

THE CITY OF NEWCASTLE

JRPP No.	2012HCC019
DA No.	DA2012/549
Proposal	Demolition of structures and erection of a commercial/residential building including hotel and basement car park to be completed in two stages and stratum subdivision of car park
Property	Lot: 5 DP: 1145847 & Lot: 4 DP: 1029006 1 KING STREET NEWCASTLE
Applicant	Kred Pty Ltd
Report By	The City of Newcastle Council

Assessment Report and Recommendation

Executive Summary

Proposed Development

The proposed development involves the demolition of part of a multi deck car park and the erection of a 17-storey commercial/residential development including hotel and basement car park. The development is proposed in two stages.

- Stage 1 – Northern building comprising 17-storeys (including two levels of above ground parking at rear). The hotel occupies eight levels (100 rooms) with residential levels (95 dwellings) above.
- Stage 2 – Southern building comprising nine-storeys (as viewed from street level) of residential dwellings (55 dwellings).

The development also includes additional underground parking and landscaping.

It is proposed to Stratum subdivide part of the car park to assign relevant parking to the adjoining 'David Maddison Building', which is in common ownership.

Referral to Joint Regional Planning Panel

The proposal is referred to the Joint Regional Planning Panel for determination pursuant to clause 13C of State Environmental Planning Policy (Major Development) 2005, given it has a CIV value of \$48,769,000, over the \$20M threshold.

Permissibility

The site is zoned B4 Mixed Use zone pursuant to Newcastle City Centre Local Environmental Plan 2008. The proposal is categorised as a residential flat building and tourist and visitor accommodation (hotel) and is permissible within the zone subject to development consent. All required owner(s) consent has been provided, including for proposed access and easements across an adjoining site. The proposal is local development.

The proposed residential and hotel uses are also consistent with the terms of approval of the Concept Plan 05_0062 as modified 9 April 2013.

Consultation

In accordance with Council's Development Control Plan (Section 8.0 – Public Participation) the application was notified from 15 June 2012 to 29 June 2012 and received 28 submissions. A further six submissions were received outside the notification period.

The application has been referred to Roads and Maritime Services in accordance with Clause 104 and Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007.

The application was also referred to the NSW Police for advice in relation to Crime Prevention Through Environmental Design (CPTED).

Key Issues

The main issues identified in the assessment and/or raised in the submissions were as follows:

- Whether the proposed development is 'generally consistent' with the terms of the Concept Plan MP05_0062.
- Whether the proposed development is acceptable in relation to State Environmental Planning Policy 65 – Design Quality of Residential Flat Buildings.
- Whether the proposed development is acceptable in relation to applicable provisions of the Newcastle City Centre Local Environmental Plan 2008 and Newcastle Development Control Plan 2012.
- Whether the proposed vehicular access from King Street will unreasonably conflict with the access to the adjoining development (The Royal) to the east.
- Whether the proposed development will result in unreasonable traffic congestion in King Street.
- Whether the development provides for sufficient on-site parking.
- Whether the development represents an overdevelopment of the site.
- Whether the development unreasonably obstructs view.
- Whether the development has adequate building separation to adjoining buildings.
- Whether the proposed development results in unreasonable overshadowing of the adjacent 'Arvia' apartments to the west and Newcastle Beach.
- Whether sufficient open space will exist across the Concept Plan site.
- Whether the design is substandard and hence impact property values.
- Whether sufficient information has been submitted to fully assess environmental impacts.

Recommendation

Grant approval to DA2012/0549, subject to the schedule of conditions contained within **Appendix A**.

1. Background

Concept plan No. 05_0062 in respect of the redevelopment of the Royal Newcastle Hospital Site was approved by the Minister for Planning on 3 January 2007. Subsequent project approvals were granted for demolition work, subdivision and Stage 1A and 1B developments (known as 'The Royal' – MP07_0133 approved 9 July 2008). The subject development is known as Stage 1C.

On 1 October 2011, Part 3A of the Environmental Planning and Assessment Act 1979 (the Act) was repealed. However, certain projects which were defined as transitional Part 3A projects continue to be subject to the provisions of Part 3A due to operation of Clause 3B of Schedule 6A of the Act which sets out transitional arrangements which apply on the repeal of Part 3A. The Department of Planning advised the applicant on 25 November 2011 that as no Director General requirements (DGRs) had been issued for the subject proposal that it was not a transitional project therefore the proposal is to be assessed under Part 4 of the

Act, with the Joint Regional Planning Panel the consent authority. However, the proposal is one for which an approved concept plan still applies.

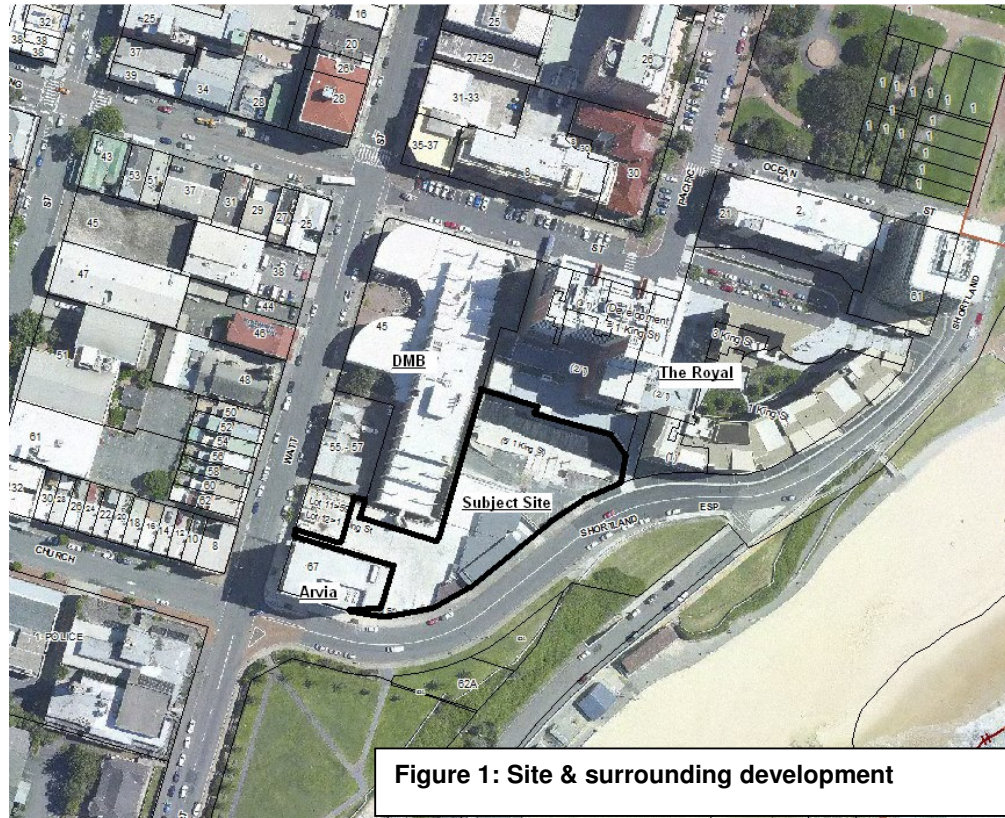
The applicant was advised on 26 June 2012 of issues of non-compliance against the concept plan, principally height and envelope (footprint). The applicant was also advised that the proposed hotel use may not be consistent with the terms of the concept approval. The applicant subsequently sought to address these matters via an application to modify the concept plan pursuant to former Section 75W of the Act, which continues to operate under the transitional provisions. The application was made to and assessed by the NSW Department of Planning and Infrastructure and the modification was approved by the Planning Assessment Commission on 9 April 2013. The assessment of this development application is based upon the concept plan as modified.

2. Site and Locality Description

The subject site comprises Lot: 5 DP: 1145847 and Lot: 4 DP: 1029006, 1 King Street Newcastle. The site is irregular shaped with a total frontage of 101.75m to Shortland Esplanade and a total area of 3,619m² and is located on the southern side of Shortland Esplanade, just to the east of the intersection with Watt Street. The site also has 2.2m 'access handle' frontage to Watt Street. It is currently occupied in part by a three-storey car parking structure, and single-storey former sales office for 'The Royal' development. The site is otherwise vacant. The car park has an existing access from Shortland Esplanade and is proposed to be part demolished along with other structures on site. The site falls by approximately 6m in a north-east direction. See Figure 1 for location of site.

Existing surrounding development comprises a nine-storey residential flat building (The 'Arvia') to the west. To the north-west is the two-storey United Services Club, a registered heritage item. Further to the north-west is a seven-storey commercial building (the 'David Maddison Building'). To the north and north-east is a mixed use development known as 'The Royal' that was the subject of a project approval (MP07_0133 approved 9 July 2008) that was made under the subject concept plan. That development comprises a 16-storey residential flat building / hotel directly to the north and two further residential flat buildings of eight-storeys to the north-east. A public pedestrian access leads from the public accessible plaza of 'The Royal' development along the eastern side of the subject site through to Shortland Esplanade.

