hall Street frontage to facilitate the new driveway access. As such, the proposal was required to be referred to Ausgrid in accordance with cl.45(2) of the ISEPP. Written advice from Ausgrid was received dated 20 May 2020 which provided recommendations to satisfy Ausgrid requirements.

The proposal is considered consistent with the ISEPP and satisfactory in relation to identified ISEPP matters subject to the inclusion of suitable conditions of consent to satisfy the recommendations and requirements raised within the Ausgrid referral response.

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

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

Accordingly, the provisions of the SEPP apply to the proposed development. A BASIX Certificate was lodged with the application (Certificate number: 1070368M_02), demonstrating that the development can achieve the required water and energy reduction targets. A condition of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment B**) requiring that the development be carried out in accordance with the BASIX Certificate.

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

State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65) applies to the development of new residential flat buildings and aims to improve the quality of residential flat development. Clause 28(2) of SEPP 65 requires the consent authority to take into consideration the advice of a Design Review Panel (constituted under Part 3 of the Policy), and the design quality of the development when evaluated in accordance with the Design Quality Principles set out in the Apartment Design Guide.

CN’s Urban Design Review Panel (UDRP), previously known as the Urban Design Consultative Group, have reviewed the development on several occasions. The proposal was first considered prior to lodgement of the development application at a meeting of the UDRP on 17 July 2019. Following lodgement of the development application, the proposal was considered for a second time at a meeting of the UDRP held on 27 May 2020.

In response to matters raised by CN and the UDRP (27 May 2020 advice), the applicant submitted amended architectural documentation in December 2020, which resulted in the following amendments:

- i) The roof form of the south side of the Hall Street tower was simplified and reduced to increase sunlight to the north facing units of the Parry Street tower.
- ii) Additional solar access and massing studies suitability demonstrated that the amendments specifically suggested by the UDRP with respect to pulling the development back from the east boundary at higher levels, would not result in additional solar access to the internal communal courtyard at podium level. In this regard, the reduced building form of the Hall Street tower which would be required to achieve additional solar access to these areas, would be impractical and unfeasible, particularly where the current design presents a largely compliant response.
- iii) Additional solar access and massing studies also show that the depth of the Parry Street tower result in minimal restriction of sunlight to the central courtyard of 122 Parry Street, with overshadowing only occurring at 9am and disappearing by 10am.

The December 2020 amended proposal and additional documentation was electronically referred to the UDRP for informal comment. The following response was provided via email, dated 9 April 2021:

We are of the view that the Parry Street block is not acceptable, in that it protrudes too far to the north, which is totally unsympathetic to the neighbouring blocks on both sides. We made this point quite strongly in our last review, -first para under 'Built Form', so we are being entirely consistent in our advice.

Although the separation distances between the two blocks complies with ADG recommendations, it should be noted that the solar access to living rooms is well below ADG. We consider that the projection of the northern side of the Parry Street block should be reduced by about 5m to 6m. This would both reduce its intrusiveness to the neighbours to an acceptable level, and potential increase the % of units achieving solar access.

Given the nature of the Panels' response to the electronic referral, combined with the subsequent concerns raised by objectors at a meeting of the Public Voice Committee held on 20 April 2021, CN requested the development application be formally considered again by the UDRP to address the outstanding concerns.

At a meeting of the UDRP held on 28 April 2021 preliminary amendments to address the concerns raised at the Public Voice session were presented for discussion with the UDRP at the meeting, these amendments included:

- i) Reduction in the overall projection of the Parry Street tower north into the central courtyard.
- ii) Setback and alignment of the Parry Street tower with the neighbouring building to the west (122 Parry Street).
- iii) Apartment layouts within the Parry Street tower reconfigured to suit the reduced building bulk.

In response to the advice of the UDRP meeting held 28 April 2021, additional information and the current amended architectural documentation was submitted in May 2021 and included the following changes:

- i) Relocated the framing element on the southern elevation of the Parry Street tower; specifically, moving the framing element one 'window bay' west would reduce the depth of the 'snorkel window' to the bedroom on that elevation.
- ii) The depth of the Hall Street tower on Level 7 reduced to achieve increased sunlight to the north facade of the Parry Street tower; specifically, reducing the depth of the roof over the Level 7 south facing balcony on the Hall Street tower.

The current amended proposal was further discussed during a meeting of the UDRP held on 26 May 2021. The following was identified:

- i) That the architectural drawings had been amended in accordance with the recommendations from UDRP meeting held 28 April 2021, and
- ii) That the UDRP had no further recommendations.

Subsequently, the final advice of the UDRP, provided via email dated 9 June 2012, confirmed the UDRP's position that the design as amended is satisfactory.

The current amended proposal has sufficiently incorporated the recommendations and resolved the concerns raised by the UDRP. As such, the development application has now satisfied the UDRP advice and is considered an appropriate design response.

Apartment Design Guide (ADG) - Key "Rule of Thumb" Numerical Compliances

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 SEPP 65.

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.

Table 1: Compliance with required topic areas of the Apartment Design Guide

3B Orientation		
Objective 3B-2 Overshadowing of neighbouring properties is minimised during mid winter		
Comment: Solar access to living rooms, private open spaces and communal open space of neighbouring properties has been considered. A number of amendments to the original proposal have been made at various stages during the assessment process, particularly in response to concerns around overshadowing and ensuring living area, private open space and communal open space of the neighbouring properties receive solar access in accordance with section 3D Communal and public open space and 4A Solar and daylight access . The proposed development has been suitably laid out having regard to the general orientation and aspect. Due to the general orientation of the site, North-South, the overshadowing impacts to adjoining buildings is minimized to an acceptable level within the tight urban context. The proposal will not result in overshadowing of solar collectors on neighbour buildings as there are none.	Compliance: Complies	
3D Communal and public open space		
Objective 3D-1 An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping		
Design Criteria: 1. Communal open space has a minimum area equal to 25% of the site.	Comment: 25% of the total site area equals 275.7m ² The proposed development includes two areas of communal open space: <ul style="list-style-type: none"> • Level 1 central podium = 150m² • Hall Street tower rooftop communal terrace = 188m² The total communal open space provided is 338m ² , or 30% of the total site area.	Compliance: Complies
Design Criteria: 2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a	Comment: The principle useable part of the communal open space (Hall Street tower rooftop communal terrace) is orientated north and achieves a minimum of 2hrs	Compliance: Complies

<p>minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter).</p>	<p>sunlight between 9am and 3pm in mid-winter to over 50% of the area. Note: the current amended shadow diagrams (Drawings DA-504, DA-505, DA-506, DA-507 – Issue 11 – dated 14 May 2021) incorrectly show the existing western neighbour overshadowing the Hall Street tower rooftop communal terrace, which would not happen as the proposed rooftop level is higher than the neighbouring two storey building.</p>	
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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:

1. Deep soil zones are to meet the following minimum requirements:

Site area	Minimum dimensions	Deep soil zone (% of site area)
greater than 1500 m ²	6m	7%

Comment:

The design guidance provided for this objective acknowledges that achieving the design criteria is not possible on some sites including where;

- The location and building typology have limited or no space for deep soil at ground level (e.g central business district, constrained sites, high density areas, or in centres); and or
- There is 100% site coverage or non-residential uses at ground floor level.

Achieving the design criteria is not possible due to the location and constraints of the subject sites (high density area and narrow width), and the extensive site coverage with non-residential development at ground. The proposal instead complies with the design guidance for this objective by integrating acceptable stormwater

Compliance:

Satisfactory (Merit based assessment)

	<p>management and alternative forms of planting such as planting on structures. This is considered acceptable.</p>													
<p>3F Visual privacy</p>														
<p>Objective 3F-1 Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.</p>														
<p>Design Criteria:</p> <p>1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" data-bbox="177 994 671 1659"> <thead> <tr> <th data-bbox="177 994 331 1218">Building height</th> <th data-bbox="331 994 464 1218">Habitable rooms & balconies</th> <th data-bbox="464 994 671 1218">Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td data-bbox="177 1218 331 1364">up to 12m (4 storeys)</td> <td data-bbox="331 1218 464 1364">6m</td> <td data-bbox="464 1218 671 1364">3m</td> </tr> <tr> <td data-bbox="177 1364 331 1509">up to 25m (5-8 storeys)</td> <td data-bbox="331 1364 464 1509">9m</td> <td data-bbox="464 1364 671 1509">4.5m</td> </tr> <tr> <td data-bbox="177 1509 331 1659">over 25m (9+ storeys)</td> <td data-bbox="331 1509 464 1659">12m</td> <td data-bbox="464 1509 671 1659">6m</td> </tr> </tbody> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2). Gallery access circulation should be treated as habitable space when measuring privacy separation distances between</p>	Building height	Habitable rooms & balconies	Non-habitable rooms	up to 12m (4 storeys)	6m	3m	up to 25m (5-8 storeys)	9m	4.5m	over 25m (9+ storeys)	12m	6m	<p>Comment:</p> <p>Separation distances to side boundaries Blank walls to the side boundaries (east and south) are proposed for the full footprint of the site at the Ground Floor and generally for the footprint of both towers. No separation is required between blank walls, as such the proposed blank walls to the side boundaries comply with the minimum separation distances required to side boundaries. Generally, all proposed windows and balconies in the two towers are orientated to either the north or south to maximise visual privacy between the proposed towers and the neighbouring buildings. Where windows or balconies are proposed near the side boundaries (east and west), the external blank wall of the proposed tower is extended along the respective boundary to provide suitable visual privacy between the window and/or balcony and the neighbouring building. The exception is an east facing lobby window in the Hall Street tower which occurs on Level 2 to Level 7. These windows are setback approximately 3.5m from the east boundary. As the lobby is a non-habitable area, the proposed setback complies with the minimum 3m separation distance required for non-</p>	<p>Compliance:</p> <p>Complies</p>
Building height	Habitable rooms & balconies	Non-habitable rooms												
up to 12m (4 storeys)	6m	3m												
up to 25m (5-8 storeys)	9m	4.5m												
over 25m (9+ storeys)	12m	6m												

<p>neighbouring properties.</p>	<p>habitable rooms to side boundaries.</p> <p>Separation distances between the proposed towers</p> <p><u>Up to 12m (Level Ground, Level 1, Level 2 and Level 3)</u></p> <p>The separation distance between buildings on the same site are not applicable at Ground Level.</p> <p>At Level 1 a minimum 12m separation distance is provided between the apartment windows and balconies of the Parry Street tower and the apartment window and balconies of the Hall Street tower. This complies with the minimum separation distance for building on the same site at this height (12m for habitable rooms).</p> <p>At Level 2 and Level 3, a minimum 17.7m separation distance is provided between the apartment windows and balconies of the Parry Street tower and the apartment window and balconies of the Hall Street tower. This complies with the minimum separation distances for buildings on the same site at this height (12m for habitable rooms).</p> <p><u>Up to 25m (Level 4, Level 5, Level 6 and Level 7)</u></p> <p>At Level 4 to Level 7 a minimum 22.08m separation distance is provided between the apartment windows and balconies of the Parry Street tower and the apartment window and balconies of the Hall Street tower. This complies with the minimum separation distance for building on the same site at this height (18m for habitable rooms).</p>	<p>Complies</p> <p>Complies</p>
	<p><u>Hall Street tower rooftop communal terrace</u></p> <p>Communal open space is proposed to the rooftop (rooftop communal terrace) of the Hall Street tower. Generally, the</p>	

	<p>useable floor area of the rooftop designed for use as communal open space has been setback from the side boundaries with 1m high raised planters provided between the communal open space and the side boundaries. The raised planters provide a landscape buffer between the rooftop communal open space and the adjacent boundaries.</p>	
<p>A4 Solar and daylight access</p>		
<p>Objective 4A-1 To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space</p>		
<p>Design Criteria:</p> <ol style="list-style-type: none"> 1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas. 	<p>Comment:</p> <p>A total of 18 of the 30 total apartments proposed, or 60%, will achieve a minimum of 2hrs sunlight during 9am and 3pm at mid-winter. (For details refer to drawing <i>Compliance Table - Solar</i>, drawing no: DA-010, issue no:11, dated 14/5/2021, prepared by CKDS Architecture)</p> <p>The design guidance provided for this objective acknowledges that achieving the design criteria is not possible on some sites including where significant views are oriented away from the desired aspect for direct sunlight. In response to CN's request for information (May 2020), the current amended architectural drawing set includes detailed solar access floor plans showing solar and daylight access to all apartments living rooms and private open spaces mid-winter between 9am and 3pm. (For details refer to <i>Solar Studies</i>, drawing no's: DA-011 – DA018, issue no:11, dated 14/5/2021, prepared by CKDS Architecture)</p> <p>In addition, a written justification for the proposed variation was</p>	<p>Compliance:</p> <p>Satisfactory (Merit based assessment)</p>

	<p>provided in response to CN's request for information (May 2020) in the <i>ADW Johnson Letter</i> (letter from ADW Johnson Pty Ltd, dated 3rd November 2021). The ADW Johnson Letter states; <i>'Whist the proposed design does not fully achieve the design criteria, it is considered that the variation is minor and the proposal achieves the objective. In this instance the design has sought to optimise solar access to habitable rooms, primary windows and POS on a narrow block in the context of adjoining developments, balanced against the need to prioritise the aesthetic view to the south across Parry Street towards the No.1 Sports Ground.'</i></p> <p>The design drawings and written justification have suitably demonstrated how; (1) the site constraints and orientation (dual street frontages with significant views to the south overlooking Number One and Two sports grounds) preclude meeting the design criteria and, (2) the proposal has been designed having regard to optimising the number of apartments receiving sunlight to habitable rooms, primary windows, and private open space.</p> <p>As such, the proposal complies with the design guidance for this objective.</p>	
<p>Design Criteria:</p> <p>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.</p>	<p>Comment:</p> <p>N/A</p>	<p>Compliance:</p> <p>N/A</p>

Design Criteria:	Comment:	Compliance:
<p>3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</p>	<p>A total of 5 of the 30 total apartments proposed, or 16%, will receive no direct sunlight between 9am and 3pm at mid-winter; Units 101, 103, 201, 204, 303 are all south facing single aspect apartments.</p> <p>The non-compliance is minimal (a maximum of 4.5 apartments out of the 30 proposed apartments is 15%).</p> <p>All apartments within the development will have access to the Hall Street tower rooftop communal open space, providing them alternative access to northern sun (see page 46, <i>Statement of Environmental Effects</i> prepared by ADW Johnson Pty Limited, dated February 2020, Issue B).</p> <p>The design guidance provided for this objective acknowledges that achieving the design criteria is not possible on some sites including where significant views are oriented away from the desired aspect for direct sunlight.</p> <p>The design drawings have suitably demonstrated how; (1) the site constraints and orientation (dual street frontages with significant views to the south overlooking Number One and Two sports grounds) preclude meeting the design criteria and, (2) the proposal has been designed having regard to optimising the number of apartments receiving sunlight to habitable rooms, primary windows, and private open space (full height glazing for the maximum practical extent of apartment frontages has been provided to maximise daylight access).</p> <p>As such, the proposal complies with the design guidance for this objective.</p>	<p>Satisfactory (Merit based assessment)</p>

4B Natural ventilation										
Objective 4B-3 The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.										
Design Criteria:	Comment:	Compliance:								
<p>1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</p>	<p>A total of 24 of the 30 proposed apartments, or 80%, achieve cross ventilation.</p> <p>For the single aspect apartments, the layout and design maximise natural ventilation; apartment depths have been minimised and frontages maximised to increase ventilation and airflow.</p> <p>All habitable rooms are naturally ventilated via adjustable windows with suitable effective operable areas.</p>	Complies								
Design Criteria:	Comment:	Compliance:								
<p>2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</p>	N/A	N/A								
4C Ceiling heights										
Objective 4C-1 Ceiling height achieves sufficient natural ventilation and daylight access.										
Design Criteria:	Comment:	Compliance:								
<p>1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="background-color: #cccccc;">Minimum ceiling height for apartment and mixed use buildings</th> </tr> </thead> <tbody> <tr> <td style="width: 15%;">Habitable rooms</td> <td>2.7m</td> </tr> <tr> <td>Non-habitable</td> <td>2.4m</td> </tr> <tr> <td>If located in mixed used areas</td> <td>3.3m for ground and first floor to promote future flexibility of use</td> </tr> </tbody> </table>	Minimum ceiling height for apartment and mixed use buildings		Habitable rooms	2.7m	Non-habitable	2.4m	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	<p><u>Mixed use</u> The Ground Floor has a floor-to-floor height of 3.8m. As such, a minimum ceiling height from finished floor level to finished ceiling level of 3.3m can be achieved for the Ground Floor.</p> <p><u>Apartments</u> All storeys containing apartments (Level 1 to Level 7) have a floor-to-floor height of 3.05m. As such, a minimum ceiling height from finished floor level to finished ceiling level of 2.7m to habitable rooms and 2.4m to non-habitable rooms can be achieved for all apartments.</p> <p>No two storey apartments or attic</p>	Complies
Minimum ceiling height for apartment and mixed use buildings										
Habitable rooms	2.7m									
Non-habitable	2.4m									
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use									
		Complies								

<p>These minimums do not preclude higher ceilings if desired.</p>	<p>spaces are proposed.</p>											
<p>4D Apartment size and layout</p>												
<p>Objective 4D-1 The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.</p>												
<p>Design Criteria:</p> <p>1. Apartments are required to have the following minimum internal areas:</p> <table border="1" data-bbox="177 741 628 965"> <thead> <tr> <th>Apartment type</th> <th>Minimum internal area</th> </tr> </thead> <tbody> <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> </tbody> </table> <p>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.</p>	Apartment type	Minimum internal area	studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>Comment:</p> <p>All of the 30 total apartments proposed are provided with the required minimum internal areas.</p>	<p>Compliance:</p> <p>Complies</p>
Apartment type	Minimum internal area											
studio	35m ²											
1 bedroom	50m ²											
2 bedroom	70m ²											
3 bedroom	90m ²											
<p>Design Criteria:</p> <p>2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>	<p>Comment:</p> <p>All apartments are provided with windows in habitable rooms.</p>	<p>Compliance:</p> <p>Complies</p>										
<p>Objective 4D-2 Environmental performance of the apartment is maximised.</p>												
<p>Design Criteria:</p> <p>1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p>	<p>Comment:</p> <p>N/A (all apartments are provided a combined living/ dining/ kitchen area)</p>	<p>Compliance:</p> <p>N/A</p>										

CITY OF NEWCASTLE

<p>Design Criteria:</p> <p>2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p>	<p>Comment:</p> <p>Of the 30 total apartments proposed, 17 have a maximum habitable room depth of 8m from a window for open plan living, dining and kitchen area.</p> <p>A total of 13 out of the 30 total apartments proposed have a useable room depth approximately 8.5m from the kitchen cabinetry and benchtops to the balcony window.</p> <p>A written justification for the proposed variation was provided in response to CN's request for information (May 2020) in the <i>ADW Johnson Letter</i> (letter from ADW Johnson Pty Ltd, dated 3rd November 2021). The ADW Johnson Letter states;</p> <p><i>"The design of the proposal is constrained by the site's unique characteristics including long narrow site, and tall adjoining development.</i></p> <p><i>It is considered that a 0.5m exceedance is nominal and will have minimal impact on the environment performance of the apartments. It is the proponent's position that the overall development has generally been designed to maximise environmental performance consistent with objective 4D-2 Design Criteria 2."</i></p> <p>This is considered acceptable.</p>	<p>Compliance:</p> <p>Satisfactory (Merit based assessment)</p>
<p>Objective 4D-3 Apartment layouts are designed to accommodate a variety of household activities and needs.</p>		
<p>Design Criteria:</p> <p>1. Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space)</p>	<p>Comment:</p> <p>All master bedrooms have a minimum area of 10m² and all other bedrooms have a minimum area of 9m² (excluding wardrobe space).</p>	<p>Compliance:</p> <p>Complies</p>
<p>Design Criteria:</p> <p>2. Bedrooms have a minimum</p>	<p>Comment:</p> <p>All bedrooms have a minimum</p>	<p>Compliance:</p> <p>Complies</p>

dimension of 3m (excluding wardrobe space).	dimension of 3m (excluding wardrobe space).																
Design Criteria: 3. Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments. • 4m for 2 and 3 bedroom apartments. 	Comment: All apartments proposed have living rooms or combined living/dining rooms which achieve the minimum dimensions required for the number of bedrooms provided.	Compliance: Complies															
Design Criteria: 4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	N/A	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="175 1294 600 1671"> <thead> <tr> <th>Dwellin g type</th> <th>Min. area</th> <th>Min. dept h</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>4m²</td> <td>-</td> </tr> <tr> <td>1 bedroom</td> <td>8m²</td> <td>2m</td> </tr> <tr> <td>2 bedroom</td> <td>10m²</td> <td>2m</td> </tr> <tr> <td>3+ bedroom</td> <td>12m²</td> <td>2.4m</td> </tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	Dwellin g type	Min. area	Min. dept h	Studio	4m ²	-	1 bedroom	8m ²	2m	2 bedroom	10m ²	2m	3+ bedroom	12m ²	2.4m	Comment: All apartments have primary balconies that achieve the minimum area and depths required.	Compliance: Complies
Dwellin g type	Min. area	Min. dept h															
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	All 5 of the proposed apartments located on the podium level (First Floor) have private open space with a minimum area of 15m ² and minimum depth of 3m.	Complies															

<p>must have a minimum area of 15m² and a minimum depth of 3m.</p>										
<p>4F Common circulation and spaces</p>										
<p>Objective 4F-1 Common circulation spaces achieve good amenity and properly service the number of apartments.</p>										
<p>Design Criteria:</p> <p>1. The maximum number of apartments off a circulation core on a single level is eight.</p>	<p>Comment:</p> <p>The maximum number of apartments off a circulation core on a single level in either tower is 3.</p>	<p>Compliance:</p> <p>Complies</p>								
<p>Design Criteria:</p> <p>2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<p>Comment:</p> <p>N/A</p>	<p>Compliance:</p> <p>N/A</p>								
<p>4G Storage</p>										
<p>Objective 4G-1 Adequate, well designed storage is provided in each apartment.</p>										
<p>Design Criteria:</p> <p>1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table border="1" data-bbox="177 1507 601 1771"> <thead> <tr> <th>Dwelling type</th> <th>Storage size volume</th> </tr> </thead> <tbody> <tr> <td>1 bedroom</td> <td>6m³</td> </tr> <tr> <td>2 bedroom</td> <td>8m³</td> </tr> <tr> <td>3+ bedroom</td> <td>10m³</td> </tr> </tbody> </table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling type	Storage size volume	1 bedroom	6m ³	2 bedroom	8m ³	3+ bedroom	10m ³	<p>Comment:</p> <p>All apartments are provided the minimum storage volumes required in accordance with the number of bedrooms provided. In response to CN's request for information (May 2020), the current amended architectural drawing set includes a detailed breakdown of the storage provisions for each proposed apartment (see drawings DA008, DA009, issue 11, dated 14/5/2021, prepared by CKDS Architecture). The storage for each apartment is located and access from within the individual apartments.</p>	<p>Compliance:</p> <p>Complies</p>
Dwelling type	Storage size volume									
1 bedroom	6m ³									
2 bedroom	8m ³									
3+ bedroom	10m ³									

Newcastle Local Environmental Plan 2012 (NLEP 2012)

The following summarises an assessment of the proposal against the provisions of the NLEP 2012 that are primarily relevant to the proposed development:

Clause 2.1 - Land Use Zones

The subject property is included within the R4 High Density Residential zone under the provisions of the NLEP 2012.

The proposal is a mixed-use development, comprising residential apartments and ground floor tenancy, which are defined as 'residential flat building' and 'business premises' respectively under the NLEP 2012 and are permissible with consent within the R4 High Density Residential zone.

The proposed development is consistent with the objectives of the R4 High Density Residential zone in that:

- i) The proposal will provide increased housing supply in the Newcastle City Centre.
- ii) The proposal includes a mix of 1, 2, 3 & 4-bedroom apartments and will contribute to increasing housing diversity.
- iii) The proposal maximises the sites redevelopment potential for high density housing, which is strategically desirable given the site is within walking distance of Marketown, Darby Street restaurant precinct, Newcastle Interchange, and the Honeysuckle precinct.
- iv) The proposal is an infill development and has been designed to respond to the site's location, unique characteristics and adjoining development. The proposal will contribute to the desired denser urban form along the Parry and Hall Street frontages.
- v) The proposed development will integrate residential and business development within a city centre location. The site is ideally located with respect to public transport and will support the viability of the city centre through increased housing and employment opportunities within the area.
- iv) The proposal includes a ground level commercial space fronting Parry Street, that will contribute to the overall activation and vitality of Parry Street.

Clause 2.7 - Demolition Requires Development Consent

The proposal includes the demolition of the existing buildings on the site. Conditions are recommended to require that demolition works, and the disposal of material is managed appropriately and in accordance with relevant standards.

Clause 4.3 - Height of Buildings

The proposed development does not comply with the height of building development standard of 24m for the subject site under the NLEP 2012. The proposed height of the development is 29m for the Parry Street tower (towards south) and 27.85m for the Hall Street tower (towards north), measured to the lift overruns. This equates to a 20% and 16% variation to the height of buildings development standard for the Parry Street and Hall Street towers respectively.

In accordance with the requirements of Clause 4.6, the applicant has submitted a written request to vary the development standard imposed by Clause 4.3 of the NLEP 2012. Refer to discussion under Clause 4.6 Exceptions to Development Standards below.

Clause 4.4 Floor Space Ratio (FSR)

The Floor Space Ratio Map prescribes a maximum permissible floor space ratio (FSR) of 3:1 for the subject site. The proposed development has a FSR of 2.84:1 and complies with this development standard.

Clause 4.6 - Exceptions 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.*

Clause 4.3(2) of the NLEP 2012 specifies that a 24m height applies to the subject site. The proposed height of the development is 29m for the Parry Street tower (south) and 27.85m for the Hall Street tower (north), measured to the lift overruns. This equates to a 20% and 16% variation to the height of buildings development standard for the Parry Street and Hall Street towers respectively.

The Applicant has submitted a written request to vary the development standard imposed by Clause 4.3 of the NLEP 2012.

An assessment of the Clause 4.6 variation request has been undertaken below, in undertaking the assessment consideration has been given to both the provisions of Clause 4.6 and the relevant Land and Environment Court judgements including: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (and appeal at NSWLEC 90)(*Four2Five*), *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ('Initial Action'), and *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*), namely that the objection is well founded, that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

Height of buildings – Clause 4.6 variation assessment

The Applicant has submitted a Clause 4.6 variation request to the height of building development standard, an assessment of this request against the relevant provisions of Clause. 4.6, is provided below:

Height of buildings:

The applicable maximum building height development standard is 24m. The proposal has a maximum building height of 29m which represents a 20% variation to this development standard. The rest of the development sits below this maximum height with heights (above existing ground level) as follows:

Parry Street tower

The main roof height is 25.15m which exceeds the height standard by 1.15m (4.8%). Above this, the balustrade has a height of 26.15m, and the lift overrun has a height of 29m, exceeding the height standard by 2.15m (8.9%) and 5m (20%) respectively.

Figure 1 below illustrates the extent of the height exceedances within the Parry Street elevation.



Figure 1: Extract of South Elevation (Parry Street) – extent of height exceedance shown in red

Hall Street tower

The main roof height is consistent with the 24m height limit. Above this, the balustrade has a height of 25m and the lift overrun has a height of 27.85m, which exceeds the height standard by 1m (4%) and 3.85m (16%) respectively.

Figure 2 below illustrates the extent of the height exceedances within the Hall Street elevation.



Figure 2: Extract of North Elevation (Hall Street) – extent of height exceedance shown in red

Clause 4.6(2) - Is the provision to be varied a development standard? And is the development standard excluded from the operation of the Clause.

The height of building development standard, Clause 4.3(2) of the NLEP 2012, is a development standard in that it is consistent with the definition of development standards under section 1.4 of the EP&A Act1979.

The height of building development standard is not expressly excluded from the operation of Clause 4.6.

Clause 4.6(3)(a) – has the applicant submitted a written request that seeks to justify contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

The submitted 'Clause 4.6 – Request to Vary a Building Height Standard under NLEP 2012' prepared by ADW Johnson Pty Ltd (Issue D dated 22 July 2021) constitutes a written request for the purposes of Clause 4.6(3).

In *Wehbe* Chief Justice Preston outlined the rationale for varying development standards and the circumstances under which strict compliance with them may be considered unreasonable or unnecessary. Preston CJ established five circumstances in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary, as follows:

- i) *“Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives?”*
- ii) *Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary?*
- iii) *Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?*
- iv) *Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable?*
- v) *Is the “zoning of particular land” unreasonable or inappropriate so that a development standard appropriate for that zoning also unreasonable or unnecessary as it applied to that land. Consequently, compliance with that development standard is unnecessary and unreasonable.”*

The submitted Clause 4.6 variation request to the height of building development standard seeks to rely on the first *Wehbe* consideration to demonstrate that compliance with the development standard is unreasonable or unnecessary, stating that that the objectives of the development standard are achieved notwithstanding non-compliance. The objectives of the height of building development standard are:

- i) *To ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy.*
- ii) *To allow reasonable daylight access to all developments and the public domain.*

Additionally, the applicant seeks to rely on the third and fourth *Wehbe* considerations to demonstrate that compliance with the development standard is unreasonable or unnecessary, stating that the underlying objective of purpose of the standard would be defeated or thwarted if compliance was required and that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consent that departs from the standard.

A summary of the justification provided within the applicant's written request is provided below:

- i) The site is in the Newcastle City Centre which is identified in both regional and local planning strategies as a city centre. The Newcastle City Centre is the major centre under the established centres hierarchy for the Hunter Valley.
- ii) The scale of the development is consistent with approved developments in the area.
- iii) The scale of development is consistent with regional strategies and plans, for higher buildings around key public transport nodes; and
- iv) The proposed height is consistent with the good design principles of the Apartment Design Guide in attempting to achieve as much density as possible in this key location. It provides for a more-slender tower design instead of a squat built form.
- v) Shadow diagrams included in the architectural documentation demonstrate that the proposed development maintains reasonable daylight access to all developments and the public domain.
- vi) The objectives of Clause 4.3 of the NLEP 2012 aim to ensure a scale of development is consistent with the established centres hierarchy and allows reasonable daylight access to all developments and the public domain. If compliance was required, the Council's desired built form would not be achieved because it would mean that a lower, but bulkier building with inferior built form would be proposed to achieve the density set by the NLEP 2012's floor space ratio development standard. Locating some additional height to the Parry Street and Hall Street frontages provides for a better outcome for neighbouring development. It allows reduced building density adjoining the neighbouring courtyards and therefore will promote better daylight access to adjoining residences
- vii) Reasonable daylight will be better promoted by removing building bulk from the centre of the site and locating this within additional height at the Parry Street and Hall Street frontages.
- viii) The proposed variation (max building height 29m) is generally consistent with the height of established and approved development on adjoining land, as follows:
 - a) The recently built Parry Grande development at 122 - 124 Parry Street has an approximate height of 25.3m above existing ground (to top of lift overruns).
 - b) The recently built development at 118 Parry Street has an approximate height of 25.8m above existing ground (to top of parapet wall).

- c) Approved development for 12-14 Hall Street has an approximate height of 30m above existing ground (to top of lift overruns).

- ix) The site and surrounding land are within a transitional area with allowable building heights of up to 35m for land to the north on the opposite side of Hall Street and to the northwest of the site on the opposite side Ravenshaw Street.

Officer comment

It is agreed that the built form of the development will make a positive contribution to the city centre streetscape, consistent with the scale of development envisaged by the applicable planning provisions and existing surrounding development. It is considered that, overall, the proposal will deliver an appropriate built form that is consistent with the desired future character, while remaining compatible with the scale of nearby developments. The proposed development including the height variation, will sit comfortably within the context of the surrounding built form, and will not look out of place.

The UDRP have considered the proposed development and, in principle, accept that amendments have “refined the overall amenity of the proposal and cohesion with adjacent similar developments”. The current amended proposal has satisfied the UDRP advice and is considered an appropriate design response.

The non-compliant portions of the development are in the upper portion and rooftop area of the two tower forms. The shadow diagrams submitted with the application demonstrate that the overshadowing impact of the development on adjoining development and the public domain would not be greatly increased because of the additional height.

The proposed height variation allows for the best placement of floor space to reduce impact on neighbouring development, whilst achieving the density envisioned by the relevant planning provisions.

As such, the Applicant’s written request is considered to satisfy the requirements of Clause 4.6(3)(a) in demonstrating that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case as the objectives of the development standard are achieved notwithstanding non-compliance.

It is not agreed that the Applicant has demonstrated that the third and fourth limbs of *Wehbe* have been satisfied. The underlying objective or purpose of Clause 4.3 building height would not be defeated or thwarted were compliance required, and therefore compliance with the development standard unreasonable on this basis. Further, it is noted that the fourth limbs of *Wehbe* is a very onus threshold for the applicant to meet and it is not accepted that the applicant has demonstrated that Council by its own actions, abandoned or destroyed the development standard by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable.

Notwithstanding the above, as the first *Wehbe* consideration has been satisfied the Applicant's written request is considered to establish that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

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

In *Initial Action*, Preston CJ identified that for there to be 'sufficient' environmental planning grounds to justify a written request under cl.4.6, focus must be on the element of the development that contravenes the development standard and that the environmental planning grounds provided in the written request must justify contravening the development, rather than promoting the benefits of the development as a whole.

The Applicant's response to Clause 4.6(3)(b) is addressed in Section 6.4 of the written request and provides specific environmental planning grounds to justify the breach of the standard which are summarised below:

- i) The proposed contravention of the height standard allows for the permitted FSR to be better located on site to reduce impacts on neighbours.
- ii) The proposed contravention of the height standard is consistent with ADG principles preferencing a more-slender tower form over an inferior squat-built form.
- iii) The proposed contravention of the height standard will ensure the design of the proposed development is consistent with the established streetscape for both the Parry Street and Hall Street frontages.

Officer comment

The written request outlines environmental planning grounds which adequately justify the contravention. In particular, the proposal has been designed to respond to the site's unique infill characteristics. By removing building bulk from the centre of the site and locating this within additional height at the Parry Street and Hall Street frontages, the proposal provides the density envisaged by the relevant planning provisions onsite without resulting in unreasonable amenity impacts on neighbouring developments.

Clause 4.6(4)(a)(i) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

As outlined above the Applicant's written request has adequately addressed the matters required to be demonstrated by Clause.4.6(3) of the NLEP 2012. It follows that the test of Clause.4.6(a)(i) is satisfied.

Clause 4.6(4)(a)(ii) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objects for development within the zone in which the development is proposed to be carried out.

The Applicant's response to the satisfaction of the objectives of the height of building standard was considered under the Clause.4.6(3)(a) discussion above. However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, 'the proposed development will be in the public interest because it is consistent', with the relevant objectives.