To the south of the site (across Shortland Esplanade) is Fletcher Park and to the east is Newcastle Beach. The site has expansive views to the east and south-east of the coastline and has high levels of visual and open space amenity. The site is well serviced by buses and with Newcastle Railway Station approximately 360m to the north. See Figure 1 for site context.



3. Project Description

The Statement of Environmental Effects provides the following description for the development:

“The DA seeks consent to erect two new buildings on the site, the Northern building being Stage 1 and the Southern building being Stage 2. The Northern building is to include four levels of parking for 219 cars and associated storage and garbage facilities, a 100 room hotel occupying Ground level 1 – Level 6 and 95 units located on Levels 7 – 14 above. Access to the parking is to be via the Lower Ground (Hospitality), Ground floors and existing service lane behind the David Maddison Building.

The Southern building is to include two levels of parking for 18 cars and associated garbage facilities, and 55 units over eight levels above. Access to parking for the Southern building will be via the existing car park entry off Shortland Esplanade Street.

Part of the existing three level decked car park on the western side of the Southern building which is located on Lot 5 DP 1145847 (subject site), will provide car parking for the refurbished David Maddison Building adjoining to the north. Additional parking for the David Maddison Building will be provided on Lot 12 DP 635003 (with the bottom level - Lot 11 DP 635003 – to be used by the United Services Club). Easements will be created over Lot 5 DP1145847 for access and circulation for the proposed stratum subdivision. The car park includes 67 spaces.

Specifically the following is proposed:

Northern Building – Stage 1

Basement Levels 3 and 2 – 66 parking spaces (including 8 tandem spaces) and associated storage and garbage facilities;

Basement Level 1 – 56 parking spaces (including 6 tandem spaces) and associated storage and garbage facilities;

Car Park Level – 31 parking spaces (including 10 tandem spaces) and associated storage and garbage facilities, hospitality, kitchen, bar and amenities areas and landscaped area;

Lower Ground Level – Hotel reception/cafe area, pool/gym, conference and back of house facilities, guest drop off area with access off Shortland Esplanade, landscaped forecourt;

Ground Level 1 – Level 6, hotel rooms varying in size from 26m² to 45m²;

Level 7 – Eleven residential units varying in size from 36m² to 74m²;

Levels 8 -14 – Twelve residential units varying in size from 36m² to 74m².

Southern Building – Stage 2

Car Park Level – 10 parking spaces and associated storage and garbage facilities;

Lower Ground Level – 8 parking spaces and associated garbage facility;

Ground Level 1 – 6 residential units varying in size from 43m² – 56m²;

Levels 2 and 3 – 7 residential units per level varying in size from 42m² – 82m²;

Levels 4 – 6 – 7 residential units per level varying in size from 40m² – 84m²;

Levels 7 – 8 – 7 residential units per level varying in size from 40m² – 84m²;

The two new buildings will have a combined Gross Floor Area (GFA) of 14,619m².

Table 1 below sets out the proposed GFA by level.

Table 1

Northern Building		
Level	GFA m²	Description
Car Park	655	Hospitality
Lower Ground	712	Hotel reception/cafe area, pool/gym, conference and back of house facilities.
Ground Level 1	635	Hotel
Levels 2 - 6	710 x 5 (3,550)	Hotel
Level 7	691	Units
Levels 8 - 14	701 x 7 (4,907)	Units
Total	11,150	
Southern Building		

Ground Level 1	365	Units
Levels 2 and 3	457 x 2 (914)	Units
Levels 4 - 8	438 x 5 (2,190)	Units
Total	3,469	
Grand Total	14,619	

The proposed unit mix is as follows:

Building North – 100 hotel suites, 32 x 2 bedroom apartments, 63 x 1 bedroom apartments;

Building South – 16 x 2 bedroom apartments, 38 x 1 bedroom apartments, 1 studio.

The building facades use a strong composition of contemporary building elements. The lower seven levels of the northern building provide a strong base, with levels 8 and 9 the break separating the base from the upper levels 10 to 14, completing a vertical tripartite composition of base, middle, and top for the Shortland Esplanade streetscape. The facades are to be further articulated with the use of framed structures and louvered screens at the upper levels and a combination of balustrading and loggias to accentuate element definition. Projections and elemental detailing provide layers and differing textures to the overall facade treatment."

The current design is an amendment to the originally submitted proposal. Following concerns raised by the Urban Design Consultative Group, Council officers and objections received, the applicants submitted the current proposal that included the following amendments:

- Refinement to façade details to provide clearer delineation between the two buildings and between the residential and hotel uses.
- Enlarge a number of decks to the residential apartments.
- Screening to the edge of the south-west decks of Building South.
- Emphasise entry to the southern residential building, including providing secure access.
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The height and footprint remained unchanged as did the floor plate, including number of units and car parking spaces and it was subsequently decided not to renotify the amended plans for these reasons. A copy of the amended plans is at **Appendix B**.

4. Consultation

In accordance with Council's Development Control Plan (Section 8.0 – Public Participation – Newcastle DCP 2012) the application was notified from 15 June 2012 to 29 June 2012 by letter to owners and occupiers in the locality and a total of 34 submissions were received. Six of the submissions were received after the notification period but have nevertheless been considered within this report. The principal issues raised are outlined below, with a brief response to each. A detailed consideration of these issues is contained under Section 7)d) of this report.

- Vehicular access from King Street – Vehicular access will conflict with the Royal's underground parking access, David Maddison Building access and other residential developments in the street. Suggest no significant vehicular access from King Street.

Comment: Vehicular access has been reviewed and is considered acceptable. (See Section 7)a)iii) – DCP considerations).

- Traffic congestion - Increased traffic congestion, particularly in King Street. Believe there should be no access from King Street. (See Section 7)a)iii) – DCP considerations).

Comment: Road and intersection performance will be within acceptable limits.

- Parking - Lack of on-site parking for units and restaurant and lack of loading dock.

Comment: The proposal incorporates parking and servicing in accordance with the Newcastle Development Control Plan 2012 and is acceptable. (See Section 7)a)iii) – DCP considerations).

- Density - The proposal represents an overdevelopment of the site in terms of floor space. The proposed development should not exceed maximum GFA set by Concept Plan 05_0062.

Comment: The amended proposal complies with the maximum GFA. (See Section 6 - Concept Plan considerations).

- Height – The proposal represents an overdevelopment of the site in terms of building height. In particular concern was raised that the proposed development does not comply with the height under the Newcastle Development Control Plan 2012 and that it is not clear whether the Concept Plan takes precedence.

Comment: The proposal complies with the maximum height limit under the Concept Plan which takes precedence over the Newcastle City Centre Local Environmental Plan 2008 and Newcastle Development Control Plan 2012. (See Section 6 - Concept Plan considerations).

- View loss - Potential view loss from The Royal (McCaffrey Wing) and loss of ocean views from the Arvia apartments at 67 Watt Street. Believe insufficient information submitted to assess view impacts.

Comment: View impacts were effectively predetermined under the Concept plan approval and considered to be within acceptable limits. (See Section 7)b) – Likely Impacts).

- Building separation (SEPP 65) – Non-compliance with SEPP 65 separation distances, as required by Condition 5 of the Concept plan approval.

Comment: The amended proposal complies with the required separation distance under SEPP 65. (See Section 6 - Concept Plan considerations).

- Overshadowing - Overshadowing of the 'Arvia' apartments and Newcastle beach.

Comment: While some overshadowing will occur the proposal would still maintain adequate solar access to adjoining development and public open space. (See Section 7)b) – Likely Impacts).

- Open space – Loss of open space on the Royal Newcastle Hospital site as a result of the 'David Maddison' building not being redeveloped. Subsequent loss of amenity for existing residents. Believe it results in the new proposal being closer to the McCaffrey Wing of The Royal.

Comment: The extent of open space over the entire block is a product of the Concept Plan. The proposal provides a generous forecourt area in excess of the Concept Plan requirements. (See Section 7)d – Submission considerations).

- Design competition - It is not clear if the proposal went through an appropriate design competition as required under the Concept Plan approval.

Comment: The design competition followed the design competition brief endorsed by the NSW Department of Planning and Infrastructure. (See Section 6 - Concept Plan considerations).

- Noise - Potential anti-social behaviour, particularly noise impacts from the hotel/forecourt area.

Comment: The submitted acoustic report identified noise impacts would be acceptable subject to restrictions on the nature of entertainment and hours. (See Section 7)b – Likely Impacts).

- Design - Substandard architectural style and that the number of smaller apartments is also substandard and will impact property values of the Royal.

Comment: The amended design is considered acceptable and would unlikely have an adverse impact upon property values. (See Section 7)d – Submission considerations).