Objectives of Clause.4.3 'height of buildings'

The development is consistent with the objectives of Clause 4.3 'height of buildings' as the scale of the development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy, as demonstrated by the design excellence process that the application has been through. The development also allows reasonable daylight access to all developments and the public domain.

Objectives of the R4 High Density Residential Zone

- i) To provide for the housing needs of the community within a high-density residential environment.
- ii) To provide a variety of housing types within a high-density residential environment.
- iii) To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- iv) To promote a denser urban form along transport corridors while respecting the residential character of adjoining streets.
- v) To maximise redevelopment and infill opportunities for high density housing within walking distance of centres.
- vi) To provide for commercial development that contributes to the vitality of the street where provided within a mixed use development
- viii) To promote a balance of residential accommodation within a mixed-use development.

The development proposal is consistent with objectives of R4 High Density Residential Zone because the proposal:

- i) Provides for housing needs in a high-density environment.
- ii) Includes a variety of housing types.

- iii) Provides for a denser urban form along a transport route.
- iv) Seeks to maximise an infill opportunity for high density housing within walking distance of the Newcastle City Centre, Marketown Shopping Centre, and Darby Street precincts.
- v) Provides for a commercial premises (business) at ground level contributing to street vitality.
- vi) Provides a balance of residential and commercial uses within a mixed-use development.

As such, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the relevant zone. Therefore, the test of Clause.4.6(4)(a)(ii) of the NLEP 2012 is satisfied.

Clause 4.6(4)(b) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained.

The Secretary's (i.e. of the Department of Planning, Industry and Environment) concurrence to the exception to the height of buildings development standard, as required by Clause 4.6(4)(b) of NLEP 2012, is assumed, as per Department of Planning Circular PS20-002 of 5 May 2020).

The proposed exceptions to the height of buildings development standard of the NLEP 2012 is an acceptable planning outcome and, in this instance, requiring strict compliance would be unreasonable and unnecessary. The proposed variations to the development standard do not cause any undue adverse environmental impacts, including impacts on neighbouring properties, in terms of overshadowing and visual privacy.

The proposed development reflects the future character of the area in respect of building height and form and is consistent with relevant controls (notably Section 6.01 Newcastle City Centre of the NDCP 2012).

The request for the height of the proposed building to exceed the 24m height of buildings development standard is supported.

Clause 5.10 - Heritage Conservation

Clause 5.10 specifies that development consent is required to demolish and/or erect a building on land on which a heritage item is located or that is within a heritage conservation area (Clause.5.10(2)(a)(iii) and (e)(i)). Further, 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 Heritage Conservation Area (HCA), which is listed as Conservation Area C4 in schedule 5 NLEP 2012. The Newcastle City Centre HCA stretches from Hamilton to Newcastle East and contains a wide variety of built forms and does not have a single cohesive character. The statement of significance for the HCA is focused on the character of the Newcastle CBD, centred around Hunter, Thorn, Perkins, Brown and Wolfe Streets, but also describes the significance of the conservation area associated with the early development of Newcastle as a town with potential in resources for trade and its expansion into an industrial regional centre.

The subject site is not a listed heritage item and is not identified as an archaeological site. There are no listed heritage items in the direct vicinity of the site. A search of the Aboriginal Heritage Information Management System (AHIMS) did not identify any Aboriginal sites or listed Aboriginal Places within 200 metres of the property.

A Statement of Heritage Impact has not been provided, instead heritage considerations are addressed in the Statement of Environmental Effects prepared by ADW Johnson Pty Ltd and submitted with the development application.

The development is consistent with the objectives of Clause .5.10 of the NLEP 2012. Although within the Newcastle City Centre HCA, the historic character of the site's context has been eroded. The context of the site is now characterised by high-rise mixed-use developments. Immediately adjacent to the site on Parry Street are a number of high-rise residential towers, and the existing single-storey non-contributory building on the site appears out of place. There are also high-rise developments in the vicinity of the non-contributory building on the Hall Street frontage, including the Marketown Shopping Centre complex, a residential tower across the road, and an approved eight storey residential development on the neighbouring site at 12-14 Hall Street.

The proposed building is more appropriate to the desired future context of this site and will serve to activate the streetscape, which will have a flow on benefit to nearby more intact heritage streetscapes and buildings. The infill development is an appropriate response to the immediate setting which is entirely eroded of its historic character and where several medium-high rise buildings have already been constructed.

Accordingly, it is considered that the proposed development will not significantly affect the heritage significance of the Newcastle City Centre HCA or heritage items in the vicinity.

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 Clause.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 ASS. According to Clause.6.1(2) works more than 2 metres below the natural ground surface on land identified as Class 4 ASS, such as the proposed car stacker pit, require development consent. Further, cl.6.1(3) specifies that development consent must not be granted for the carrying out of works under the clause unless an ASS 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.

An Acid Sulfate Soil Management and Waste Classification Plan has been prepared by RCA Australia to address any potential ASS on site and provided to CN.

Subject to the inclusion of CN's standard conditions of consent addressing the management of potential ASS in accordance with the recommendations of the Acid Sulfate Soil Management and Waste Classification Plan, the proposed development is considered satisfactory. Relevant conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment B**) to ensure ASS are appropriately managed, if found on the site.

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. Specifically, cl.6.2(2) 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 bulk earthworks including excavation works that are required to facilitate the underground car storage facilities. Works for the mechanical car stacker pit will be required in the centre portion of the site to approximately 4.8m below the surface and is expected to generate approximately 850m³ of soil which will be surplus to the requirements of the site.

Clause 6.2(3) provides several matters that the consent authority must consider prior to granting development consent as outlined below.

Table 2: Matters for consideration under c.6.3(3) NLEP 2012

Matter	Officer Comment
(a) Disruption/detrimental effect on drainage patterns and soil stability.	Detailed stormwater management plans have been provided with the development application. An ASS Management Plan has also been provided. Subject to conditions of consent the proposed earthworks will not adversely impact drainage patterns or soil stability.
(b) 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.

CITY OF NEWCASTLE

<p>(c) The quality of fill and/or soil to be excavated.</p>	<p>A Detailed Site (Contamination) Assessment has been provided with the development application. The detailed site investigation determined that no soil contamination was identified above the adopted landuse criteria across the subject sites. The assessment noted that Asbestos Containing Materials were identified within the buildings and would need to be removed prior to any demolition works.</p> <p>Further, an ASS Management Plan has been prepared and provided to CN which addresses the management of ASS, if found onsite.</p> <p>Subject to conditions of consent the soil to be excavated from the site can be appropriately managed. Conditions of consent in respect to use of fill material are also recommended.</p>
<p>(d) The effect of the development on the existing and likely amenity of adjoining properties.</p>	<p>Detailed assessment of the effect of the development on existing and likely amenity of adjoining properties has been provided elsewhere in this report. The proposed development does not result in unreasonable impacts to the amenity of adjoining properties.</p>
<p>(e) The source and any fill material and destination of any excavated material</p>	<p>The source of fill material and destination of excavated material will be addressed by conditions of consent.</p>
<p>(f) The likelihood of disturbing relics.</p>	<p>The subject site is not identified as an archaeological site. Conditions of consent will be imposed in respect to any unexpected finds discovered during construction.</p>
<p>(g) Impact to any watercourse, drinking water catchment or environmentally sensitive area.</p>	<p>The development will not adversely impact any watercourse, drinking water catchment or environmentally sensitive area.</p>
<p>(h) Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</p>	<p>Conditions of consent have been recommended to avoid, minimise or mitigate the impacts of the development.</p>

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

Part 7 Additional local provisions—Newcastle City Centre

The site is located within the Newcastle City Centre. 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 of Newcastle. The proposal is considered to be consistent with the objectives of Part 7 as detailed below.

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.

The proposal does not trigger the requirements of c.7.5(4) to undertake an architectural design competition as the height of the proposed building is not greater than 48m and the subject site is not identified as a key site on the Key Sites Map of the NLEP 2012.

An Architectural Design Verification Statement has been prepared by CKDS Architecture (issue B, dated 17 May 2021) as part of the SEPP 65 requirements and addresses the design principles that have been used to formulate the proposal.

The development application was referred to CN's Urban Design Review Panel (UDRP) on several occasions during the assessment process. The UDRP provided feedback to guide the achievement of design excellence in the overall design and the proposal.

The proposal has been amended and development in response to the recommendation of the UDRP during this time, as detailed under the '*State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*' assessment of this report above. It is considered that the current amended proposal has adequately addressed the recommendation of the UDRP and satisfies the design excellence criteria.

Clause 7.10A - Floor space ratio for certain other development

The proposed development has a site area of less than 1,500m². Accordingly, the provisions of cl.7.10A apply to the proposal. This clause specifies that the maximum FSR of a building is whichever is the lesser of the FSR identified on the *Floor Space Ratio Map* or 3:1.

The *Floor Space Ratio Map* identifies a maximum FSR of 3:1 for the subject site. Accordingly, the maximum permissible FSR remains 3:1 in accordance with cl.4.3. The proposed development has a FSR of 2.84:1 which complies.

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

Proposed Design and Place State Environmental Planning Policy (Design & Place SEPP): Explanation of Intended Effect

The proposed Design and Place SEPP will bring together a range of considerations that impact the design of places in NSW and will give effect to the objectives of the EP&A Act 1979 and the Premier's Priorities for building a better environment. The Explanation of Intended Effect (EIE) was exhibited from 26 February to 28 April 2021. The EIE is broad and indicates that the proposed Design and Place SEPP applies to all scales of development including residential flat buildings.

Assessment of the proposal has considered character, context, and overall design principles in accordance with current policy. This assessment, as detailed in **Section 5.3** below, found that on merit the proposal is consistent with the sites context, character, and design principles. The proposal is consistent with the intent of the proposed Design and Place SEPP.

Review of Clause 4.6 of the Standard Instrument LEP: Explanation of Intended Effect

The review of Clause 4.6 seeks to ensure that applications to vary development standards have a greater focus on the planning outcomes of the proposed development and are consistent with the strategic context of the site. The EIE was exhibited from the 31 March to 12 May 2021 and outlines those amendments to Clause 4.6 will include new criteria for consideration.

The proposed change would require applicants to demonstrate that a variation to a development standard *"is consistent with the objectives of the relevant development standard and land use zone and the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened."* For the purposes of CN's assessment, the public interest, environmental outcomes, social outcomes, or economic outcomes would need to be considered when assessing the improved planning outcome.

The proposed development includes a Clause 4.6 variation request. As discussed above in **Section 5.1** of this report, the proposal achieves the objectives of the R4 High Density Residential zone and the objectives of Clause 4.3 notwithstanding noncompliance.

There is also a second test proposed for development for when *"the contravention is minor and relates to a small portion of the site, and therefore the environmental impacts of the contravention are minimal or negligible."* This test would require a less rigorous assessment when the impact of the contravention is demonstrated to be minor. It is unclear if this second test would be applicable to the subject application, as there is insufficient detail in the EIE to confirm what a 'minor' contravention is.

Considering the aims of the EIE and the above considerations, the proposed development and Clause 4.6 Variation Request is not considered to be inconsistent with the proposed changes to Clause 4.6 of the Standard Instrument and NLEP 2012.

5.3 Any development control plan

Newcastle Development Control Plan 2012 (NDCP 2012)

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

Residential Development - Section 3.03

The objective of this section is to improve the quality of residential development. This can be achieved with 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 following comments are made concerning the proposed development and the relevant provisions of Section 3.03:

Principal controls (3.03.01)

A. Frontage widths

Frontages:

A minimum site frontage of 15m is required for residential flat building development in R4 zone.

The subject site consists of two adjoining allotments, 120 Parry Street and 16 Hall Street, backing onto one another with a 13.7m primary frontage to Parry Street and a 13.7m secondary frontage to Hall Street respectively.

It is considered acceptable that both the primary and secondary frontages be included within the frontage measurement as both boundaries are technically frontage to a road. As such, the subject site has frontage of approximately 27.4m and satisfies the relevant performance criteria regarding minimum site frontage widths.

Furthermore, it is observed that an 'isolated lot' of sorts has been created for the 120 Parry Street allotment by the recent redevelopment of the neighbouring sites with frontage to Parry Street, which now contain high rise residential and mixed-use buildings of similar scale to the proposed development. The development application, through the amalgamation of 120 Parry Street with 16 Hall Street, successfully addresses this issue.

The proposed development will replace unwanted existing and low scale development on the site with a development that will make a contribution to high density housing consistent with the objectives of the R4 High Density Residential Zone. The development site has a frontage consistent with surrounding sites and has demonstrated that vehicular and pedestrian access is available to the development. In addition, the site has sufficient amenity. Accordingly, the development is consistent with the performance criteria and is acceptable.

Isolated Lots:

Development on land zoned R4 High Density residential, must not result in the creation of an isolated lot.

It is understood, a site will become “isolated” if the redevelopment of neighbouring land prevents the reasonable development of the site in accordance with planning controls or, as expressed in *Statewide Planning Pty Ltd v Canterbury-Bankstown Council [2021] NSWLEC 1210 (Statewide v Canterbury)*, the “isolated site” is rendered “*incapable of accommodating the form of development envisaged by the planning controls*”.

With the exception of 18 Hall Street, the adjoining land on either side of the site has either been recently development, or has development consent, for similar sized developments.

It is noted that 18 Hall Street adjoins the proposed development to the west. It is a single lot of rectangular shape, with an area of around 450-460m², and a frontage of approximately 14m to Hall Street. 18 Hall Street contains a two-storey brick building accommodating two dwellings.

Further, 18 Hall Street is bounded to the west by four lots fronting Ravenshaw Street, (numbers 16-22). Each of the four lots contain a two-storey dwelling that extend to their respective side and rear boundaries.

In this respect, 18 Hall Street can be developed in conjunction with the adjoining allotments along Ravenshaw Street which are currently under-developed with respect to density under current planning controls. While the buildings along Ravenshaw Street may have been recently refurbished, that does not mean further redevelopment is unlikely.

In *Landmark Group Australia Pty Limited v Lane Cove Council [2019] NSWLEC 1034 (Landmark)*, the Court determined that amalgamation of the potentially isolated sites with other adjoining properties was not precluded, even where development consent had already been granted for redevelopment of those adjoining properties. In this case, it is evident that there is redevelopment potential in the Ravenshaw Street properties, and they are available for consolidation with 18 Hall Street.

In any event, the future redevelopment of 18 Hall Street, without amalgamation with any other lots, for residential or commercial purposes remains practical and feasible notwithstanding the proposed development.

Section 3.03 of the NDCP 2012 includes a requirement to avoid isolated sites “*that have less than the minimum developable site frontage*”. No.18 Hall Street has a frontage of approximately 14m which does not meet the minimum frontage width requirements for a residential flat building under Section 3.03 of the NDCP 2012. Nevertheless, a wide range of residential and commercial uses are permissible in the R4 zone (including attached dwellings, shop top housing, office and business premises and tourist and visitor accommodation) some of which are not subject to the minimum frontage width controls under Section 3.03 of the NDCP 2012.

In particular, the NDCP 2012 specifically provides that Section 3.03 does not apply to shop top housing. A multi-storey shop top housing development on 18 Hall Street would therefore not be restricted by the minimum site frontage control in Section 3.03 of the NDCP 2012 that applies to residential flat buildings. Consistent with the decision in *Statewide v Canterbury*, even if “some forms” of development may not be achieved in accordance with existing controls, 18 Hall Street will not become “isolated” unless it is incapable of being reasonably developed.

It is considered unreasonable to interpret the minimum site frontage control in Section 3.03 of the NDCP 2012 to mean that 18 Hall Street would become an 'isolated lot' as a result of the proposed development because the frontage width of 18 Hall Street does not meet the controls for "some forms of development" (but not all forms of development). Furthermore, the NLEP 2012 does not include any include specific isolation provisions relevant to the development site such as minimum lot size requirements or consolidation / amalgamation plans, relevant to the development site. Consistent with the decision in *Landmark*, the controls in Section 3.03 of the NDCP 2012 should be afforded less weight in this case and should not be interpreted as requiring amalgamation.

In summary, the proposed development will not result in the creation of an isolated lot at 18 Hall Street because; (1) it can be redeveloped in conjunction with adjoining lots on Ravenshaw Street; and (2) the site can be reasonably developed, without amalgamation, for a wide range of permissible uses.

Further, it is observed that the proposed development resolves the potential for 120 Parry Street to be an “isolated” site and remain underdeveloped in perpetuity. The redevelopment of this potentially isolated site would be a good planning outcome for the Parry Street frontage and is consistent with the approved redevelopment of the adjoining site at 14 Hall Street.

B. Front setbacks and C. Side and rear setbacks

The setback controls specify compliance with the relevant locality specific controls under Section 6 of the NDCP 2012 as an acceptable solution. The proposal satisfies the relevant locality specific building setbacks as discussed under '*Newcastle City Centre - Section 6.01*' of the NDCP 2012 assessment below.

Further, the relevant components of the Apartment Design Guide under SEPP 65 prevail over the setback controls of the NDCP 2012. The development application satisfies the provisions of the Apartment Design Guide as detailed under the '*State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*' assessment in **Section 5.1** of this report above.

D. Landscaped Area

Landscape areas:

Development in the R4 zone is required to provide a minimum landscape area of 20% of the site area. The total landscaping area provided is 363m². This equates to 32.9% of the total site area which complies.

Deep soil zone:

The relevant deep soil zone controls of Section 6.01 Newcastle City Centre under NDCP 2012 prevail over the deep soil zone controls under Section 3 of the NDCP 2012. The proposal satisfies the relevant deep soil zone controls as discussed under 'Newcastle City Centre - Section 6.01' of the NDCP 2012 assessment below.