- Deficient application - The Statement of Environmental Effects (SEE) has insufficient information to assess environmental impacts and is not in the public interest as should adhere to Newcastle City Centre Local Environmental Plan 2008 controls.

Comment: While the original application was deficient the applicant has subsequently addressed information shortfalls. Sufficient information is now available to carry out a thorough and proper assessment. The Concept Plan approval takes precedence over the Newcastle City Centre Local Environmental Plan 2008. (See Section 7)d – Submission considerations).

The final amended design **Appendix B** was not renotified as it was deemed to present a reduced impact upon surrounding properties and was generally an appropriate response to issues raised by Council and objectors, where relevant.

5 Referrals

The application has been referred to Roads and Maritime Services (RMS) in accordance with Clause 104 and Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007. Their advice is considered below under Section 7.

The application was also referred to the NSW Police for advice in relation to Crime Prevention Through Environmental Design (CPTED). The advice is considered and discussed under Section 7.

Referral comments referenced above are attached at **Appendix C**.

6. Concept Plan MP05_0062

Concept Plan MP05_0062 as, amended 9 April 2013, applies to the land comprising Lots 2, 4 & 5 DP1145847, Lot 4 DP1029006, SP84211 and SP83376. This includes the subject site.

Schedule 6A of the Act sets out transitional provisions for the repeal of Part 3A. Clause 3B applies specifically to development applications made under Part 4 of the Act that are subject to a concept plan.

The following is an assessment against the Concept Plan MP05_0062 approved 3 January 2007 and modified 9 April 2013, specifically addressing subclauses (2)(c), (d) & (f) of Clause 3B. A copy of the Concept Plan MP05_0062, as amended is at **Appendix D**.

Condition 1 approved documentation

Compliance with the approved concept area and revised building envelopes plan dated 29 October 2012 is discussed further below under the relevant heading.

The proposal is considered to be consistent with the approved documentation; with the principal reference documents for the proposed development being:

- Royal Newcastle Hospital Site Design Principles dated 24 November 2006 (as amended 9 April 2013).
- Royal Newcastle Hospital Draft Statement of Commitments dated 24 November 2006.

These two documents provide the information requirements and issues to address on subsequent development applications made under the Concept Plan and also provide detailed design guideline requirements for the site.

The originally submitted SEE made no reference at all to the Site Design Principles or the Statement of Commitments and was therefore significantly deficient. Upon request the applicant has subsequently addressed the commitment shortfalls.

Royal Newcastle Hospital Statement of Commitments dated 24 November 2006

SUBJECT	COMITTMENT	TIMING	COMMENT
1. Compliance with applicable planning requirements	Detailed design of the development will demonstrate compliance with applicable planning requirements, including BCA, SEPP 65 and BASIX.	Addressed at the detailed development design stage as part of the relevant Project Application(s).	The submitted information addresses relevant EPI's, including SEPP 65 and BASIX and relevant BCA matters.
2. Design excellence	The applicant must put in place limited architectural design competition/s for all the buildings on the site. An evaluation panel will be established to assess the design	Prior to the lodgement of project applications for new buildings.	A design competition has been held in accordance with Condition 8 of the concept plan. Discussed further below.

	competition/s which will include representatives of Landcom and the Department of Planning.		
3. Built form and urban design	The detailed design for the buildings will adhere to the Site Design Principles formulated for the project to ensure that the intended development outcomes will be achieved. The 'Site Design Principles' document shall provide guidance as to acceptable: FSR, building heights, building setbacks. Building separation, street wall heights and upper storey setbacks, extent of active frontages, vehicular access points and through-site links.	Detailed design for each building will be undertaken as part of the relevant Project Application(s).	An assessment against the Site Design Principles document has been carried out as detailed beneath this table.
4. Access, traffic and parking	<p>Further traffic analysis will be undertaken for the detailed design of the project to ensure that the development will be consistent with the recommendations included in the Traffic Assessment Report prepared by Mark Waugh Transport and will not result in adverse traffic impacts.</p> <p>Construction management plans will be prepared for subsequent Project Application(s) to address the management of impacts from construction activities, as well as management of truck/vehicle and pedestrian access during construction.</p>	<p>Details of the traffic analysis will be undertaken as part of the relevant Project Application(s).</p> <p>Construction management plans will be prepared as part of the relevant Project Application(s).</p>	<p>The Transport Impact Assessment Report by Mark Waugh dated May 2006 (prepared for the concept plan) has been reviewed and established that the concept proposal would not result in adverse traffic impacts and that the site should be able to accommodate adequate parking. It is noted that the report did not make any specific recommendations for subsequent development applications on the site.</p> <p>A new traffic report has been submitted prepared by Colston Budd Hunt & Kafes Pty Ltd. The report has had regard to Mark Waugh report prepared for the Concept Plan.</p> <p>Further SIDRA modelling for</p>

			<p>intersection performance was also submitted upon request from Council.</p> <p>A Construction Management Plan would be required as a condition of consent.</p>
5. Public domain	Detailed design of the development will incorporate public domain works in accordance with this Concept Plan and will be provided in accordance with Council's reasonable requirements.	Details of the design will be submitted in accordance with Council's reasonable requirements at Project Application stage.	Neither the Site Design Guidelines nor the support control drawings specifically nominate any public plaza on the subject site. The development does enhance the public pedestrian link through the site by activating its edge with the hotel use. The development also provides for the hotel forecourt and generally provides quality public domain area.
6. Visual impact	An analysis of visual impacts will be submitted with the subsequent Project Application(s) to ensure that the location and detailed design of the buildings will preserve important visual corridors and are consistent with the Site Design Principles submitted with the Concept Plan.	Analysis of visual impacts will be undertaken as part of the relevant Project Application(s).	The SEE, including SEPP 65 information has generally addressed these matters. Discussed further below under Site Design Principles considerations.
7. Solar analysis and overshadowing	If a future building extends beyond the approved Concept Plan building envelope, an overshadowing analysis will be required at the subsequent Project Application stage to ensure that the proposal will minimise overshadowing of Newcastle Beach in accordance with the solar access analysis included in Section 6.8 of the Environmental Assessment Report.	Details of overshadowing analysis will be undertaken as part of the relevant Project Application(s).	Shadow diagrams have been submitted which demonstrate that the impact upon Newcastle Beach and surrounding sites is acceptable. The proposal generally complies with the Concept Plan envelope as modified 9 April 2013.
8. Heritage matters	The following are to Accompany	A Statement of Heritage Impact will be	A Statement of Heritage Impact has

	<p>subsequent Project Application(s) at the detailed development design stage:</p> <p>A Statement of Heritage Impact (SOHI) prepared in accordance with the recommendations included in the review of heritage issues prepared by Tanner Architects.</p> <p>A site wide Interpretation Strategy will be prepared, recognising and celebrating the site's social history and built form heritage.</p> <p>If aboriginal objects are exposed during the work, works must cease until the Department of Environment and Conservation and the local Aboriginal Land Council have been consulted.</p>	<p>undertaken as part of the relevant Project Application(s) at the detailed development design stage.</p> <p>The Interpretation Strategy will be submitted before, or in conjunction with the first project applications seeking approval for buildings and public realm works.</p>	<p>been submitted prepared by John Carr Heritage Design.</p> <p>While the submitted report does not specifically reference the recommendations of the previous 'Tanner Architects' report it has satisfied all requirements being to assess the proposal's impact in terms of both non-European archaeology, European archaeology, impacts on heritage conservations areas and impact upon heritage items in the vicinity of the site.</p> <p>Importantly the report has addressed past reports from the Concept Plan, notably:</p> <ul style="list-style-type: none"> • Aboriginal Heritage Issues & Management, Royal Newcastle Hospital Project – by Umwelt Environmental Consultants, May 2006. • Background Historical Archaeological Assessment for the RNH Site, Newcastle – by ERM, dated December 2004. <p>The report also concludes that the potential for Aboriginal sites to remain beneath the Royal Newcastle Hospital site was very low. This would not negate the requirements of the National Parks and Wildlife Act 1974 should any relics be discovered during construction.</p>
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			<p>The report also concludes that the impact of the proposal on heritage conservation area and heritage items in the vicinity is acceptable.</p> <p>No further information is required in this regard.</p>
9. Ecologically sustainable design and water management	The detailed design of the development is to Demonstrate consistency with the ESD and water sensitive urban design (WSUD) measures generally consistent with Council's requirements and BASIX.	Addressed at the detailed development design stage as part of the relevant Project Application(s).	<p>Council engineering advice indicates that the 60m³ rainwater harvesting tank is appropriately sized in accordance with Newcastle DCP 2012 and is in excess of BASIX requirement of 40m³.</p> <p>Considered acceptable.</p>
10. Wind conditions	Further wind analysis will be undertaken at the Project Application stage to ensure that no unacceptable wind conditions will result. Such analysis will also assess the need for measures that are necessary to mitigate any wind impacts (e.g. local screening and awnings along pedestrian thoroughfares and around public open spaces).	Analysis of the impacts on wind will be undertaken as part of the relevant Project Application(s).	<p>The applicant was requested to submit a wind analysis. The applicant originally submitted the wind modelling that was carried out for Stage 1A & B (The Mirvac development) however this report provided no detailed assessment of or useful recommendations in relation to the subject proposal. A further wind study specifically for the subject development was requested and subsequently submitted. The report concludes that wind conditions at pedestrian level around the development are expected to be suitable for pedestrians.</p>
11. Social plan	Subsequent Project Application(s) will take account of the Social Plan prepared by Heather Nesbitt Planning submitted with this Concept Plan.	As part of the relevant Project Application(s).	<p>No social impact plan specific to this proposal has been submitted.</p> <p>The recommendations of the social plan by Heather Nesbitt Planning have been reviewed. The principal design commitments</p>