Siting the development (3.03.02)

A. Local character and context

A detailed site analysis was submitted with the development application. The proposed development reflects the desired future character of the area and will not unreasonably impact on the amenity or privacy of adjoining dwellings.

Further, the proposal satisfies the relevant provisions for the Parry Street Character Area, as discussed under '*Newcastle City Centre - Section 6.01*' of the NDCP 2012 assessment below. The proposed development is acceptable with regard to local character and context.

A. Public domain Interface

The proposed development has been sited and designed to directly address both the Parry and Hall Street frontages. The proposal includes windows and balconies to both street frontages overlooking the public domain. Direct visibility is achieved along the proposed pathways and driveways from the public domain.

Private open space is located behind the front building line and windows and balconies overlook the street. Street access and the building entries from Parry and Hall Streets are clearly defined.

The development provides an appropriate interface with the public domain and allows for clear delineation between the private and public space.

Further, the interface proposed by the development is consistent with the relevant locally specific provisions, as discussed '*Section 6.01 Newcastle City Centre*' of the NDCP 2012 assessment below.

A. Pedestrian and vehicle access

Parking spaces, driveways and circulation spaces are consistent with AS2890.1. Adequate space is provided for vehicle circulation and dominance of driveways within the site and to the streetscape is suitable by providing vehicle access from the secondary frontage (Hall Street).

Sufficient and safe pedestrian access is provided from both Parry and Hall Streets.

Relevant conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment B**) to ensure the provision of suitable lighting to carpark areas and pedestrian pathways.

A. *Orientation and siting*

Building types and layouts are required to respond to the streetscape and site while optimising solar access within the development and maximising street surveillance and connectivity.

The proposed development has been designed and sited to adequately respond to the streetscape of Parry and Hall Street. The proposal responds to the sites' locality and constraints, achieving an appropriate balance between maximising both solar access, and street surveillance and connectivity.

Further, the relevant components of the Apartment Design Guide under SEPP 65 prevail over solar access controls of the NDCP 2012. The development application satisfies the provisions of the Apartment Design Guide as detailed under the '*State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*' assessment in **Section 5.1** of this report above.

A. *Building Separation*

Adequate separation between buildings is required for landscape, daylight access, and to reduce visual bulk.

The minimum separation between the two buildings on the subject site is greater than 15m, which exceeds the minimum relevant requirement of 7.5m under this section.

Further, the relevant components of the Apartment Design Guide under SEPP 65 prevail over the building separation controls of the NDCP 2012. The development application satisfies the provisions of the Apartment Design Guide as detailed under the '*State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*' assessment in **Section 5.1** of this report above.

Amenity (3.03.03)

Many of the controls in 3.03.03 specify compliance with the relevant components of the Apartment Design Guide under SEPP 65 as an acceptable solution. The development application satisfies the provisions of the Apartment Design Guide, as detailed under the '*State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*' assessment in **Section 5.1** of this report above. Accordingly, only the relevant additional controls contained within 3.03.03 have been discussed below:

G. *Car and bicycle parking*

The car and bicycle parking controls specify compliance with Section 7.03 Traffic, Parking and Access of the NDCP 2012 as acceptable solution. The development application satisfies the relevant car and bicycle parking controls, as discussed under '*Traffic, Parking and Access – Section 7.03*' of the NDCP 2012 assessment below.

The Ground floor comprises, amongst other things, a secure central parking area with vehicle access provided from the Hall Street frontage. The entry to the parking area is setback over 5.9m from the Hall Street boundary. A 5.5m wide 'garage' door is proposed to secure the parking area. The vehicle entry is appropriately setback and the garage door width proposed is acceptable.

1. Acoustic privacy

Noise transfer is required to be minimised through the siting of buildings and building layout, including mechanical plant.

A Noise Impact Assessment (NIA) has been prepared by Spectrum Acoustics to address the potential for noise generating equipment of the proposed development to impact upon future residents and neighbours. The NIA provides the results, findings and recommendations arising from an acoustical assessment of the proposed development (i.e. from mechanical plant including the proposed car stackers) to ensure appropriate internal noise levels are achieved.

Maximum noise emissions for the mechanical plant were nominated for the purpose of the acoustic assessment. In particular, the assessment modelled the noise from the proposed car stacker on site based on an assumed maximum of 90dB(A). Based upon these nominated levels, the NIA theoretically demonstrates that given the thickness of the concrete slab (200mm) along with the distance to the nearest off-site receivers, it is unlikely the proposed car stacker would result in adverse impacts for future occupants of the proposal.

As the calculation are modelled on nominal levels, relevant conditions of consent have been included in the recommended Draft Schedule of Conditions (refer to **Attachment B**) to limit the maximum noise level of the car stacker to 90 dB(A) and require certification from an appropriately qualified acoustic consultant.

1. Noise and pollution

Outside noise levels are required to be controlled to acceptable levels in living and bedrooms of dwellings.

The submitted NIA includes a theoretical assessment which calculated the project specific noise goals for the site based upon unattended monitoring at the subject site. The dominant noise source in the area was road traffic. The Noise Impact Assessment demonstrated no specific glazing (other than standard construction) is required for compliance with internal noise level requirements under AS 2107:2000 to be achieved.

As such, the proposed development is appropriately located and designed to ameliorate potential outside traffic noise within the subject site.

Configuration (3.03.04)

A. Universal design

In order to promote flexible housing for all community members, the residential component of the proposal is required to include universal design features.

A Disability Access Report has been prepared by Lindsay Perry Access and submitted with the development application. The Report provides the review and recommendations arising from an access assessment of the proposed development against the relevant access legislation, including the *Liveable Housing Design Guide*, and concludes that the fundamental aims of accessibility legislation are achievable.

All apartments within the proposed development are accessible from the Parry Street frontage and the central carparking area by a continuous step free path of travel. All apartments contain open-plan living areas to facilitate comfortable and unimpeded movement between spaces. The spatial planning and general arrangements of development suitably maximises accessibility to offer inclusion for all building users, and as such is considered to promote flexible housing for community members.

A. Communal area and open space

The proposal is required to provide an active communal open space with a minimum area of 5% of the site and with a minimum dimension of 8m.

A total of 30% of the site area is dedicated to communal open space, which has been provided in two locations; (1) the central podium connecting the two buildings at the first floor; and (2) the Hall Street tower rooftop communal terrace. Generally, the communal open spaces have a minimum dimension of 8m.

The communal open space is considered to achieve adequate solar access (the central landscaped podium will receive solar access in the second half of the day, whilst the Hall Street rooftop communal terrace will receive sunlight throughout the day) and be of a suitably size to enhance the amenity of future residents.

Whilst the proposed Hall Street tower rooftop communal terrace is not adjacent to or overlooked by habitable rooms, access is restricted to use of residents by secure lifts. Common circulation spaces achieve good amenity and promote safety and social interaction between residents.

A. Architectural design and roof form

The proposed roof design integrates with the overall building and the visual bulk of the development has been suitably reduced by the building massing (two separate tower forms).

Further, the development is considered to exhibit 'Design Excellence' as discussed under '*Clause 7.5 - Design Excellence*' of the NLEP 2012 assessment in **Section 5.1** of this report above.

A. Visual appearance and articulation

The performance criteria require that facade 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 massing of the proposed development, into two eight storey tower forms, is articulated and developed to create a pleasant streetscape for both Hall and Parry Streets. The proposal responds to the surrounding buildings through the articulation of the facade and the selection of materials.

The proportions, heights and setbacks from the streets are in keeping with the pattern set out by the surrounding buildings, with a ground floor street wall, varying setbacks to intermediate levels, and increased setbacks to upper levels. The forms in the facade are neatly put together, creating visual interest consistent with that of the existing and approved buildings adjacent.

The material selection, a combination of rendered concrete, face brick and powder coated aluminium balustrading and screening, subtly complements the surrounding buildings.

The building entries from Parry Street and Hall Street are clearly defined via framed elements within the facade composition and provided cover by a street awning. All building elements, including screening devices, on structure landscaping, and street awnings are coordinated and integrated into the overall facade design.

Overall, the facades contain a balanced composition of elements including a mix of solid and void, and a variety of materials and colours have been utilised.

Further, the development is considered to exhibit 'Design Excellence' as discussed under 'Clause 7.5 - Design Excellence' of the NLEP 2012 assessment in **Section 5.1** of this report above.

A condition of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment B**) to ensure plant and services are not visible from the public domain.

Environment (3.03.05)

A. Energy efficiency

It is acknowledged that the density of the proposed development 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.

A. *Water management and conservation*

The water management and conservation controls specify compliance with the relevant stormwater treatment and disposal requirements of Section 7.06 Stormwater under NDCP 2012 as an acceptable solution. The proposed development satisfies the relevant stormwater treatment and disposal controls as discussed under '*Section 7.06 Stormwater*' of the NDCP 2012 assessment below.

C *Waste management*

Waste storage and collection facilities are integrated into the development and have minimal impact on the amenity of adjoining residents, building entry and the streetscape.

Furthermore, the proposal can be serviced by CN's Waste Collection Services without disruption to traffic, on street parking and without requiring the presentation of waste bins to the street frontages, as discussed under '*Waste Management – Section 7.08*' of the NDCP 2012 assessment below.

Commercial Uses - Section 3.10

Section 3.10 encourages commercial development that has a positive contribution to surrounding development, attracts pedestrian traffic, and activates street frontages.

Pedestrian access to the residential component of development is provided along both the Parry Street and Hall Street frontages. A suitable extent of glazing is provided addressing these frontages at ground level to achieve a visual connection into the development. Further, the provision of ground level business space will enhance the activation of Parry Street by promoting increased activity within the locality.

The site facilities are visually attractive and suitably blend in with the streetscape. Mailboxes for each of the towers are located within their respective lobby at ground level. The shared bin storage area is concealed within an enclosed room at ground level adjacent the Parry Street frontage to facilitate collection by CN's Waste Services.

The subject site is in an ideal location for the proposed business use due to proximity to public transport, services, retail, and recreational areas. The proposal is considered an appropriate scale and form in the context of the sites' City Centre location and responds appropriately to surrounding development.

The development application is considered consistent with the aims and objectives of this section of the NDCP 2012.

Flood Management - Section 4.01

The subject site is, or contains, flood prone land as defined in the *Floodplain Development Manual: the management of flood liable land, April 2005* published by the NSW Government.

The site is subjected by local catchment flooding during the Probable Maximum Flood (PMF) event as indicated on flood certificates (FL2018/00088 & FL2018/00089) issued by CN. An assessment of the flood characteristics of the site, having regard to the proposed development, is provided below:

Minimum Floor Level

The Flood Planning Level (FPL) is not applicable for this site as it is not subjected to 1% AEP flood event. The boundary threshold limits for the proposed development have been set at 4.95m AHD which is above the Probably Maximum Flood (PMF). The ground floor levels proposed are considered acceptable.

Flood Storage

The majority of 120 Parry Street is identified as a local catchment flood storage area in the PMF level as shown in the below figure. The stormwater management plan indicates that minor filling is proposed in the flood storage area to achieve FFL of 3.75m AHD which is considered acceptable. It is anticipated that flood waters will be able to enter the building through the Parry Street lobby during the PMF event and therefore there will be negligible loss of flood storage due to the proposal.

Flood Refuge

On site refuge is to be provided for all development where the life hazard category is L4 or higher unless the proposed development is less than 40m from the perimeter of the PMF extent and the higher ground is accessible.

Whilst the majority of 120 Parry Street is identified as having a life hazard category of 'L4', given that the perimeter of PMF is within 40m and higher ground is accessible on Parry Street further east and Hall Street to the north (from within the building), there is no requirement to provide a refuge.

The development application generally complies with the flood management requirements of the NDCP 2012. Accordingly, the proposal is considered acceptable in relation to flooding.

Mine Subsidence - Section 4.03

Separate approval is required from Subsidence Advisory NSW under s.22 *Coal Mine Subsidence Compensation Act 2017*. As detailed in **Section 4.0** of this report above, Subsidence Advisory NSW granted General Terms of Approval on 24 May 2021, which have been included in the recommended Draft Schedule of Conditions (refer to **Attachment B**).

Safety and Security - Section 4.04

This section applies to the proposal given the nature and scale of development, with components of common space (driveway, car parking, entry foyers, lift and stair wells and communal opens space areas and roof top areas).

A Crime Risk Comment has been included within the submitted Statement of Environmental Effects which demonstrates that the proposal incorporates appropriate crime prevention features to reduce the likelihood of criminal activity and provide a safe environment for future residents.

The development is acceptable in relation to aspects of safety and security providing for good natural surveillance from active frontages with balconies and maintains clear sightlines between private and public spaces. Lighting external areas and limiting places to hide are provided within the design. Access to the building and car parks is controlled and is safe for residents 24 hours per day.

Accordingly, the proposal is acceptable in relation to safety and security.

Social Impact - Section 4.05

The proposed development does not require the submission of a Social Impact Assessment pursuant to CN's *Social Impact Assessment Policy of Development Applications*. The proposed development is in keeping with the existing urban context and is not likely to result in any increase risks to public safety.

Notwithstanding, the Applicant has provided commentary regarding social impact within the submitted Statement of Environmental Effects. It is identified that the proposed development will result in the provision of additional housing within an ideal city centre locality with access to public transport, essential community infrastructure and services.

The proposed development, incorporating residential and business uses, will contribute to the overall revitalisation of Newcastle by placing people in the city both day and night. The proposal includes a mix of residential apartment types (one bedroom to four bedroom). More diversity means greater housing choice for a range of households, which can also create more affordable housing options.

The development will increase the city centre population and lead to the activation of the existing site. The associated public domain improvements also contribute positively to the existing locality.

The development does not involve a potential loss of opportunity or resources for future generations. It is considered unlikely that a development of the nature proposed would result in increased anti-social behaviour.

Redevelopment of this under-utilised site within the Newcastle City Centre is a positive outcome socially. The proposal will have a positive impact within the community as it will provide additional housing choice and employment opportunities in the locality. As such, the proposal is acceptable having regard to Section 4.05.

Soil Management - Section 5.01

A Sedimentation and Erosion Control Plan has been prepared by MPC Consulting Engineers details prevention and sediment control measures which are proposed to be implemented during the construction stage.

The proposed development involves bulk earthworks, in particular excavation works are required to facilitate the underground car storage facilities. Excavation works for the mechanical car stacker pit will be required in the center portion of the site, within the building footprint, to approximately 4.8m below the surface. Minor filling is proposed to achieve the ground floor levels proposed (3.75m AHD and 4.65m AHD for the Parry Street and Hall Street towers respectively) which is considered acceptable. No excavation or filling is proposed external to the proposed building footprint.

The proposed earthworks will be informed by the Geotechnical Investigation prepared for the site.

Accordingly, the proposal is acceptable subject to conditions included in the recommended Draft Schedule of Conditions (refer to **Attachment B**) to address soil management and ensure adequate sediment and erosion control measures are in place for the construction period.

Land Contamination - Section 5.02

A Detailed Site (Contamination) Assessment was prepared by RCA Australian which, as discussed in **Section 5.1** of this report, found the site to be acceptable for the proposed development consistent with the provisions of SEPP 55.

As such, the proposed development is satisfactory regarding contamination and relevant conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment B**) to address classified waste removal and disposal.

Aboriginal Heritage - Section 5.04

A search of the Aboriginal Heritage Information Management System (AHIMS) did not identify any Aboriginal sites or listed Aboriginal Places within 200 metres of the property.

Nevertheless, relevant conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment B**) which require 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.

Accordingly, subject to the recommended conditions of consent, the proposal is acceptable in relation to aboriginal heritage.

Heritage Items - Section 5.05

The subject site is not a listed heritage item, and there are no listed heritage items in the vicinity of the site.

Archaeological Management - Section 5.06

The site is not specifically listed in the *Newcastle Archaeological Management Plan 1997* or NLEP 2012 as an 'Archaeological Site'.

Nevertheless, relevant conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment B**) which require 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.

Accordingly, subject to the recommended conditions of consent, the proposal is acceptable in relation to archaeological management.

Newcastle City Centre - Section 6.01

Character Areas (6.01.02)

Within the Newcastle City Centre there are several areas with distinct characteristics. The controls of 6.01.02 divide the Newcastle City Centre into eight 'character areas' based on their attributes, including topography, landscape, heritage, streetscape, land uses and built form.

This part (6.01.02) contains the character statements and supporting principles for development within each of the city centre character areas. Accordingly, only the relevant character area controls contained within 6.01.02 have been discussed below:

E. Parry Street

The subject site is in the '*Parry Street*' character area and the development has been designed to respond to the principles for the area.

The subject site consists of two allotments, 120 Parry Street and 16 Hall Street, which currently contain separate single storey commercial and industrial premises. Whilst the existing buildings are industrial, they are not considered distinctive or of the warehouse style that the Parry Street character area is aiming to retain. The proposed development will see two underperforming sites amalgamated and redeveloped to contribute to the revitalisation and renewal of the Parry Street character area and the Newcastle City Centre.

The proposal has been architecturally designed to address both the Parry Street and Hall Street frontages and includes a ground level commercial space (business) opening onto Parry Street to promote street activation. The landscaping and public domain works proposed further enhance the public domain. The overall development aligns with the objectives to support the evolving character of the area into a high-density residential and mixed-use precinct.

General controls (6.01.03)

A1. Street wall heights

A 16m street wall height is described for the subject site with zero setbacks from the front boundary up to a height of 16m and then a 6m setback above. Variations to street wall height and associated front boundary setbacks are proposed.

The Parry Street tower has a zero setback from all boundaries at ground level, which complies with the relevant NDCP 2012 control. Above this however, the Parry Street tower is generally setback 1.5m to the apartment balconies (4.5m to the apartment) from the street boundary, with a framed 'pop out' element around the central balconies on Levels 2 to 6 (approximate height of 19m) that is setback 0.3m from the street boundary and reinforces the street wall effect. At Level 7 the building bulk is setback 3.9m, with the rooftop terrace above setback over 7m, from the Parry Street boundary.

The design is similar for the Hall Street tower with the exception of the western third of the building, which has an increased setback of 7.5m from the Hall Street frontage above the ground level, and the framed 'pop out' element which only occurs on Levels 2 to 5 (approximate height of 16m) that has a zero setback from the street boundary and reinforces the street wall effect having regard for the 17m street wall height approved for the east neighbour at 14 Hall Street (DA2017/00932, approved 21 December 2018).

The proposal has been designed with setbacks and proportions that align with the adjoining development existing and as approved. The setbacks are appropriate given the sites context and relationship with surrounding development. Further, the setback has provided opportunities for improvement to the public domain with use of soft landscaping.

Whilst both towers do not strictly comply with the front boundary setbacks prescribed, the UDRP advice in relation to 'Built Form and Scale' '*commended the building forms fitting with the streetscapes along Hall and Parry Street.*' It is considered desirable to maintain the existing and approved street wall heights of the neighbouring buildings and as such the variations are considered consistent with the alternative solutions listed under this part.

Refer to figure three below.

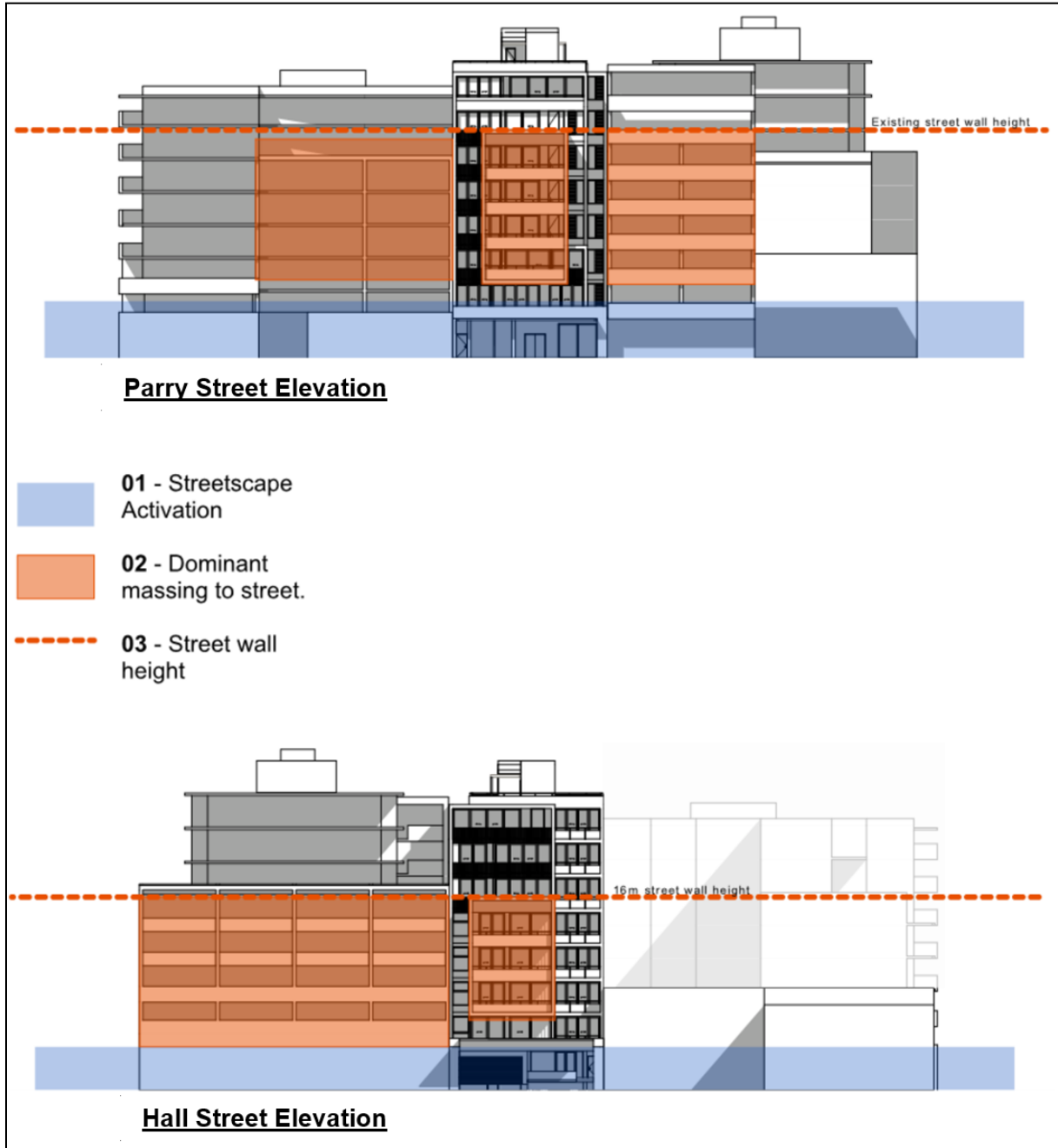


Figure 3: Streetscape approach (Source: Drawing DA-006 Massing Strategy, prepared by CKDS Architecture Pty Ltd)

A2. Building setbacks

A zero setback is described for the front, side, and rear boundary up to the prescribed street wall height (which is 16m for the subject site) and then a 6m setback above. Variations to these front, side and rear boundary setbacks are proposed as detailed below.

Front boundary setbacks: On balance, the proposal satisfies the street wall height controls, as discussed under 'Newcastle City Centre – Section 6.01.01 A1 Street Wall Height' of the NDCP 2012 assessment above. As such, the development application is considered acceptable regarding front boundary setbacks (Parry and Hall Street).

Side boundary setbacks:

The proposed development is largely built to both side boundaries (east and west) for the height of both towers. The proposal is generally consistent with the adjoining buildings which are also built to the shared boundaries (east and west). Where the proposed development does extend beyond the alignment of the neighbour development to the east and west in floor plan, the built form is reduced towards the centre of the site by stepping the building back from the east and west boundaries.

The relevant components of the Apartment Design Guide (ADG) under SEPP 65 prevail over building setback controls of the NDCP 2012. The development application satisfies the relevant provisions of the ADG, as detailed under the SEPP 65 assessment in **Section 5.1** of this report. As such, the development application is considered acceptable regarding side boundary setbacks.

Rear boundary setbacks:

The subject site consists of two allotments, 120 Parry Street and 16 Hall Street, backing on to one another and as such the development does not have a 'rear' boundary.

A3. Building separation

The building separation controls for mixed use development specify compliance with the relevant components of the ADG under SEPP 65 as an acceptable solution. The development application satisfies the relevant provisions of the ADG, as detailed in the SEPP 65 assessment in **Section 5.1** of this report.

A4. Building depth and bulk

For floor plates above street wall height, a maximum Gross Floor Area (GFA) of 900m² and a maximum building depth of 18m is described for residential tower development.

All floor plates above the prescribed street wall height, being Level 6 and above, have a GFA well below the maximum allowed (approximately 200m² per tower).

The building depth of the Parry Street tower and Hall Street tower above the prescribed street wall height, being Level 6 and above, ranges from approximately 15m to 25.5m and 15m to 26m respectively. As such, the floor plates of both towers have portions that exceed the maximum building depth control.

Generally, both towers have been articulated to reduce building bulk at the interface along the sites side boundaries. For the Parry Street tower at Levels 6 and above, a maximum building depth of approximately 15m and 17m is provided adjacent the east and west side boundaries respectively. For the Hall Street tower at Levels 6 and above, a maximum building depth of approximately 15m and 23m is provided adjacent the east and west side boundaries respectively. The portions of both towers where building depths exceed 18m have been strategically located toward the centre of the site.

The proposal exceeds the maximum building depth control; however the scale of the proposal is considered acceptable on the site. Further, the development application satisfies the relevant provisions of the ADG to allow for ventilation, daylight access, view sharing and privacy in neighbouring development and the public domain, as detailed under the SEPP 65 assessment in **Section 5.1** of this report.

A5. Building exteriors

The facades have been designed with a mix of materials, including, face brickwork, pre-cast concrete with rendered finish, and flat panel lightweight cladding.

The material selection presents a high-quality design and finish that will subtly complement the surrounding buildings and the character of the wider area. A well-articulated building form which differentiates between the base, middle and top is achieved.

A6. Heritage buildings

This part relates to the assessment or alteration work of listed heritage items and does not apply to the subject development application.

A7. Awnings

The subject site is not located within an area required to provide street awnings. Nevertheless, the proposed development includes an awning over both the Parry Street and Hall Street frontages to protect pedestrians from sun and rain.

A8. Design of parking structures

The visual impact of at-grade or above-ground parking structures in the City Centre needs to be minimised.

The Ground Level comprises, amongst other things, a secure central parking area with vehicle access provided from the Hall Street frontage. This parking area is 'sleeved' by active and other uses (business tenancy and residential lobby) which suitably screens it from view from public spaces.

Basement car parking levels are not proposed in the traditional sense, underground car storage is proposed in the form a mechanical car stacker system. The site is identified as flood prone land and subjected by local catchment flooding during the Probable Maximum Flood event. As discussed under '*Flood Management – Section*

4.01' of the NDCP 2012 assessment above, the vehicle entry from Hall Street has been designed to minimise the potential for inundation during a flood event with boundary threshold levels proposed above the Probable Maximum Flood level.

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.

The landscape controls specify compliance with the relevant controls under Section 7.02 Landscape Open Space and Visual Amenity of the NDCP 2012 as acceptable solution. The proposed development satisfies the relevant landscaping controls, as discussed under '*Landscape open Space and Visual Amenity – Section 7.02*' of the NDCP 2012 assessment below.

The proposed development is not required to provide deep soil zone, as an exemption to the minimum deep soil zone requirements is provided for residential buildings within the city centre under this section. The proposal is considered acceptable in relation to the landscaping provided at both podium level and rooftop area within the city centre location.

B1. Access network

The controls do not identify any existing or desired new connections through the subject site. Nevertheless, the proposal includes active uses at the ground level on Parry Street, promoting access and public use of the public footpath fronting the site.

B2. Views and vistas

New development must protect the nominated views within the city centre and achieve equitable view sharing from adjacent development.

There are no identified view corridors from Parry or Hall Streets to be protected and no views across the street block between Parry and Hall Streets.

Given the location of the subject site in a high-density residential zone and the constraints associated with the narrow subdivision pattern, it is inevitable the development application will result in some impact on the views of existing residential development adjacent the subject site.

View sharing has been considered having regard to the planning principles contained within *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 at 25-29. The proposals impact on the existing views of 122 Parry Street does not arise because of non-compliance with relevant planning controls. A reasonable level of outlook and views will be maintained consistent with this city centre urban environment. On balance, the view impact of the proposed development is considered acceptable and the view sharing reasonable.

B3. Active street frontages

The subject site is not required to contribute to active street frontages under this section of the NDCP 2012. Nevertheless, the proposal provides a positive street presentation, with active frontages and uses at ground level to both Parry and Hall Streets that will promote street activation and contribute to the desired streetscape.

B4. Addressing the street

The proposal contributes to the safety, amenity, and quality of the public domain through the provision of pedestrian access to ground level business tenancy and residential lobby on Parry Street, whilst a separate vehicular and pedestrian access is provided on Hall Street. Glazing is provided across a significant part of the street frontages, encouraging passive surveillance and activity.

B5. Public art

The proposal is not required to incorporate public artwork, control B5 does not apply.

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. The overshadowing impacts of the proposed development have been assessed and the development does not result in unreasonable overshadowing impacts to either existing or proposed public spaces. Solar access and overshadowing are discussed in detail elsewhere within this report.

B7. Infrastructure

Stormwater, water and sewerage infrastructure is integrated into each site and does not create negative off-site impacts.

The proposed development will connect to the existing water and sewer network services the subject site. The infrastructure controls specify compliance with the relevant controls under Section 7.06 Stormwater of the NDCP 2012 as acceptable solution. The proposal satisfies the relevant infrastructure controls, as discussed under '*Stormwater - Section 7.06*' of the NDCP 2012 assessment below.

B8. Site amalgamation

The subject site is not located on former rail corridor land, accordingly, control B8 does not apply.

Key precincts (6.01.04)

Seven key precincts have been identified within the Character Areas of Newcastle's City Centre. The subject site is not located within one of these key precincts and as such the development controls of this section do not apply to the development application.

Heritage Conservation Areas - Section 6.02

This section provides a framework for the conservation of the special qualities within each of Newcastle's Heritage Conservation Areas (HCA). Specific controls are detailed to ensure that development activity within each HCA is commensurate with heritage significance and produces good design and liveable streetscapes. The controls of 6.02.01 to 6.02.06 are relevant to re-development of existing buildings with HCAs, and as such do not apply to the subject development.

Infill development in heritage conservation areas (6.02.07)

This part (6.02.07) specifies that all new development HCAs are to be treated as 'infill' and outlines controls which are determined acceptable for infill development within a heritage conservation area

The site is located within the Newcastle City Centre HCA, which is listed as Conservation Area C4 in Schedule 5 of the NLEP 2012. The Newcastle City Centre HCA stretches from Hamilton to Newcastle East and contains a wide variety of built forms. It does not have a cohesive character across the entire HCA, and the NDCP 2012 does not provide a Desired Future Character Statement for the Newcastle City Centre HCA. The Statement of Significance for the Newcastle City Centre HCA is focused on the character of the historic Newcastle CBD, centred around Hunter, Thorn, Perkins, Brown and Wolfe streets.

The proposal is not consistent with the specific controls for infill development in HCAs; however, these controls are more relevant to HCAs with cohesive streetscapes and consistent building typologies. The established significance as described in the listing and the NDCP 2012 has little relevance for the context of the subject site. Despite isolated buildings of heritage significance in the area, including the Fire Station (I108), Leslieville (I110) and the Former Gasworks Office (I507), the subject streetscape has no consistent heritage character and is now characterised by a wide range of building styles, uses and scales, including several medium rise residential flat buildings and the Marketown Shopping Centre complex.

The buildings on either side of the subject site with a frontage to Parry Street have previously been redeveloped and now contain medium rise residential buildings of a similar scale to the proposed development. There are no buildings of significance directly south of the site, as the block bounded by Parry Street, Union Street, Parkway Avenue and Smith Street is occupied by a public sportsground.

The development site is in an area of the Newcastle City Centre HCA that does not reflect the same historic character described in the Statement of Significance and represented more cohesively in other parts of the Newcastle City Centre HCA. The development is compatible with the scale and character of the existing residential apartment development adjacent to the site on Parry Street and the immediate area. It is considered that the proposal is generally responding appropriately to its context. The development will activate and enhance the immediate area and have a flow on benefit to nearby streetscapes with greater integrity in the HCA.

The Newcastle City Centre HCA contributory buildings map (updated January 2020) identifies the relevant contribution each building on the site (and in the vicinity) makes towards the character of the HCA. The existing buildings at 120 Parry Street and 16 Hall Street are both identified as non-contributory building within the HCA. The demolition of the two non-contributory buildings on the subject site is acceptable in this instance.

The proposed development will improve the contextual design of the site and infill a 'hole' in the streetscape, which is surrounded by medium rise residential development and no longer demonstrates a historic character.

It is not considered to be appropriate to design the proposed infill building base on the scale of contributory buildings in the vicinity. The nearest contributory buildings are at the eastern end of the street block and address Arnott Street. They are single and two-storey brick industrial buildings, some of which have been adaptively reused. They do not have a visual relationship with the subject site, being orientated towards the east, with several neutral and non-contributory buildings between them and the subject site. The proposed development would address Parry Street, which is characterised by similar medium rise developments, and Hall Street, which is characterised by non-contributory commercial buildings and medium rise development. It is considered that using the predominant height and form of nearby single and two-storey contributory buildings as a guide for the proposed development would be inappropriate due to the existing context. The character and style of the development is consistent with the immediate area, particularly the neighbouring development at 116–122 Parry Street and approved neighbouring development at 12-14 Hall Street.

The proposed building is more appropriate to the desired future context of this site than the existing buildings and will serve to activate the streetscape, which will have a flow on benefit to nearby more intact heritage streetscapes and buildings. The infill development is an appropriate response to the immediate setting which is entirely eroded of its historic character and where several medium rise buildings have already been constructed.

It is considered that the proposed development will not significantly affect the heritage significance of the Newcastle City Centre HCA or heritage items in the vicinity.

Landscape Open Space & Visual Amenity - Section 7.02

General controls (7.02.02)

The submitted Landscape Plans demonstrates sufficient areas of soft landscaping with a detailed planting schedule also provided. The landscaping design is in scale and context with the proposed mixed-use development within a city centre location.

A high level of integrated landscaping throughout the development enhances the appearance and improve amenity both within, and external to, the development. The landscaped central podium which connects the two towers at the first floor, serve as a circulation space and provides visual amenity to the apartments facing internally. In addition to the landscaped podium, the Hall Street tower rooftop communal terrace provides all residents access to solar and landscaped amenities. On-structure planting within the building facades addressing Parry and Hall Streets help to soften the built form, maximise the amenity of the public domain, and provide visual integration with the street

There is one existing street tree (Street Tree ID 6180656, *Tristaniopsis laurina*) located on the frontage of 120 Parry Street. The existing street tree will be unaffected by the proposal and is to be retained. There are no existing street trees located on the frontage of 18 Hall Street. Relevant conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment B**) to ensure the protection of existing street trees during construction.