			<p>outlined are to facilitate social mix within the area by providing a mix of 1, 2 and 3 bedroom dwellings. The development provides for 102 x 1-bed and 48 x 2-bed dwellings. It therefore does not satisfy the recommendation. This issue was raised with the applicant.</p> <p>The applicant has argued that:</p> <p><i>"The matter of unit mix should be assessed in the context of the development of the overall hospital site, including that part already developed by Mirvac. The 3 completed buildings within the Mirvac component include 79 units having at least 3 bedrooms. This represents 53% of the total number of units developed by Mirvac. In addition to the above, as previously raised, in finalising the design of the buildings on the remainder of the site, Sutera have ensured that the proposed unit layout is sufficiently flexible to allow units to be combined with minimum changes where demand requires. It is anticipated that this, along with the existing 3 bedroom apartments, will ensure a good overall unit mix of 1, 2 and 3 bedroom units across the site, which is responsive to market demand and in keeping with the recommendations of the social plan."</i></p>
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			<p>It is accepted that the social mix can be taken across the entire 'concept plan' site. It is considered unlikely that units will be combined in the future once strata subdivision has occurred. Nevertheless it is agreed that across the entire site there is a reasonable unit mix.</p> <p>The other design based recommendations of the social plan by Heather Nesbitt involve enhancing public safety, equitable access and enhancing public open space. The development achieves these latter requirements.</p>
12. Site contamination and remediation	<p>A Remediation Action Plan (RAP) will accompany any Project Application(s) in accordance with the recommendations included in the Phase 2 Environmental Site Assessment prepared by HLA-Envirosciences. The RAP will detail how the site is to be cleaned up including the excavation and disposal offsite of any contaminated material.</p>	<p>A Remediation Action Plan will accompany any relevant Project Application(s).</p>	<p>The original application was deficient in that a RAP had not been prepared. This was subsequently submitted upon request and has been reviewed by Council's Compliance Services Unit (CSU). The RAP is considered acceptable and compliance with the RAP can be addressed as a condition of consent.</p>
13. Geotechnical conditions	<p>Subsequent Project Application(s) will be required to incorporate the recommendations included in the Geotechnical Investigation prepared by Coffey Geosciences Pty Ltd.</p>	<p>As part of the relevant Project Application(s).</p>	<p>The site is not identified as affected by mine subsidence under Council's planning controls. As it is not within a proclaimed mine subsidence district it is not integrated development pursuant to Clause 91 of the EPA Act 1979. However, the submitted geotechnical report indicates that mine workings were encountered during construction of the adjoining project. Both the geotechnical report</p>

			as part of the concept plan and that under the current application do not raise any issue that would preclude the development but do recommend further testing once the site is cleared. This is considered reasonable given the difficulties that would be evident with conducting further testing at this stage with existing structures in place. This aspect can be addressed by conditions of consent.
14. Site infrastructure and services	Detailed site infrastructure and services reports will be required to accompany any subsequent Project Application(s) to demonstrate how the development can be adequately and properly serviced. The report will include an outline of any necessary augmentation of existing services.	As part of the relevant Project Application(s).	The plans have been stamped by Hunter Water Corporation in terms of water and sewer services. Other services would be addressed as conditions of consent. Considered acceptable in this regard.
15. Section 94 contributions	<p>To meet the demand for additional public facilities and services generated by development on the site contributions will be made in the form of works in kind, material public benefits and/or the payment of a monetary contributions to a monetary value equal to that otherwise payable in accordance with the relevant Newcastle City Council Section 94 Contribution Plan.</p> <p>The following public facilities and services proposed in this application are to be offset against any otherwise payable monetary Section 94</p>	As part of the issuing of the Construction Certificate for each Project Application(s).	<p>The project would be subject to the Section 94A Plan which requires contributions at a rate of 2% of construction cost (Part B – Newcastle City Centre).</p> <p>The submitted registered quantity surveyors report calculates a total development cost of \$50,735,300. At a rate of 2% equates to a contribution payable of \$1,014,706.</p> <p>Traffic advice has recommended improvement works within Shortland Esplanade including footpath upgrades, street tree planting and</p>

	<p>contributions that arise in relation to this or any subsequent Project Application(s):</p> <p>New street tree planting along King and Watt Streets, and Shortland Esplanade;</p> <p>Publicly accessible through site link from Pacific Street to Shortland Esplanade and from King Street to Shortland Esplanade;</p> <p>A widened footpath along the northern side of Shortland Esplanade; and</p> <p>Appropriately located pedestrian crossings from the site across Shortland Esplanade to the foreshore.</p>		<p>a pedestrian crossing due to increased pedestrian traffic to access Newcastle Beach. Council would typically require such works above and beyond any Section 94A contribution. However, as per the concept plan approval this work may be offset against the Section 94A contribution. At this stage the precise design details and cost of such works is unknown, with such works being the subject of a future Section 138 application under the Roads Act. Accordingly at this stage the full Section 94A levy should be imposed with any reduction being negotiated between Council and the applicant once design details/cost is established. Any adjustment to the section 94A levy would need to be adjusted via a Section 96 application to modify consent.</p>
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Site Design Principles

Built Form

- Street wall heights and upper storey setbacks

The guidelines require upper level setbacks of a minimum of 4.5m. The Plan Showing Proposed Concept Area and Revised Building E, dated 29 October 2012 override these guidelines and effectively provide for an upper level setback well in excess of 4.5m. The only exception would be the eastern corner where the setback reduces due to the curving nature of Shortland Esplanade. In any regards there is a clear delineation between the lower building adjoining Shortland Esplanade and the northern tower element and the setbacks considered acceptable.

- Building setbacks

The original site design guidelines (and support control drawings dated 8th December 2006) required a minimum front setback of 2.5m from Shortland Esplanade at ground level. The building is proposed to be aligned to the front boundary along Shortland Esplanade which

was non-compliant. The applicant has addressed this issue through the modified concept plan approved 9 April 2013 which now requires a 3m setback from the edge of kerb. The proposed development complies with this amended setback, providing for the required 3m wide footpath area.

The required setbacks from No. 67 Watt Street (Arvia apartments) which range from 6.5m to 10.3m have been achieved. Appendix 21 of the SEE contained a 'Landcom Agreement re Arvia Set Back' which provided for setbacks in excess of the guidelines. The proposal also complies with these agreed setbacks.

- Building separation

The guidelines require building separation in accordance with the Residential Flat Design Code. This is discussed in greater detail below under consideration of Condition 5 – Building Separation. Building separation is considered acceptable.

- View sharing

The site design guidelines (as amended 9 April 2013) state *'The design, height and bulk of proposed buildings within the building envelopes should incorporate the sharing of views through the location and orientation of buildings and land uses, gaps between buildings, placement of windows, balconies and open space.'*

The orientation and position of the building is constrained by the approved envelope (footprint). It is noted that it does not extend to the east of the envelope with this area being used as the forecourt area. This would provide for improved southerly views from 'The Royal' development to the north. The landuses within the building itself have no affect on view sharing. The location of decks and windows would not affect view sharing. While some floorspace could possibly be redistributed from Southern Building (reduced height or gap) it could only reasonably be placed into the eastern portion of the envelope. This would compromise the forecourt area which is considered a highly positive design aspect of the proposal and would then likely compromise southerly views from 'The Royal'. On balance, given the constraints of the approved envelope, the view sharing is considered reasonable. Further discussion on view sharing is contained under submission consideration, Section 7d) of this report.

Building Character

- Building articulation and façade treatment

The guidelines require long lengths of building frontages to be minimised through use of breaks in buildings and modulation of facades.