Green walls and roof space (7.02.06)

Deep soil planting is not achievable on the subject site due to site constraints and the city centre local. As such, areas of deep on-structure planting are provided to achieve substantial landscaping. Sufficient soil depths and areas have been provided within 'raised planters' integrated into the building structure and design.

Traffic, Parking & Access - Section 7.03

Traffic studies & plans (7.03.01)

A. Traffic impact study

A Traffic Impact Assessment has been prepared by Intersect Traffic to address traffic impacts of the proposed development on the local and state road network.

The Traffic Impact Assessment confirms that: (1) the proposed development will not adversely impact on the local and state road network; (2) the proposed access arrangements provide safe and suitable site access to all components of the development and would comply with relevant CN and AS2890.1 requirements; (3) the internal circulation arrangement is appropriate and can comply AS2890.1 requirements; and (4) the on-site parking provisions proposed will be adequate and can comply with rates set out in this section of the NDCP 2012.

B. Construction traffic management plan

The provision of traffic management measure for the construction phase of the project to minimise adverse impacts on traffic movement, pedestrians, and/or parking can be addressed by the provision of suitable conditions of consent.

A condition of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment B**) requiring a Construction Traffic Management Plan be submitted to CN for approval prior to commencement of site works.

Parking provision (7.03.02)

A. Parking rates

The proposed development comprises of two x four-bedroom apartments, 17 x three-bedroom apartments, three x two-bedroom apartments, 8 x one-bedroom apartments, and 20m² of business floor area.

The development generates following car parking demand in accordance with rates set out in this section of the NDCP2012:

Residential

- i) 0.6 spaces per 1-bedroom apartment = 8 x 0.6 = 4.8 spaces
- ii) 0.9 spaces per 2-bedroom apartment = 3 x 0.9 = 2.7 spaces
- iii) 1.4 spaces per 3-bedroom (or more) apartment = 19 x 1.4 = 26.6 spaces

Residential visitors

- i) 1 space for the first 3 dwellings plus 1 space for every 5 = 7 spaces

Commercial/business

- i) 1 space per 60sqm GFA = 1 space

The total car parking requirement for the development is 42 spaces (34 residential spaces, seven visitor spaces, and one business space).

A total of 44 residential car spaces and one accessible car space for the business tenancy are provided, which is considered to exceed the minimum NCP 2012 requirements.

The 44 residential car spaces are accommodated in two mechanical car stackers (seven car stacker spaces will be dedicated to residential visitor parking and the remaining 37 allocated to the residential apartments).

Off-street parking has been provided for the development and car parking provisions comply with CN's requirements. It is also acknowledged that an additional two on street car parking spaces (Parry Street frontage) and an additional one on street car parking space (Hall Street frontage) have now been provided in accordance with the recommendations of CN officers.

Stacker parking, including mechanical devices, is only considered appropriate in circumstances where it can be demonstrated that it will be operationally efficient and not cause unreasonable obstruction.

A condition of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment B**) requiring an operational and maintenance plan for the car stacker system to be submitted and approved prior to the issue of an occupation certificate.

The proposed mechanical stack parking system is required to be regularly serviced and maintained to the requirements set out by the manufacturer of the system. In this regard the owner or the occupier of the building is to enter an annual service and maintenance contract with the manufacturer's service agent for the life of the system.

A copy of the initial service and maintenance contract is to be provided to Council along with an operational plan prior to occupation of the building. In the event of permanent failure of the car stacker system (which is unable to be remedied by servicing), the owner(s) of the building is to replace the mechanical stack parking system as soon as reasonably practicable.

B. Variations to parking rates

The development provides a total of 45 car spaces on-site which exceeds the minimum requirements under NDCP 2012 by three spaces. As such, a variation to the minimum car parking rates is not proposed.

C. Bike parking

The development generates following bicycle parking demand in accordance with rates set out in this section of the NDCP 2012:

Residential

- i) 1 space per dwelling for residents = 30 x 1 = 30 spaces

Residential visitors

- i) 1 space per 10 dwellings = 3 spaces

Commercial/business

- i) 1 space per 200sqm GFA = 1 space

The total bicycle parking demand for the development is 34 spaces (30 residential spaces, 3 visitor spaces, and 1 business space).

A total of 27 bicycle spaces are provided.

A total of 20 residential bicycle spaces (Class 2) are provided at ground level within the secured parking area. An additional two residential bicycle spaces are provided at level 7 (one bicycle space in the apartment lobby of the Parry Street and Hall Street towers respectively). The selected type of bicycle storage, vertical racks, will allow users to lock or otherwise secure their bicycles.

A total of five bicycle spaces (Class 3 within site) are provided for residential visitors and the commercial staff are provided directly accessible from the public domain. These bicycle parking spaces for visitors/commercial are provided at grade near key access points to the development; two spaces near the Parry Street tower lobby and three spaces near the Hall Street tower lobby.

On balance, a deficit of seven bicycle spaces is considered acceptable.

D. Motorbike parking

The development generates following motorbike parking demand in accordance with rates set out in this section of the NDCP 2012:

Residential and Commercial

- i) 1 space per 20 cars = 2 spaces

The total motorbike parking demand for the development is two spaces.

Two motorbike parking spaces are provided, located at ground floor near the Hall Street lobby within the secured parking area, which complies with minimum NDCP 2012 requirements.

E. Parking for people with a disability

An accessible car space and associated shared space is provided at ground level within the secured parking area. The spatial planning and general arrangement of the accessible car space in accordance with current relevant Australian Standards (AS2890 and AS1428).

Design & layout of parking & access (7.03.04)

A. Siting

Development is to ensure that car parking areas are well-sited and designed as an integrated component of the total proposal.

The Ground Level comprises, amongst other things, a secure central parking area with vehicle access provided from the Hall Street frontage. This parking area is 'sleeved' by active and other uses addressing the street frontages (business tenancy and residential lobby) which suitably screens it from view from public spaces.

The parking area is located to provide safe and suitable site access to all components of the development. The entry to the parking area is setback over 5.9m from the Hall Street boundary.

B. Parking areas and structures

The proposed car parking area and vehicular access arrangements generally comply with the requirements of AS2890.

C. Access

The development site currently has road frontages to Parry Street and Hall Street with a 5m wide combined entry / exit vehicular crossing on Parry Street and a 10m wide combined entry / exit vehicular crossing on Hall Street.

The existing vehicle access to the site from Parry Street is proposed to be removed resulting in approximately two additional on-street parking spaces and vehicular access for the development is proposed off the Hall Street frontage.

The existing vehicular crossing on Hall Street has been reduced in width and aligned with the proposed driveway at the request of CN officers, which results in an additional parking space on Hall Street.

The proposed driveway requires relocation of a power pole and a kerb inlet pit on Hall Street. In addition, the developer is required to reconstruct full width footpath along the entire length of the Parry Street and Hall Street frontages. Relevant conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment B**).

The proposed car park layout and vehicular access arrangements generally comply with the requirements of the NDCP 2012 as well as AS2890. In particular, the internal car park will enable vehicles to enter and exit the site in a forward direction. In addition, the proposed vehicular access point is suitably located, providing adequate sight lines.

Energy efficiency - Section 7.05

Business development (7.05.01)

The proposed commercial units incorporate measures to maximise natural/passive climate control, including glazed frontages to allow for sunlight penetration. The proposal is considered to accord with this control.

Stormwater- Section 7.06

A Stormwater Management Plan has been prepared by MPC Consulting Engineers.

A 30m³ underground rainwater and reuse tank is proposed. The tank will collect rainwater from the roofed areas for reuse within toilets and laundries. It is noted that the development provides landscaping onsite in form of deep on-structure planting, predominantly on the first-floor podium and rooftop terraces, which effectively reduces the impervious area of the site. The proposed rainwater tank sizing is based on the rainfall depth storage of 25mm (100% imperviousness) and therefore exceeds the minimum NDCP 2012 requirement.

A 3,000L below-ground tank is proposed to collect runoff within the internal car parking area. A pump out system will convey water from this tank a pit adjacent the Parry Street frontage for disposal to the kerb (drained under gravity). Similarly, runoff collected in the underground car storage (mechanical car stacker pit) will be pumped out a pit adjacent the Parry Street frontage for disposal to the kerb.

The use of pump out systems is acceptable in this case as; (1) the low-level car parking area cannot be drained via gravity; (2) the failure of the pumps will not inundate any habitable areas or neighbouring properties; and (3) the car parking area will not receive rainfall meaning only minor runoff will be collected to the pump-out system (any water entering the parking area from the Hall Street entrance will be intercepted a grated drain across the width of the entrance).

The stormwater management plan shows a new kerb inlet pit at the west end of the Hall Street frontage and a new pit in the Hall Street road shoulder at the point of connection between the new kerb inlet pit and Councils 750mm RCP pipe. Although the location of CN's pipe is shown to be in the roadway, the Applicant have indicated they did not investigate the site to confirm the depth of the existing kerb inlet pit or the actual location of CN's pipe.

To ensure the Hall Street point of disposal is identified and designed at an early stage of the development, a condition of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment B**) requiring further details in the application for a section 138 approval.

The proposal is considered acceptable in regard to stormwater management.

Waste Management - Section 7.08

A communal waste storage is proposed at ground level of the Parry Street tower to store the waste and recycling generated by both the residential and commercial components of the proposed development

Residential

The communal waste storage area will be accessible by all residence of the proposal for the disposal of waste. Adequate space has been provided to store the garbage bins required for the residential component as follows:

- i) 6 x 660L waste bins
- ii) 5 x 660L co-mingled recycling bins
- iii) 6 x 240L green waste bins
- iv) 7.5m² bulk waste area

Direct street access to the communal waste storage area is provided to allow bin collection directly from Parry Street. Residential waste is to be collected from Parry Street via a Collect and Return agreement with CN's Waste Services.

The residential component of the development is capable of being serviced by CN's Waste Services subject to conditions included in the recommended Draft Schedule of Conditions (refer to **Attachment B**) to requiring the applicant enters an agreement with CN for site entry waste collection.

Commercial

Within the communal waste storage area, adequate space has been provided within a lockable compartment to storage the garage bins required for the commercial component, as follows:

- i) 1 x 240L waste bin
- ii) 1 x 240L co-mingled recycling bin

The commercial waste is to be stored in a locked compartment within the communal waste area and collected from Parry Street by a private contractor. It is likely that commercial waste and recycling will be collected weekly.

Management of waste during construction can be address by way of conditions of consent included in the recommended Draft Schedule of Conditions (refer to **Attachment B**).

Street Awnings and Balconies - Section 7.10

The development includes awnings on Parry Street and Hall Street. The proposed awnings accord with the design criteria set out in this control and are considered acceptable.

Development Contributions

Section 7.12 of the EP&A Act1979 enables CN to levy contributions for public amenities and services. The proposed development would attract a development contribution to CN, as detailed in CN's *Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019 (Update December 2020)*.

A condition of consent has been included in the recommended Draft Schedule of Conditions (refer to **Attachment B**) requiring the applicable development contribution be paid.

5.4 Planning agreements

No planning agreements are relevant to the development application.

5.5 The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the EP&A Act1979 and the *Environmental Planning and Assessment Regulation 2000*. In addition, a requirement to comply with AS2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

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

5.6 The likely impacts of that 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 policies, including NLEP 2012 and NDCP 2012 considerations. In addition, the following impacts are considered relevant:

Privacy

The proposed development has been designed to limit overlooking of neighbouring properties and within the development site itself. All the windows and balconies comply with prescribed building separation requirements given under NDCP 2012 and the Apartment Design Guide. A further detailed assessment of overshadowing is provided in **Section 5.8**.

Overshadowing

Overshadowing of neighbouring properties is considered acceptable, having regard to the site's orientation and the overall impact of the development throughout the year. In terms of the site itself, the building has been designed to allow both internal and external solar access appropriate to the nature and location of the development. A further detailed assessment of overshadowing is provided in **Section 5.8**.

Views

There are no significant public or private views that will be impacted in this location. The development will alter the general outlook due to the proposed changes in size and scale, however this is reasonable having regard to the prevailing development controls that apply to the site and other approved developments in the area. A further detailed assessment of overshadowing is provided in **Section 5.8**.

5.7 The suitability of the site for the development

The site it is located in a R4 High Density Residential zone, in an established suburb and close to suitable infrastructure and facilities.

The constraints of the site have been considered in the proposed demolition of the existing car park, which includes contamination, acid sulfate soils and heritage and mine subsidence. Further, the site is not affected by significant environmental constraints that would preclude development of the site.

The proposal constitutes an appropriate form of development that is consistent with the character and uses of the surrounding area. The development sits comfortably within the locality, creating no significant adverse impacts on neighbouring properties.

The proposal does not result in adverse social or economic impacts. It is considered that the proposal will have positive economic benefits in the area as the increased number of residents supports the demand for local services and facilities.

The proposed development will not have any undue adverse impact on the natural or built environment. As such, the site is considered to be acceptable for the proposed development.

5.8 Any submissions made in accordance with this Act or the regulations

Submissions received during notification periods

The development application was publicly notified in accordance with CN's Community Participation Plan. Details of the public notification are provided in at **Section 3.0** of Part II of this report.

The following table provides a summary of the matters raised in submissions objecting to the current amended proposal. A response to these matters are contained in the relevant sections of this report and are also discussed below.

Table 3: Matters raised in submissions objecting to the current amended proposal

Matter	Officer Comment
Statutory and Policy Issues	
<p>Height of building: the proposal does not comply with height of building development standard of 24m under NLEP 2012</p>	<p>The height of the development is 29m for the Parry Street tower (south) and 27.85m for the Hall Street tower (north), measured to the lift overruns. This equates to a 20% and 16% variation to the height of buildings development standard (Clause 4.3 under NLEP 2012) for the Parry Street and Hall Street towers respectively.</p> <p>In accordance with the requirements of Clause 4.6, the applicant has submitted a written request to vary the development standard imposed by Clause 4.3 of the NLEP 2012.</p> <p>As discussed under '<i>Clause 4.6 – Exception to Development Standards</i>' of the NLEP 2012 assessment in Section 5.1 of this report above, an assessment of the written request has been undertaken and is well founded.</p>
<p>Frontage widths: the subject site does not comply with the site frontage width control under NDCP 2012 Section 3.03 Residential Development.</p>	<p>The subject site has a 13.7m frontage to both Parry and Hall Streets. Under NDCP 2012 Section 3.03 Residential Development, the proposal does not comply with the 15m frontage width prescribed for residential flat buildings within the R4 zone.</p> <p>The subject site consists of two adjoining allotments, 120 Parry Street and 16 Hall Street, backing onto one another with a 13.7m primary frontage to Parry Street and a 13.7m secondary frontage to Hall Street respectively.</p> <p>It is considered acceptable that both the primary and secondary frontages be included within the frontage measurement as both boundaries are technically frontage to a road. As such, the subject site has frontage of approximately 27.4m and satisfies the relevant performance criteria regarding minimum site frontage</p>

	<p>widths. Furthermore, the development site has a frontage consistent with surrounding sites and has demonstrated that vehicular and pedestrian access is available to the development and the site has sufficient amenity. Accordingly, the development is consistent with the performance criteria and is acceptable.</p>
<p>Building setbacks: the proposal does not comply with front, side and rear boundary setback controls under NDCP 2012 Section 3.03 Residential Development.</p>	<p>The front, side and rear boundary setback controls in Section 3.03 Residential Development under NDCP 2012 are not applicable to the development application as they are for residential development where there are no locality specific controls. The subject site is located within the Newcastle City Centre, and as such the locality specific controls in Section 6.01 Newcastle City Centre under NDCP 2012 are applicable. Furthermore, the relevant components of the Apartment Design Guide under SEPP 65 prevail over the setback controls of the NDCP 2012. The development application satisfies the provisions of the ADG as detailed under the <i>SEPP 65</i> assessment in Section 5.1 of this report. The current amended proposal is considered acceptable in regard to building setbacks.</p>
<p>Solar access: the proposal does not achieve the solar access requirements of the Apartment Design Guide under SEPP 65</p>	<p>The Apartment Design Guide contains a minimum standard of two hours direct sunlight to living room windows and private open space during 9am and 3pm at mid-winter, for 70% of proposed apartments. A total of 18 out of the 30 apartments proposed, or 60%, will achieve a minimum of 2hrs sunlight during 9am and 3pm at mid-winter. The ADG also acknowledges that achieving this minimum standard for solar access is not possible on some sites, including where significant views are oriented away from the desired aspect for direct sunlight. As detailed under the SEPP 65 assessment in Section 5.1 of this report, the current amended architectural drawings have suitably demonstrated how; (1) the site constraints and orientation (dual street frontages and significant views to the south overlooking Number One and Two sports grounds) preclude meeting the minimum standard for solar access and, (2) the proposal has been designed having regard to optimizing the number of apartments receiving sunlight to habitable rooms, primary windows, and private open space. The current amended proposal is considered on balance to be an acceptable response to redevelopment of the site in this regard.</p>

<p>Isolated lot: the proposal will result in the creation of an isolated lot at 18 Hall Street.</p>	<p>As discussed in Section 5.3 of this report, under <i>'Residential Development – Section 3:03'</i> of the NDCP 2012 assessment, the proposed development will not result in the creation of an isolated lot at 18 Hall Street because; (1) it can be redeveloped in conjunction with adjoining lots on Ravenshaw Street; and (2) the site can be reasonably developed, without amalgamation, for a wide range of permissible uses.</p>
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Amenity Issues

<p>Overshadowing: the proposal will overshadow the principle useable area and landscaping areas of the communal open space at 122 Parry Street.</p>	<p>In response to both CN assessment and UDRP advice, a number of amendments have been made to the original proposal to reduce the depth, and thus overshadowing impact, of both the Parry Street and Hall Street towers. Additional solar and massing studies were also provided during the assessment process. The 3D view shadow diagrams demonstrate the overshadowing impact of the current amended proposal on neighbouring property to the west, 122 Parry Street, is minimal, with some additional overshadowing only at 9am which disappears by 10am.</p>
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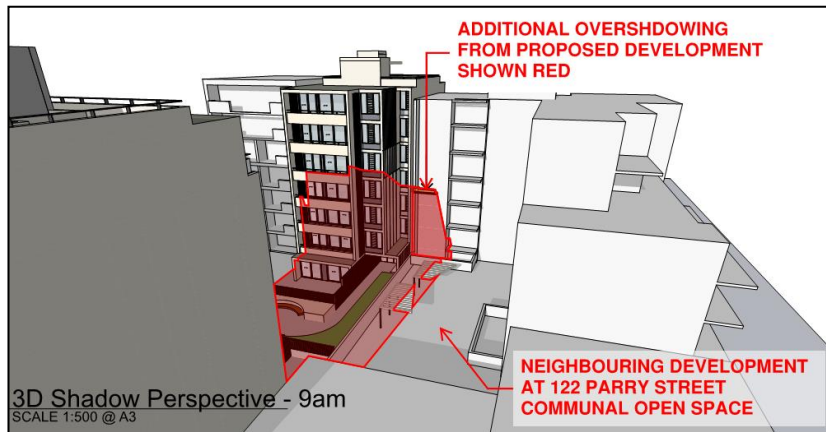


Figure 4: Shadow diagram 9AM - markup showing overshadowing of proposed development on communal open space of neighbouring apartment development at 122 Parry Street (extract from *Additional Information*, drawing no: DA-603, issue no: A, dated 22/7/2021)

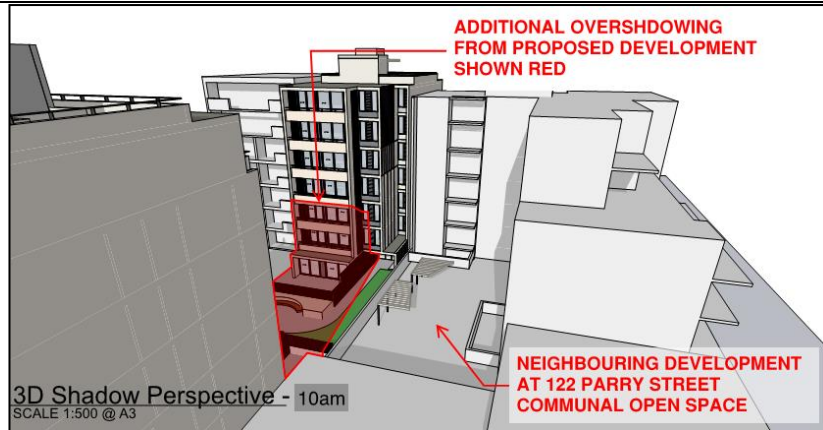


Figure 5: Shadow diagram 10AM - markup showing overshadowing of proposed development on communal open space of neighbouring apartment development at 122 Parry Street (extract from *Additional Information*, drawing no: DA-603, issue no: A, dated 22/7/2021)

The ADG sets a minimum standard of two hours direct sunlight to 50% of principle useable part of the communal open space during 9am and 3pm at mid-winter for neighbouring properties.

Further to the 3D view shadow diagrams, the plan shadow diagrams demonstrate over 50% of the principle useable part of the 122 Parry Street communal open space achieves direct sunlight for two hours during 9am and 3pm at mid-winter.

(For details refer to drawings *Shadow Diagrams*, drawing no's: DA-504- DA-507, issue no:11, dated 14/5/2021, prepared by CKDS Architecture).

Given the above, there is no reason to suggest that adjoining development at 122 Parry Street will not receive appropriate solar access for this type of high-density urban development due to the proposed development.

Furthermore, it is noted that the UDRP have considered recent amendments to the proposal and, in principle, accept that the amendments have “refined the overall amenity of the proposal and cohesion with adjacent similar developments” and the UDRP supports the application. The comments of the UDRP should be given more weight in the consideration of the development application than objections based on perceived impacts that are not supported by evidence (*Telstra Corporation Limited v Hornsby Shire Council (2006) LGERA 10*).

Overshadowing:
the proposal will overshadow the north facing balconies of apartments '101', '201', '301', '401',

As discussed above, additional solar and massing studies were provided during the assessment process and demonstrate the overshadowing impact of the current amended proposal on neighbouring property to the west, 122 Parry Street, is minimal, with some additional overshadowing only at 9am and gone by 10am. Further analysis of the 3D views found the proposed

'501', '601' and '701' at 122 Parry Street

development will not overshadow the north facing balconies of apartments '101', '201', '301', '401', '501', '601' and '701' at 122 Parry Street. The overshadowing is limited to the north facing bed windows of apartments '101', '201', '301', and '401', at 122 Parry Street. (see Figure 6 below).

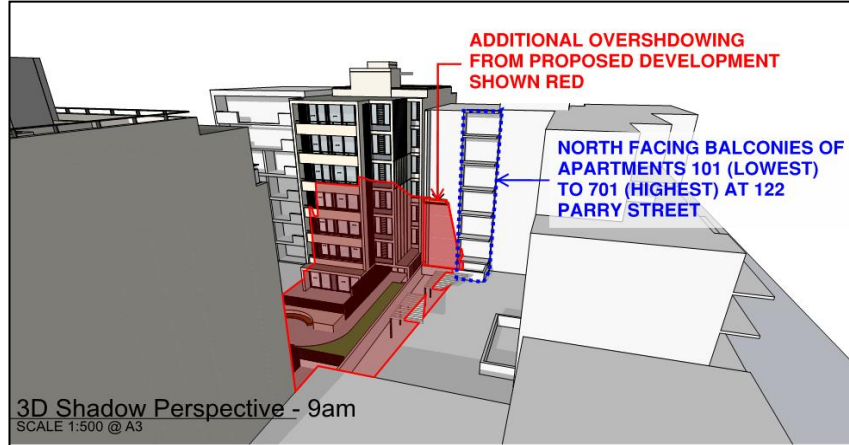


Figure 6: Shadow diagram 9AM - markup showing overshadowing of proposed development on north facing balconies of neighbouring apartment development at 122 Parry Street (extract from *Additional Information*, drawing no: DA-603, issue no: A, dated 22/7/2021)

The ADG requires a minimum of two hours direct sunlight be maintained to the living rooms and private open space (balconies) of apartments during 9am and 3pm at mid-winter for neighbouring properties.

Where an adjoining property does not currently receive the required hours of solar access, which is the case for 122 Parry Street, then the proposed development must ensure required solar access to neighbouring properties is not reduced by more than 20%.

The proposal does not overshadow living room windows or balconies of apartments at 122 Parry Street. As there will be no change to the solar access currently received by living rooms and private open space (balconies) of the neighbouring apartments at 122 Parry Street, the current amended proposal satisfies the solar access and daylight provisions for neighbouring development contained in the ADG under SEPP 65.

As such, the proposed development is considered satisfactory in this regard.

Views/ outlook: the blank side boundary walls of the Parry Street tower will result in loss of views/ outlook towards the

Whilst the depth of the Parry Street tower in the current amended proposal still extends further north than the alignment of the neighbouring buildings, the overall building form and bulk and scale is considered acceptable in the context of the site and scale of surrounding development. The most recent amended proposal included additional 3D views from the north facing apartment balconies and

northeast from the communal open space and north facing balconies of apartments '101', '201', '301', '401', '501', '601' and '701' at 122 Parry Street.

communal courtyard of the neighbouring development at 122 Parry Street to show the impact of the projection past the adjoining building (see Figure 7, Figure 8, Figure 9, and Figure 10, below). Where the wall is visible it will be articulated and finished to contribute to the overall aesthetic of the development.

These 3D views show that the proposed development as amended will maintain an open perspective from 122 Parry Street and, having regard to the high-density urban context (including the development at 122 Parry Street itself), the proposed development will not create a significant impact on the amenity of 122 Parry Street.

The proposed development has adequately balanced the amenity of adjoining apartments with the overall desire to achieve density in an inner city location.

Furthermore, the application has been reviewed by CN's UDRP on multiple occasions and the current amended proposal has now satisfied the UDRP advise and is considered an appropriate design response as discussed under as detailed under the SEPP 65 assessment in **Section 5.1** of this report above.

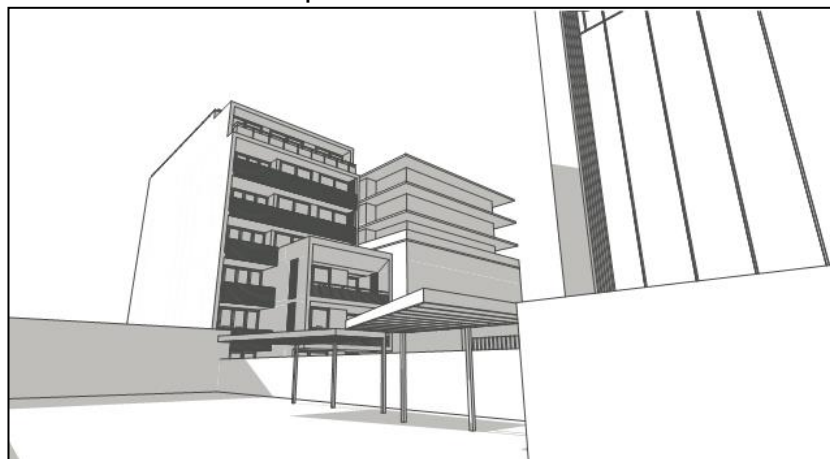


Figure 7: View looking northeast from communal courtyard of neighbouring development 122 Parry Street (extract from *Additional Information*, drawing no: DA-601, issue no: A, dated 22/7/2021)

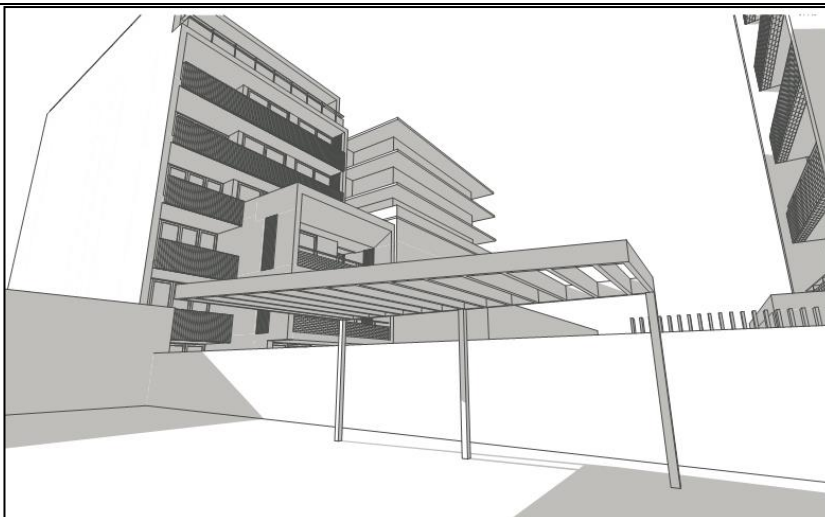
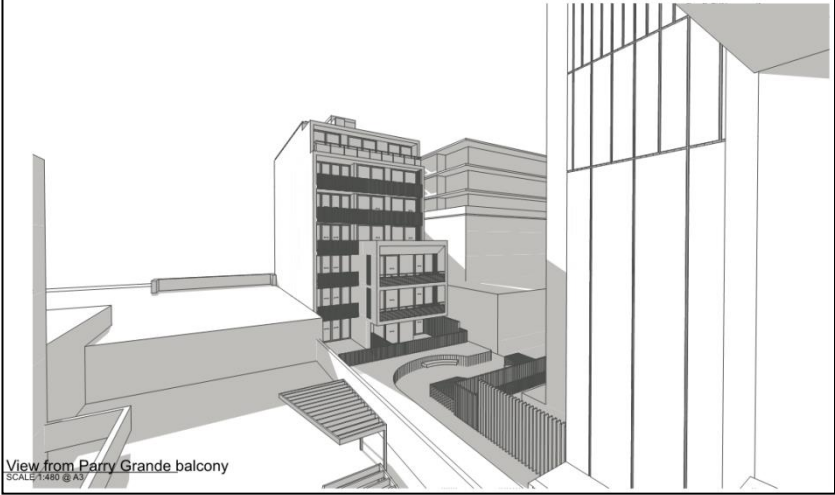


Figure 8: View looking east from communal courtyard of neighbouring development 122 Parry Street (extract from *Additional Information*, drawing no: DA-601, issue no: A, dated 22/7/2021)



Figure 9: View looking southeast from communal courtyard of neighbouring development 122 Parry Street (extract from *Additional Information*, drawing no: DA-601, issue no: A, dated 22/7/2021)

	 <p>Figure 10: View looking northeast from apartment balcony of neighbouring development 122 Parry Street (extract from <i>Additional Information</i>, drawing no: DA-602, issue no: A, dated 22/7/2021)</p>
<p>Acoustic: the operation of the mechanical car stacker and associated equipment will result in unacceptable levels of noise for neighbouring residential receivers.</p>	<p>A Noise Impact Assessment has been prepared by Spectrum Acoustics to address the potential for noise generating equipment of the proposed development to impact upon future residents and neighbours and to ensure appropriate internal noise levels are achieved.</p> <p>Section 5.2 Car Park Noise of the submitted Noise Impact Assessment states:</p> <p><i>“With the proposed car stacker to be placed centrally within the site, between the two proposed residential towers at approximately 25m from the Parry and Hall Street frontages, there is minimal chance for noise impacts at off-site receivers. Based on distance loss alone (reverberant for 25m and free field for 30m) and an assumed maximum level of 90 dB(A), the received maximum level at the residence diagonally opposite the site on the corner of Hall and Ravenshaw Streets would be 45 dB(A). This is well below the INP default minimum 52 dB(A), Lmax sleep disturbance noise trigger level and further assessment is not required.”</i></p> <p>Further, Tables 4 & 5 of the submitted Noise Impact Assessment theoretically demonstrate that given the thickness of the concrete slab (200mm) along with the distance to the nearest receiver above, it is unlikely the car stacker will result in adverse impacts for occupants of the proposal.</p> <p>As discussed under 'Section 3.03.03 I - Acoustic privacy' of the NDCP 2012 assessment in Section 5.3 of this report above, the development application is considered satisfactory regarding acoustic privacy subject to recommended conditions of consent.</p>

<p>Acoustic: Hall Street tower rooftop communal terrace will result in unacceptable levels of noise for neighbouring residential receivers.</p>	<p>Use of the Hall Street tower rooftop communal terrace is expected to generate domestic levels of noise. This is considered acceptable given the location of the subject site within a high-density residential zone.</p>
<p>Overlooking: Hall Street tower rooftop communal terrace will overlook the apartments and communal open space at 122 Parry Street.</p>	<p>Communal open space is proposed to the rooftop (rooftop communal terrace) of the Hall Street tower. The rooftop communal terrace is setback from the southern edge of the Hall Street tower apartment levels below. Additionally, the useable floor area of the rooftop terrace designed for use as communal open space has been setback from the side boundaries with 1m high raised planters provided between the communal open space and the side boundaries. The raised planters provide a landscape buffer between the rooftop communal terrace and the adjacent development. As discussed above, additional solar and massing studies were provided during the assessment process. Further analysis of the 3D views found the potential for direct sight lights between the communal open space of the neighbouring development at 122 Parry Street and the Hall Street tower rooftop communal terrace has been suitably minimised by the setback distances combined with the landscaping buffer (see Figure 11 below). As such, the current amended proposal is considered acceptable in this regard.</p> <div data-bbox="550 1355 1385 1899" data-label="Image"> </div> <p>Figure 11: View from communal open space of neighbouring development 122 Parry Street - markup showing extent the Hall Street tower rooftop communal terrace visible (extract from <i>Additional Information</i>, drawing no: DA-601, issue no: A, dated 22/7/2021)</p>

Design and Aesthetic Issues	
<p>Streetscape: the floor levels of the Parry Street tower do not align with the existing adjoining buildings</p>	<p>The floor levels of the neighbouring development to the east, 118 Parry Street, and the west, 122 Parry Street, are not consistent with the latter being lower.</p> <p>The floor levels of the Parry Street tower generally align with the neighbouring development at 118 Parry Street which has a similar frontage width as the subject site.</p> <p>As discussed in Section 5.3 of this report above, under '<i>Section 6.01.03 A1 - Street wall heights</i>' of the NDCP 2012 assessment, the proposal is considered to generally respond appropriately to its context. The UDRP supported the streetscape presentation, saying:</p> <p><i>'elements of the proposed facades have taken into account the street wall heights in the existing and proposed buildings to create a harmonious street frontage'</i>.</p> <p>Overall, the UDRP commended the building forms for fitting in with the streetscape along both Parry Street and Hall Street.</p> <p>As such, the current amended proposal is considered acceptable in this regard.</p>
<p>Bulk and scale: the depth of the Parry Street tower is inconsistent with the existing adjoining buildings</p>	<p>The same concern was raised by the speakers at the Public Voice session and is addressed in the officer comments for '<i>Bulk and scale</i>' in Table 4 below.</p>
Traffic and Parking Issues	
<p>Operation and maintenance of mechanical car stacker: mechanical failure of the car stackers will increase demand for on street car parking.</p>	<p>The same concern was raised by the speakers at the Public Voice session and is addressed in the officer comments for '<i>Operation and maintenance of mechanical car stacker</i>' in Table 4 below.</p>
<p>Demolition and construction impacts: the proposal will result in disruptions to public domain during demolition and construction.</p>	<p>In it is acknowledged that there will be short term impacts associated with the demolition and construction of the proposed development. Conditions of consent have been included in the Schedule of Conditions in relation to hours of works, demolition, construction, and traffic management measures. Prior to commencing works, the developer is required to submit a Construction Management Plan and a Traffic Management Plan to CN for approval. The plan is required to address traffic control measures and ensure safe, continuous movement of traffic and pedestrians within the road reserve.</p>