The eastern elevation on the original submitted proposal was effectively unbroken for its entire length. Council's constituted SEPP 65 Panel the Urban Design Consultative Group (UDCG) under consideration of built form and aesthetics indicated that there needs to be a clearer delineation between the northern and southern building, indicating that a recessed vertical section (i.e. a break in the building façade) may assist in breaking up this unrelieved expanse. The amended plans have incorporated a vertical recessed section that provides a clear delineation between the northern and southern building. The façade treatment of the amended design also provides for improved articulation and modulation. The amended proposal is considered to be acceptable.

- Active frontages and pedestrian amenity

The guidelines do not require an active frontage (i.e. commercial use) or pedestrian awning to Shortland Esplanade and the development is considered acceptable in this regard. It is noted that the Hotel at lower ground level and hospitality area (carpark level) provide an active frontage to the forecourt area and pedestrian link through the site respectively.

- Vehicle access and carparking

The guidelines indicate preferred vehicular access from King and Watt Street. The amended guidelines discourage vehicular access from Shortland Esplanade, stating:

'Any proposal for a vehicle access point on Shortland Esplanade must demonstrate that the vehicle access point would not result in adverse traffic impacts and sight lines are adequate.'

The development incorporates three vehicle access points. One from King Street (passing behind the David Madison Building) and two from Shortland Esplanade. One of the Shortland Esplanade access points provides direct access into the car park while the second, further to the east, provides access to a porte-cochere. The access arrangements have been considered by Council's Senior Traffic Engineer. A porte-cochere to service the hotel is considered desirable, however the western driveway would ideally be deleted with direct access from the porte-cochere area into the basement. This would also have the advantage of avoiding additional traffic movements/conflict, as cars leaving the porte-cochere need to exit left only (due to poor sight lines) and circle the block to re-enter the basement car park. This issue was raised with the applicants who have responded that providing this direct access would be difficult due to existing site constraints and additional access points would improve overall traffic distribution across the road network.

It is noted that there already exists an access from Shortland Esplanade and the porte-cochere only represents a minor intensification to this. While a single access would be desirable the two access points is considered acceptable in terms of traffic impacts and as the applicants suggest would assist in dispersing some traffic impacts. However, the driver sight lines at these access points are poor and accordingly movements need to be restricted to left-in left-out only. This has been addressed as a condition of consent.

All car parking is effectively screened from the public domain as required under the Site Design Guidelines.

- Heritage and archaeology

The guidelines require that height, setbacks and massing of buildings adjacent to the heritage listed United Services Club (fronting Watt Street) provide an appropriate transition of scale. This guideline would be more relevant to redevelopment along King Street. The subject building complies with the height limits under the concept plan and is considered acceptable.

The guidelines require a site interpretation strategy to be prepared as part of any major development proposal on the site. The original application was not supported by a site interpretation strategy, which was therefore requested from the applicant. The applicant has advised:

"An Interpretation Strategy for the former Royal Newcastle Hospital Site was prepared on behalf of Mirvac Projects Pty Ltd in December 2007. The Interpretation Strategy proposed to carry the memories of the Royal into the future via the collection, archiving and display of old records and materials, oral history, photography and commemorative works of art."

The applicant also submitted a copy of the Interpretation Strategy. It is considered that no further strategy is required.

- Roof and skyline elements

The guidelines require that plant, lift towers and vents be designed as an integral part of roof form. The proposed rooftop plant is considered acceptable in scale and the simple rectangular form is considered acceptable in the context of the heritage conservation area.

- Materials and colours

The guidelines require that finishes complement buildings in the locality, including sandstone and granite, timber, brickwork and render with colours in warm earth tones.

The submitted colour/materials schedule indicates appropriate materials and colours in warm neutral tones that would complement the existing development within the area.

- Public domain

The forecourt area is semi-public domain and is considered of an acceptable design quality in terms of landscaping and CPTED principals.

- Through site links

The development maintains and enhances the existing through site link.

In summary the proposed amended development is acceptable in relation to the Site Design Guidelines.

Condition 2 Floor Space Ratio

Condition 2 of the Concept Plan (as amended 9 April 2013) is:

The redevelopment of the subject site shall have a maximum GFA of 40,716m².

This figure represents the entire allowable GFA under the concept plan. To determine how much GFA is available for the subject development the Stage 1 (Mirvac) needs to be subtracted. The SEE indicates that the part of the site already developed (Mirvac) represents 25,222m². This figure is contained in the description of approved development for Stage 1 (approval MP07_0133). Condition B7 of this approval required confirmation by way of registered surveyor that the GFA had not been exceeded. A letter was submitted to the PCA by Mirvac dated 19 March 2010 indicating this had been satisfied but no surveyors report appeared to be submitted. Nevertheless it was established by the PCA that this was acceptable at the time and it would not be unreasonable for Council to accept this. Additional information was nevertheless sought from the applicant. The applicant subsequently submitted plans and area calculations for Stage 1A and 1B prepared by Denny Linker & Co Consulting Surveyors that were prepared in 23 December 2008. The applicant advised:

"Our understanding is that the drawings and table of calculations dated 23 December 2008 provided to us by Mirvac and included in Attachment 2 of our letter dated 24 October 2012 were provided by Denny Linker and Co Consulting Surveyors to demonstrate compliance with condition B7."

The area calculations as submitted indicate a GFA of 25,092.5m² for Stage 1A and 1B, well within the maximum of 25,222m² as permitted under this consent.

Based upon the figure of 25,222m² there remains **15,494m²** of GFA available for the subject proposal.

The applicant has submitted a set of plans and area calculations on 5 February 2013 for the proposed development. These calculations (and the SEE) indicate that the two new buildings have a combined GFA of **14,619m²** (northern building 11,150m² and southern building 3,469m²). The applicant's calculations are considered sound other than that they have not included the 'loggias' within the northern building as GFA. These loggias have a fixed enclosing wall over 1.4m in height and are therefore by definition included in GFA. This position has been confirmed under the Land and Environment Court judgement dated 16 January 2013 of Haralambis Management Pty Ltd V Council of the City of Sydney. The loggias at Levels 7 to 14 inclusive represent another 870m² of floor area. Therefore the total GFA is **15,489m²** (14,619 + 870), just within the maximum GFA. It is noted that the screens on the southern building are retractable and therefore not included as GFA.

The definition of GFA under the Concept Plan excludes '*car parking to meet any requirements of the consent authority (including access to that parking)*'. The development provides for an excess of 34 car parking spaces when having regard to the parking requirements of the Newcastle Development Control Plan (DCP) 2012 for the development itself. This excess parking equates to an additional 468m² and would usually be included in GFA therefore causing the proposal to exceed the maximum GFA. However, development consent DA 2012/201 for alterations and additions and change of use to office space applying to the adjoining David Maddison building (Lot 12 DP635003) required 69 car parking spaces within the multi-storey car park, part of which is on the subject site. The 34 excess parking spaces will in part meet this requirement and therefore also constitute 'car parking requirements of the consent authority' and therefore are excluded from the GFA calculations. It should be noted that the excess parking is below street level and does not add to the perceived bulk and scale of the development.

In summary the proposed development complies with the maximum GFA under the concept Plan.

Condition 3 Building Envelopes

The development complies with the building envelope as amended 9 April 2013, other than a small projection on the west side of the southern building at levels 4 to 8. This corner projection encroaches approximately 1.2m outside the envelope (as can be seen on the plans **Appendix B**). The projection is considered minor and does not result in any adverse bulk and scale issues or any adverse amenity impacts such as view loss or overshadowing. The proposal is considered satisfactory in this regard.

Condition 4 Building Heights

Objection was raised to the proposed development on the grounds of excessive height, particular that it exceeded the height limit of 35m under the Newcastle City Centre Local Environmental Plan (NCCLEP) 2008.

The proposed northern building is approximately 57m high and does not comply with the NCCLEP 2008; however the height controls under the Concept Plan take precedence.

The maximum height limit for the northern building under the Concept Plan is 18-storey / RL70.2 with an additional 5.8m allowable for plant.

The proposed height of the northern building is 17 storey (including 2 levels of above ground car parking) at RL 68.38 (excluding plant). The plant is approximately 3.8m high. Therefore the northern building complies.

The maximum height limit for the southern building under the Concept Plan is 9-storey / RL 49.75. An additional 5.8m is allowable for plant.

The proposed height of the southern building is 9-storey at RL 49.75, with plant of 3.75m. Therefore the southern building complies.

The proposal is considered satisfactory in relation to height.

Condition 5 Building Separation

The concept plan requires building separation to comply with SEPP 65. The SEPP itself does not include any separation distances however there is reference under the SEPP to the Residential Flat Design Code (RFDC) which contains recommended separation distances.

The SEE indicates that the recommended separation distances of 18m under the RFDC between the northern proposed building and the existing 'David Maddison Building' (to be retained) are not achieved, with a distance of approximately 13.9m. The applicant has argued in this case that less sensitive land uses face each other, being office (adjacent 'David Maddison Building') and the proposed hotel, and that furthermore the design of the northern building has living areas orientated away via recessed sections.