Miscellaneous	
<p>Flood management: the impact of water inundation in heavy rain events on the underground mechanical car stacker pit. Additionally, the submissions identified ongoing water egress issues occurring in the basement of 122 Parry Street.</p>	<p>As discussed in Section 5.3 of this report above, under <i>'Flood Management – 4.01'</i> of the NDCP 2012 assessment, the development application generally complies with the flood management requirements of the NDCP 2012, in particular the Engineering assessment found; (1) the Ground floor levels are acceptable; (2) flood storage loss due to the development is negligible, and; (3) no flood refuge is required as higher ground is accessible and the development is within 40m of the perimeter of PMF extents.</p> <p>The proposal is considered acceptable in this regard.</p>
<p>Mines subsidence: the Mines Subsidence Assessment Report submitted with the development application, and subsequently amended during the assessment process, is inadequate.</p>	<p>As discussed in Section 4.0 of this report above, the development application is integrated development pursuant to Section 4.46 of the EP&A Act1979 and the application was referred to Subsidence Advisory NSW (SA NSW) for assessment.</p> <p>Subsidence Advisory NSW (SA NSW) are the technical experts with respect to issues pertaining to mine subsidence and their advice has been utilised to inform CNs assessment of the application.</p> <p>It is noted, SA NSW requested a peer review of the amended Mines Subsidence Assessment Report prepared by Douglas Partners (DPS) be undertaken and submitted to SA NSW for acceptance.</p> <p>An independent peer review was undertaken by Dillon Geotechnical Services Pty Ltd, which <i>"concur(ed) with the recommendation given in the DPS Report that proposed building should be designed to remain 'structurally sound and safe' if subject to the subsidence effect contours provided herein."</i></p> <p>Conditional approval for the proposed development has been granted by SA NSW via 'General Terms of Approval' (GTA) and stamped approved plans dated 24 May 2021 (copy appended at Attachment D).</p> <p>A condition of consent has been included within the Draft Schedule of Conditions in Attachment B requiring the GTAs from SA NSW be complied with prior to, during, and at the completion of the development and a copy of the GTAs be attached to the determination notice.</p>

<p>Waste management: servicing from Parry Street not achievable.</p>	<p>As discussed in Section 5.3 of this report above, under <i>'Waste Management – 7.08'</i> of the NDCP 2012 assessment, the proposal to adequately be serviced by CN's Waste Collection Services without disruption to traffic, on street parking and without requiring the presentation of waste bins to the street frontage. The proposal is considered acceptable in this regard.</p>
<p>Earthworks: excavation for the development may make changes to the water table which has potential settlement effects for the neighbouring buildings.</p>	<p>The same concern was raised by the speakers at the Public Voice session and is addressed in the officer comments for <i>'Earthworks'</i> in Table 4 below.</p>

Public Voice Committee

The development application was considered at a meeting of the Public Voice Committee held on 20 April 2021. The two objectors that spoke at the Public Voice session were owners and residents of the neighbouring development to the west at 122 Parry Street.

Following the Public Voice session and subsequent consultation with CN, the applicant engaged in consultation with the objectors by meeting with the neighbour representatives who spoke at the Public Voice session, along with CN staff, to discuss the concerns raised in more detail.

To address the concerns of objectors raised at the Public Voice Committee additional information and the current amended proposal was submitted in May 2021.

The following table provides a summary of the matters raised during the Public Voice session. Responses to these matters are contained in the relevant sections of this report and also discussed below.

Table 4: Matters raised during a meeting of the Public Voice Committee held on 20 April 2021

Matter	Officer Comment
Bulk and Scale	The speakers identified concerns that the minimum separation distances originally proposed between the Parry Street and Hall Street towers, whilst it technically complied with the minimum required under SEPP 65 and the ADG, did not have due regard to context. In particular, the extension of the Parry Street tower further north than the alignment of the neighbouring buildings to the east

and west which are not as deep in floor plan. In response, the proposal was amended to provide increased building separation beyond the minimum contained in the ADG for buildings on the same site, by reducing the overall projection of the Parry Street tower north into the central courtyard. The minimum separation distances originally proposed between the Parry Street and Hall Street towers have been increased by:
 5.78m (from 12.92m, to 18.7m) at Levels 2 and 3, and
 7.35m (from 14.9m, to 22.25m) at Levels 4 – 7

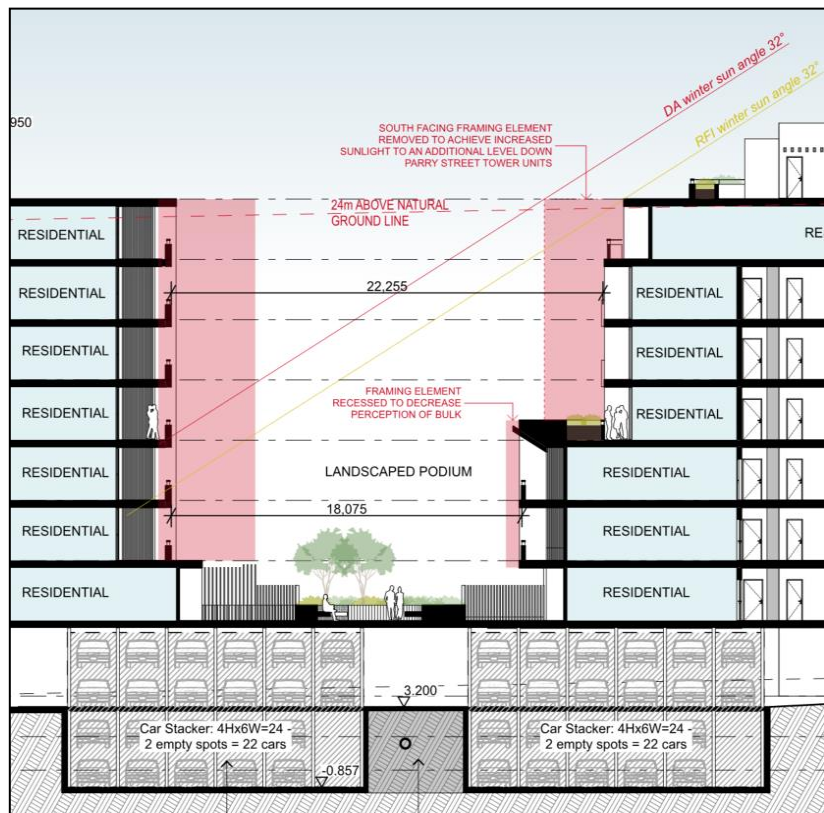


Figure 12: Extract from *Site Section* (drawing no: DA-301, issue no: 11, dated 14/5/2021) showing increased building separation – extent of building bulk original proposed shown in red.

Further to the above, the speaker raised concerns that the extension of the Parry Street tower further north than the neighbouring buildings would expose large areas of blank walls facing the adjacent development.

In response, the length of blank walls extending beyond the building line of the neighbouring development to the east and west of the Parry Street tower has been reduced as follows:

The blank wall along the western boundary, which in the original proposal extended approximately 4.9m beyond the neighbouring development at 122 Parry Street, has been reduced to align with the neighbouring boundary

wall by introducing a 1.8m setback to the Parry Street tower from the western boundary.

The blank wall along the eastern boundary, which in the original proposal extended approximately 6.9m beyond the neighbouring development at 118 Parry Street, has been reduced by 3.8m.

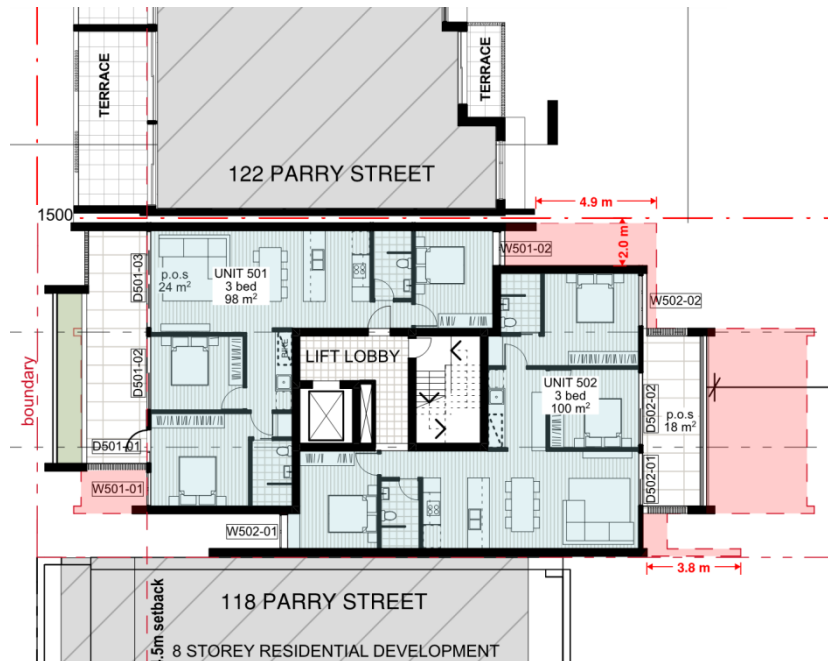


Figure 13: Extract from *Level 5 Floor Plan* (drawing no: DA-106, issue no: 11, dated 14/5/2021) showing reduced blank walls on boundary – extent of building bulk original proposed shown in red.

Where the depth of the Parry Street tower in the current amended proposal still extends further north than the alignment of the neighbouring buildings, the overall building form and bulk and scale is considered acceptable in the context of the site and scale of surrounding development.

The most recent amended proposal included additional 3D views from the apartments and communal courtyard of the neighbouring development at 122 Parry Street to show the impact of the projection past the adjoining building (see Figure 7, Figure 8, Figure 9, and Figure 10, above). Where the wall is visible it will be articulated and finished to contribute to the overall aesthetic of the development.

The proposed development has adequately balanced the amenity of adjoining apartments with the overall desire to achieve density in an inner-city location.

Furthermore, the application has been reviewed by CN's UDRP on multiple occasions and the current amended proposal has now satisfied the UDRP advise and is considered an appropriate design response as discussed

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	<p>under as detailed under the SEPP 65 assessment in Section 5.1 of this report.</p>
<p>Clause 4.6 variation request not supportable</p>	<p>The speakers identified concerns that Clause 4.6 variation request did not pass legal threshold tests or adequately address relevant NLEP 212 objectives</p> <p>In response, an amended Clause 4.6 variation request was provided in support of the current amended proposal. As discussed under '<i>Clause 4.6 – Exception to Development Standards</i>' of the NLEP 2012 assessment in Section 5.1 of this report above, an assessment of the request has been undertaken and it is considered to be well founded.</p> <p>CN consider that the applicant's written request has adequately addressed the matters required to be demonstrated under Clause. 4.6(3). Further that the proposed development is in the public interest as it is consistent with objectives of the building height development standard. The proposed development is also considered to be consistent with the R4 zone objectives. Concurrence from the Planning Secretary is provided under Planning Circular PS18-003 issued 21 February 2018.</p>
	<p>The speakers identified concerns the excavation works will sink neighbouring buildings, as happened during the construction of the neighbouring development at 122 Parry Street.</p> <p>The proposed development involves bulk earthworks, in particular excavation works are required to facilitate the underground car storage facilities.</p> <p>As discussed in Section 5.3 of this report above, under '<i>Clause 6.2 – Earthworks</i>' of the NLEP 2012 assessment, the proposed earthworks are considered acceptable and suitable conditions of consent have been included within the Draft Schedule of Conditions in Attachment B to ensure all earthworks are to be executed safely in accordance with appropriate professional standards and excavations are to be properly guarded and protected to prevent them from being dangerous to life and property. Furthermore, relevant conditions have been included in the recommended Draft Schedule of Conditions (refer to Attachment B) requiring; (1) an electronic copy of a dilapidation report prepared by a suitably qualified person be provided to CN prior to the issue of a Construction Certificate; and (2) a post construction dilapidation report prepared by a suitability qualified person be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate, to ascertain if any structural damage has occurred to the adjoining buildings,</p>

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	<p>infrastructure and roads. The reports shall be forwarded to Council and will be made available in any private dispute between neighbours regarding damage arising from construction works.</p> <p>In addition to the general concerns relating to excavation works, the speaker requested a condition of consent allowing them the opportunity to review the excavation and shoring plan once prepared as part of the construction documentation.</p> <p>A condition of consent is not necessary to this extent as any request by a third party to review detailed documentation prepared as part of the Construction Certificate application can be made directly to the relevant Principle Certifying authority and/ or CN.</p>
<p>Excavation:</p>	<p>The speaker requested a condition of consent allowing them to opportunity to apply external waterproof to the external face of their basement level walls when the walls are releveled as a result of the excavations works for the subject development proposal.</p> <p>The applicant provided the following response; <i>"Neighbours concerns with regard to ground conditions and flooding are appreciated and the proponent is aware of the issues raised. Experts have and will be engaged to ensure appropriate construction outcomes are achieved. With regard to flooding the proposed development complies with Council's standards. It is understood that the neighbouring property would like access via the proposed development site to carry out investigations to assist in resolving their own water ingress issues. The proponent will be happy to speak with neighbours about that issue at the relevant time. However, we note that this is not a matter relating to the assessment of the current application."</i></p> <p>This is a private matter between neighbouring properties which the applicant indicated they are willing to participate in at the relevant time.</p> <p>A condition of consent to this extent would not be within the statutory power to be imposed.</p>
<p>Operation and maintenance of mechanical car stacker</p>	<p>The speakers identified concerns that the mechanical car stackers are not fit for purpose, and this will increase demand for on street car parking.</p> <p>Under the NDCCP 2012 stacker parking, including mechanical devices, is considered acceptable in</p>

	<p>circumstances where it can be demonstrated that it will be operationally efficient and not cause unreasonable obstruction.</p> <p>A condition of consent has been included in the recommended Draft Schedule of Conditions (refer to Attachment B) requiring an operational and maintenance plan for the car stacker system to be submitted and approved prior to the issue of a final occupation certificate. The proposed mechanical stack parking system is required to be regularly serviced and maintained to the requirements set out by the manufacturer of the system. In this regard the owner or the occupier of the building is to enter into an annual service and maintenance contract with the manufacturer's service agent for the life of the system. A copy of the initial service and maintenance contract is to be provided to Council along with an operational plan prior to occupation of the building. In the event of permanent failure of the car stacker system (which is unable to be remedied by servicing), the owner(s) of the building is to replace the mechanical stack parking system as soon as reasonably practicable.</p> <p>The use of mechanical car stackers systems allows the development to provide compliant number of car parking spaces on a challenging site. It is considered a reasonable and practical solution to accommodate the on-site parking requirements under the NDCP 2012 in the context of the site constraints which include water table and mines subsidence and the impact of these on development feasibility.</p>
<p>Waste management</p>	<p>As discussed in Section 5.3 of this report above, under '<i>Waste Management – 7.08</i>' of the NDCP 2012 assessment, the proposal to adequately be serviced by CN's Waste Collection Services without disruption to traffic, on street parking and without requiring the presentation of waste bins to the street frontage.</p> <p>The proposal is considered acceptable in this regard.</p>

It is considered that the issues and concerns raised in the submissions do not warrant the refusal of the application in its present form or require any further amendments. The proposed development does not raise any other significant general public interest issues beyond matters already addressed in this report.

The current amended proposal is considered an acceptable form of development for the site as discussed within this report subject to the conditions included in the recommended Draft Schedule of Conditions (refer to **Attachment B**).

5.9 The public interest

This report has addressed the various concerns raised in the submissions received in response to the public notification and relevant referral procedures. The proposed development does not raise any other significant general public interest issues beyond matters already addressed in this report.

The proposed development is in the public interest and the variation to the height standard is consistent with the objectives of Clause 4.3, as the scale of the development makes a positive contribution towards the desired built form and is consistent with the established centres hierarchy. The proposal also allows for reasonable daylight access to the public domain and nearby developments.

The proposal is consistent with CN's urban consolidation objectives, making more efficient use of the established public infrastructure and services.

The application has demonstrated that there will be no significant adverse traffic impacts and it is considered that the development does not cause any significant overshadowing, privacy impacts or view loss for adjacent properties.

The proposed development provides for the orderly economic development of the site for purposes for which it is zoned and will not have any negative social or economic impacts.

6.0 CONCLUSION

The proposal is acceptable against the relevant heads of consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* and is supported on the basis that the recommended conditions in **Attachment B** are included in any consent issued.

ATTACHMENTS

Item 16 Attachment A: Submitted Plans - 120 Parry Street & 16 Hall Street Newcastle West

Item 16 Attachment B: Draft Schedule of Conditions - 120 Parry Street & 16 Hall Street Newcastle West

Item 16 Attachment C: Processing Chronology - 120 Parry Street & 16 Hall Street Newcastle West

Item 16 Attachment D: General Terms of Approval – Subsidence Advisory NSW - 120 Parry Street & 16 Hall Street Newcastle West

Item 16 Attachments A-D distributed under separate cover