The RFDC separation distances apply between residential uses and have limited application to commercial situations. The applicant's merit argument is reasonable in the circumstances as the submitted plans identify that the 'David Maddison Building' (even with approved additions) will, in terms of height, be opposite the hotel component of the northern building. The residential levels of the northern building are higher than the 'David Maddison Building'. Having regards to the lack of sensitive windows / balconies in the hotel facing to the west the proposed separation between the 'David Maddison Building' and the proposed hotel is considered acceptable.

The SEE has not addressed the separation distances to the 'Arvia' apartments to the west. Above 5 storeys the RFDC requires 18m separation between habitable rooms/balconies and 13m between habitable room/balconies and non-habitable room. The western façade of the southern building (facing 'Arvia') is devoid of openings, therefore non-habitable. The required 13m separation is achieved. Council raised concern with the original submitted design in that the balconies of Unit 7 (on each level) had no western screening thereby compromising the 18m separation between habitable areas. The amended design has addressed this by extending the blade wall or providing screening to all decks and is considered acceptable.

Appendix 21 of the SEE contains a 'Landcom Agreement re Arvia Set Back'. This is an agreement from the landowner of the time (Landcom) accepting certain setbacks on the subject site. This was presumably to protect the amenity of the Arvia apartments given that they are built at minimal setbacks to the eastern side boundaries. A review of the proposal against these agreed setbacks identifies that it complies with the agreed setbacks.

In summary building separation is considered acceptable.

Condition 6 Car parking

The concept plan requires compliance with Newcastle DCP 2005. The DCP 2005 has now been superseded by Newcastle DCP 2012 and has been used as the basis for the parking calculations. It is noted that the parking requirements did not differ between the two plans.

The Newcastle DCP 2012 specifies the following car parking rates:

- Non-residential (i.e. Hotel in this case) – 1 space per 60m² GFA
- Residential
 - Small (<75m² or 1-Bed) – 0.6 space per dwelling
 - Medium (75m² – 100m² or 2-Bed) – 0.9 space per dwelling
 - Visitor – 1 for the first 3 and 1 for every 5 thereafter
 - Bicycle – 1 space per dwelling (unless separate storage provided). Visitor bicycle parking at 1 space per 10 dwellings.
 - Motorcycle – 1 space per 20 car parking spaces
- Delivery area – In this regard the forecourt area to the Hotel provides sufficient delivery area.

Vehicle parking

Hotel – 5582m² GFA requires 93 spaces

Residential –

- 48 x 2-Bed requires 43.2 spaces
- 102 x 1-Bed requires 61.2 spaces
- Visitor parking requires 30.4 spaces

Total parking requirement is 228 spaces

The development site itself contains 262 spaces and therefore has sufficient capacity to service car parking demand, with an excess of 34 spaces.

Development Consent DA 2012/201 for alterations and additions and change of use to office space applying to the adjoining David Maddison Building (Lot 12 DP635003) required 69 car parking spaces within the multi-storey car park, part of which is on the subject site. The 34 excess parking spaces will in part meet this requirement with another 33 spaces required.

In this regard it is noted that the existing multi-storey car park (that will join to Building South) actually spans across a number of allotments, including the subject site itself (Lot 5 DP1145847), the David Maddison Building site (Lot 11 DP579257) and Lot 12 DP635003 (being the stratum upper levels of the United Services Union car park). Both of these adjoining sites are owned by the applicant. When accounting for the total parking provision within the subject site and the total multi-storey car park provides a total of 304 parking spaces. This satisfies the total combined parking demand for the subject development and the David Maddison Building development of 297 parking spaces.

Bicycle parking

The development requires a total of 150 bicycle parking spaces for units and 16 spaces for visitors. The basement currently proposes 135 storage compartments which is 15 short. However, it is evident that there is sufficient room within the basement areas to accommodate additional storage compartments and accordingly this matter can be

addressed by way of a condition of consent. The basement contains a communal bicycle storage area and racks at ground level for visitor bicycle storage.

Motorcycle parking

The development requires a total of 12 motorcycle parking spaces and provides for 14 spaces.

Consideration should also be given to the proposed staging, specifically whether sufficient parking will be available at Stage 1.

- Stage 1 – Is for the construction of the northern building, incorporating the hotel, 32 x 2-Bed and 63 x 1-Bed apartments. This requires 179 car parking spaces (93 for hotel and 86 residential), 105 bicycle parking spaces and 9 motorcycle parking spaces.

Stage 1 development provides for 219 car parking spaces, 120 storage compartments for bicycle storage (plus visitor bicycle parking), and 9 motorcycle parking spaces. It therefore provides sufficient car parking (40 excess). The north building basement parking combined with the existing multi-storey car park would also satisfy the David Maddison Building parking. The bicycle storage can be addressed as a condition of consent and the motorcycle parking complies.

- Stage 2 – Represents the completed development (i.e. construction of the southern building which incorporates 16 x 2-Bed and 39 x 1-Bed (including studio) apartments). This requires 49 car parking spaces, 61 bicycle parking spaces and 3 motorcycle parking spaces.

Stage 2 development provides 43 car parking spaces, 18 storage compartments for bicycle storage (plus visitor bicycle storage), and 5 motorcycle parking spaces.

The parking shortfall of 6 spaces is absorbed by excess parking under Stage 1, bicycle storage can be addressed via condition and the motorcycle parking complies.

In summary the development satisfies the parking requirements of the Newcastle DCP 2012 both considering the total development (including David Maddison Building parking requirements) and when considered in individual stages. It also complies with motorcycle parking requirements and the bicycle parking shortfall can be addressed as a condition of consent.

Condition 7 Public Plaza

Not applicable to this application.

Condition 8 Design Competition

The proposal includes a building in excess of 10 storeys and therefore requires a design competition. Objection was raised to the proposed development on the grounds that an appropriate design competition was not undertaken.

The Design Competition Brief was endorsed by the Department of Planning and Infrastructure on 25 November 2011, as required under Condition 8 of the Concept Plan MP05_0062. The endorsed brief included a five person panel consisting of:

- Proponent: two members

- Planning compliance - Town Planner.
- Buildability and Construction Costs
- Architect

Council initially raised concern with the Design Competition Report in that only three of the five member panel appeared to have been involved in the competition assessment. The applicant has since clarified that the town planner and quantity surveyors input was sought in the assessment process to provide specialist advice in relation to compliance of the various proposals with relevant planning criteria and cost estimations respectively, even though they were not specifically involved in the selection of the proposal. Accordingly it is accepted that the five member panel was involved and that the design competition process did satisfy the requirements of the Design Competition Brief. The submitted Design Competition Report prepared by the panel's architect, Professor Lawrence Nield, identified that three proposals were assessed and recommended.

"The Panel unanimously recommended that the scheme by Suters best met the requirements of the brief for this important site and that Suters Architects be declared the winner and they be retained to develop their proposal further."

It is considered that the design competition process followed has satisfied the requirements of Condition 8 of the Concept Plan.

Condition 9 Section 94 Contributions

The proposed development is subject to a section 94A contribution pursuant to Council's Section 94A Development Contributions Plan 2009. The submitted registered quantity surveyors report calculates a total development cost of \$50,735,300. At the specified rate of 2% equates to a contribution payable of \$1,014,706.

Condition 10 Alignment to King Street

Not applicable to this application

Summary of compliance against Concept Plan

The amended proposal has now satisfied the requirements of the Statement of Commitments. The amended development is considered to be generally consistent with the Concept Plan, including compliance with the Site Design Guidelines.

7. Section 79C Considerations

As outlined previously Clause 3B of Schedule 6A of the Act sets out transitional arrangements which apply on the repeal of Part 3A. Subclause (2)f) states:

- (f) the provisions of any environmental planning instrument or any development control plan do not have effect to the extent to which they are inconsistent with the terms of the approval of the concept plan,*

The proceeding 79C assessment of the proposal against environmental planning instruments and the Newcastle Development Control Plan 2012 has been carried out on this basis.

(a)(i) the provisions of any environmental planning instrument

Newcastle City Centre Local Environmental Plan (NCCLEP) 2008

The application was lodged 17 May 2012. The Newcastle Local Environmental Plan (NLEP) 2012 was gazetted on 15 June 2012. Due to savings provisions under NLEP 2012 the former NCCLEP 2008 is the applicable LEP.

The site is zoned B4 Mixed Use Zone under the LEP. Residential flat building and tourist and visitor accommodation are permissible in this zone and considered to be consistent with the zone objectives.

An assessment against the NCCLEP 2008 provisions is at **Appendix F**. The development is considered acceptable in relation to the LEP considerations with any variations, such as height and FSR, consistent with the Concept Plan which takes precedence.

State Environmental Planning Policy 65 – Design Quality of Residential Flat Development

The application has been supported by the required documentation under Schedule 1 of the Environmental Planning and Assessment Regulation 2000, including a statement from the architect against the ten design quality principles, plans and montages of the buildings in the context of surrounds and landscaping design. The applicant has also submitted a colours and materials schedule (included in **Appendix B**).

The provisions of SEPP 65 require that the Consent Authority take into consideration the design quality of the residential flat development when evaluated in accordance with ten design quality principles.

In this regard, SEPP 65 also requires Council to consider the advice of the relevant design review panel concerning the design quality of the residential flat development. Council's design review panel, the 'Urban Design Consultative Group' (UDCG) have, reviewed the proposed development on two occasions. A copy of the UDCG meeting minutes is contained at **Appendix E**. The UDCG considered the originally submitted proposal and a number of preliminary amended elevations. The UDCG has not considered the current amended design, however the design is considered to be a product of the Groups detailed advice. The UDCG was generally supportive of the proposal with relevant discussion under the principles below.

- Principle 1: Context

The UDCG noted that the proposal is largely a product of the Concept Plan.

"The placements of the proposed buildings, their height, street setbacks, etc., have all been pre-determined by the Approved Master Plan. This Master Plan took into consideration not only the development potential of the Royal Hospital site, but also critical factors such as the overshadowing of Newcastle Beach, protection from the harsh, ocean-front environment and the opportunity to develop facilities along the beach front which were largely lacking within Newcastle. Another important consideration of the Master Plan was that the footprint and location of each of the buildings, considered the views so that no individual building, as far as possible, obstructed the views for the other buildings on the site. The only major change from the Approved Master Plan is the proposed retention of the David Maddison Building, which had been intended for demolition and replacement under the Master Plan by a taller building. The Group

strongly supports the building's retention as a significant piece of modern architecture in the city."

The proposed development is considered acceptable in the context being compatible with the Concept Plan as modified.

- Principle 2: Scale

The UDCG was supportive of the massing and scale of the development but suggested that a physical model of the development would be of assistance in assessing the impact of the proposal.

The applicant has submitted a 3D electronic model of the proposal showing the proposal within the context of the surrounds, however the applicant has not presented the model to the UDCG. In any regard the scale of the development is a product of the Concept Plan approval and is therefore considered acceptable.

- Principle 3: Built form

The UDCG was generally supportive of the original proposal's built form noting that it was primarily a product of the Concept Plan but indicated that clearer delineation between the uses would be desirable. The Group advised:

"The building has varied facade treatments to express the different internal accommodation. The hotel portion on the lower floors has been given a different façade treatment to the residential areas on the upper floor. Above the seventh storey, two levels of the building have been given a more glazed treatment, to form a visual break between the lower section of the building and the upper storeys. Above this two-storey portion, the residential component of the North building extends to its full height.

While the design strategy of expressing the different functions of the building is supported, the images show that the South building containing only residential functions has been given much the same treatment as the hotel. The Applicants are encouraged to give further consideration to the South building, with a façade more consistent with this strategy of giving unique expression to distinguish the residential and hotel uses.

The Applicants stated that the final selection and detailing of materials and colours for the external of the building is still on going. Various options are being explored and tested within the overall budgeting of the project. The building is likely to be a mixture of pre-cast concrete elements, sandstone cladding, glass louvres and glass balustrades for the Decks. The Group requested the final selections of colour and materials be presented at the same time as the updated photomontages, etc., to enable proper consideration of the built form."

Based upon this advice it was evident that the original submitted design required further refinement. As previously discussed under the Concept Plan considerations the associated Site Design Guidelines also require large expanses of façade to be relieved by way of breaks. This aspect of the development certainly required further resolution. The applicant submitted a number of preliminary design solutions to address the resolution between the different functions and the division between the buildings. The options were considered by the UDCG.

“Of most concern was the junction between the Hotel element and the Southern apartment building, which included a glazed balustrade component which, in plan, turned back towards the Hotel façade by way of a faceted curve. While the stated intent of marking the junction between the two buildings and functions with a recessive element was supported, the protrusion of the apartment decks beyond the line of the hotel façade was considered to be counter to this objective. The full glazing of the balustrades at this point was also considered to be undesirable, however the overall concern about the form would not be simply addressed by making the balustrades more solid. The Group was of the view that the manner in which the buildings “cranked” in plan at this point required further design development, which included a physical recess at this point. This would involve the removal of at least part of the balcony of the apartments adjacent to the ‘crank’.

While differentiating the treatment of the hotel façade from the residential façade components was supported, it was suggested by Group members that the façade would be assisted by greater consistency between the apartment component of the northern building and the southern building apartments. The Group recommended in selecting materials colours and finishes generally, a cohesive overall development was desirable.

In respect to the expressed rectangular large-scaled frame proposed for the Hotel and Southern buildings, the Group was advised that the projected frame element which forms the rectangular patterning protrudes only some 300mm beyond the surrounding facades. There was some doubt expressed by the Group that this would be sufficient to make this element readily legible.”

The applicants have submitted the final amended design (**Appendix B**) to address these issues. It is noted that the final design has not been considered by the UDCG. However it is considered that the amended design has addressed the outstanding matters raised by the Group. Principally the design now provides for a clear delineation between the north and south buildings by way of a vertical recessed section as suggested by the UDCG. The distinction between the hotel and residential uses has also been resolved while achieving an overall cohesive development. The framed ‘blade’ elements of the hotel façade have been deepened to approximately 2m to further emphasis this architectural feature. It is considered that the built form is now acceptable.

- Principle 4: Density

The UDCG raised no concern with the density provided it complies with the Concept Plan. Density was discussed under Section 6 of this report. The proposal complies with the maximum GFA under the Concept Plan.

- Principle 5: Resource, energy and water efficiency

The UDCG was supportive of the proposal in this regard.

“The Applicants have advised that 70% of the units achieve the required exposure to sunlight in accordance with SEPP 65. This has been achieved despite the difficulties of the orientation-facing majority of units East and South. The Applicants have provided a number of “through” apartments, so that there is frontage to both the West and East sides of the building. The Applicants have also included other measures such as provision of sunscreens to the Western façade, promotion of cross-ventilation, control of the harsh, strong winds with

glass louvres to balconies. In their submission, the Applicants have also stated that the units will be fitted with energy efficient appliances and light fittings, etc., in accordance with the normal BASIX requirements."

The rules of thumb of the RFDC recommend living rooms and open space of at least 70% of apartments receive at least two hours of direct sunlight (allowing for dense urban area) between 9am and 3pm mid winter.

The applicant's RFDC statement suggests that of the 150 apartments at least 105 will receive 2 hours of direct sunlight between 8am and 3pm. This represents 70%. However, this does not refer to living areas or open space and the sunlight must be received from 9am not 8am under the RFDC.

A review of the plans would suggest that 70% of units would receive 2 hours but not necessarily the living areas. This is discussed further under RFDC considerations and is considered acceptable in the circumstances of the case.

- Principle 6: Landscape

It was acknowledged by the UDCG that the site and its orientation are very exposed to salt-laden winds, which severely limit the capacity of even the most salt tolerant species to thrive. The Group suggested that wind studies for the courtyard and entry spaces would be desirable to facilitate and inform design development. The species selection was generally supported, and the strategy of providing a secluded garden entry on the western side of the North building where larger trees are more capable of viability was supported.

It was also suggested that an assessment of wind loads be made on the two proposed Cook Island Pines to ensure that soil depths are sufficient to retain the mature trees in extreme wind events.

While the proposed 'whistle screen' was considered to be a potentially interesting inclusion, the Group suggested that testing on site would need to be undertaken to ensure the prevailing strong winds do not produce noise levels that can become an annoyance.

The UDCG did request additional information:

"Further montage images are required of the courtyards and entry spaces, which will allow a better understanding and appreciation of the proposed open landscaped spaces. The inclusion of proposed landscaped spaces on the existing Mirvac scale model would be very helpful in this regard."

The applicant has questioned this further information requirement given that they have met their submission requirements in accordance with the Newcastle DCP 2012, by providing landscaping plans and report prepared by a landscape architect. It is agreed that further montages would not provide significant benefit to the assessment. The proposed landscaping is designed by a landscape architect and is considered appropriate, providing good amenity to the western side entry areas and the eastern forecourt area. The landscaping is considered acceptable provided sufficient soil depth is provided to support growth. This has been addressed as a recommended condition of consent.

The applicant has submitted a wind impact assessment which identifies pedestrian amenity would be acceptable.

A condition of consent has been recommended to address potential noise issues with the 'whistle screen'.

- Principle 7: Amenity

The UDCG advised:

"Generally, the majority of the units provide satisfactory amenity. As many units as possible have been located to obtain the attractive views over the beach and ocean. The Group had concerns with the units located on the lowest level of the South building, particularly at the Southern end of the site. These units appear to be at, or very close to, footpath level in Shortland Esplanade, and have been set forward to the street boundary. This creates obvious problems of security, privacy, etc. It was suggested that these units be reviewed and appropriate measures provided to ensure satisfactory living conditions. Consideration could also be given to commercial uses for these at-grade spaces, given their attractive aspect and proximity to the street."

The amended design provides for a low masonry wall to separate the front courtyard space from the footpath area and building entryway. Furthermore the amended design incorporates retractable privacy screens to the deck. While the amenity of these units near the street level is not ideal these design features have improved them to an acceptable level.

The UDCG advised:

"A number of units on the West side of the building may require further consideration of the amenity provided (Unit 6, South Building and Units 9, 10, 11 and 12, North Building). The floor plans of these units are irregular, making furnishing difficult and with Kitchen and laundry facilities quite limited. Consideration might be given to possibly amalgamating Units 11 and 12 into a single, two Bedroom units or single Bedroom unit with Studio, which would have much better opportunity for functional living arrangements."

The applicant has responded:

"Contrary to the UDCG comments, these present as compact yet functional units."

Having regards to the RFDC guidelines the unit depths are considered sufficiently shallow to provide adequate solar access. The amended plans have also increased the deck sizes to a more functional area and dimension. While the floor layout is somewhat irregular they are considered to still be reasonably functional.

The UDCG expressed concern regarding the entrances to both apartment buildings, in particular the south building.

"Greater consideration needs to be given to security, weather protection and definition of the Entrances to enable visitors to find individual apartments. The Entrances are not highly visible from the drawings provided and protection from the elements appears less than can be achieved."

The Group suggested that a wind study for the Entrances to the apartments, the landscaped forecourt and Hotel entry would be highly beneficial. A wind study could indicate subtle, but significant improvements in the control and deflection of winds, to improve the access to buildings and protection from the elements for both the occupants and the surrounding spaces."

The applicant has responded:

"The design sought to have the entrances to the rear acknowledging the harsh environment on Shortland Esplanade. In the case of the southern building, landscaping and signage will address the visibility of the entry. In the case of the northern building, a secure landscaped area at the rear with controlled lobby entrance will allow weather protection and safe access for residents."

The entrance to the northern building consists of a secure 'tunnel' type entry area that passes through the building to the western side. A landscaped pedestrian area then leads to the two lobby areas. It is agreed with the applicant that this arrangement would be quite functional allowing residents to escape the harsh coastal winds. It is noted that the landscaping within this area is of a high quality, including proposed outdoor showers.

It is agreed with the UDCG that the entry to the southern building was poorly resolved. However, the amended plans have provided more tangible and secure pedestrian access to this building. It is now considered acceptable.

The submitted wind study identifies that downwash is expected in this area but that pedestrian amenity will be acceptable.

The Group also raised the issue of circulation alternatives available to residents when the lifts are being serviced.

"Opportunities should be explored so that a link at upper levels can be provided for alternative lift services for the residents. The Applicants are currently considering the possibility of making the hotel lift available for residents during these circumstances."

The applicant has responded:

"These details will be considered in the detailed design/hotel operation agreements."

It is agreed with the applicant that this may be difficult to achieve given the different land uses within the building, and in any regard it is not essential to the operation of the building/s.

In relation to storage compartments for the residential units the UDCG advised:

"Storage for larger bulky items of the residents such as sporting equipment, etc., has been provided in the basement. The extent of storage in relation to the number of units has not been advised."

The applicant has advised:

“The submitted DA drawings currently show 135 store rooms provided in the basement parking area. In addition, 12 units will have tandem basement parking spaces, creating the ability of future purchasers to use one of the parking spaces for storage if required.”

The RFDC recommend at least 3m³ storage in addition to kitchen cupboards and wardrobes. The basement car park provides some 135 storerooms which is slightly deficient for the 150 residential dwellings proposed. However, it is evident that there is sufficient area within the basement to make up the shortfall. This has been addressed as a recommended condition of consent.

The UDCG suggested that a drop-off area be provided for the southern building:

“Consideration should be given to vehicle set-down area at the Entrance to the South building. The use of the Hotel Porte Cochere for this purpose may prove unsatisfactory due to the distance involved.”

The applicant has responded:

“No vehicle set down is proposed at the entrance to the southern building. It is proposed to use the Hotel Port Cochere for this purpose.”

Council’s Senior Traffic Engineer has not raised set down area as an issue in this regard. The size of the southern building is not considered to warrant a designated drop off area in lieu of the on-street parking that would be lost.

- Principle 8: Safety and security

The UDCG advised:

“The Group understood the rationale for the location of the apartment building Entrances on the Western side of both the North and South buildings.

While this location gives better weather protection, it also raises the issue of security with the absence of the usual street surveillance. The Applicants undertook to consider the entrance sequence for both buildings in more detail.

As previously mentioned the Group questioned the security and amenity of the Ground Floor units of the South building and requires further design refinement.”

The applicant has responded:

“Security and entrance sequence to be dealt with in the detailed design/operation of the building.”

The security to the rear of the northern building can be protected via security swipe cards or the like through the entrance area off Shortland Esplanade. Likewise the amended plans now provide for secure access for the southern building. This has also been addressed as a recommended condition of consent.

The security to the ground floor (Unit 1) apartment is somewhat more problematic being located close to street level. The amended design provides for an additional wall and retractable screening to the balcony. While not ideal it is considered to be acceptable in the context of the entire development which is considered to generally provide good security.

- Principle 9: Social dimensions

The UDCG advised:

“The development comprises a mixture of 1 Bedroom and 2 Bedroom apartments. We understand that during the marketing phase, buyers will be given the option of consolidating apartments to create 3 Bedroom apartments. The Group was advised that the apartments will vary in price depending on the location within the building (East or West side) and the height within the building, so that a range of pricing is available.

The access to facilities in this location is considered excellent. The residents of this development will have access to the beach and ocean baths, the cafes and parks in the immediate surroundings. The Applicants have also advised that the residents will most likely be offered membership to use the hotel facilities. Due to the beachside location, the design includes outdoor shower facilities for use in conjunction with the beach, surfing, etc.”

The issue of social mix was considered in detail under Part 6 Concept Plan considerations of this report. In the context of the entire Newcastle Hospital redevelopment site the social mix is considered acceptable.

- Principle 10: Aesthetics

The UDCG advised:

“The Group was generally supportive of the design approach in terms of concept materials, colours, etc. This support is subject to further details being provided by the Applicants of the final selections for these items.

While it is difficult to be precise given the relatively preliminary nature of the drawings submitted, the articulation of the buildings, particularly where the North and South building change alignment, should be given further consideration. At present, the building simply “bends or folds” in Elevation as the façade angle changes to the street alignment. There is an opportunity to create a richer and more interesting expression or articulation of this change in alignment.

Also, as was noted earlier, if the different functions of the building are to be given differing visual expressions, the duplication of the hotel treatment for the residential portion of the South building is questionable. The Group suggests that further consideration be given to the Shortland Esplanade Elevation of the South building.

The residential Entrances as mentioned previously, also require further refinement and definition so that there is clear indication of the Entrances to these, significant residential developments. As there are two separate

residential components within the one development, the distinction between the two entrances is important.

The Group suggests that these matters of refinement are included in the further submission from the Applicants, which will include the model and the photomontages, with more accurate depictions of the actual building and materials.”

It is considered that the amended plans have adequately addressed the concerns raised by the UDCG. The amended design provides for clear delineation between the north and south buildings and the entrances to both buildings are also now clearly defined with secure access.

In terms of the overall development in general the UDCG advice concluded:

“The Group was generally quite supportive of this proposal, apart from the matters noted above which require further consideration.”

In relation to the outstanding matters it is considered that the amended design has now satisfactorily resolved these and that the proposal is generally acceptable in relation to the 10 Design Quality Principles under SEPP 65 other than the minor matters that will be addressed as conditions of consent.

The SEPP also requires the Consent Authority to take into consideration the publication Residential Flat Design Code (RFDC). The applicant has submitted a statement assessing the proposal against the RFDC. A detailed assessment against the RFDC is contained at **Appendix G**. The amended proposal is considered to be acceptable other than insufficient storage areas for the residential units. This has been addressed as a condition of consent.

State Environmental Planning Policy (Infrastructure) 2007

The application has been referred to Roads and Maritime Services (RMS) in accordance with Clause 104 and Schedule 3.

RMS advice has been received and recommends:

- *Section 117 (2) direction 3.4 (Integrating Land Use Development and Transport) under the Environmental planning and Assessment Act 1979, should be taken into account in relation to the provision of adequate access to public transport, especially for the elderly and opportunities for pedestrians and cyclist connections to existing facilities.*
- *A Construction Traffic Management Plan (CTMP) should be prepared including a Vehicle Movement Plan and Traffic Control Plan. The CTMP should be prepared with the intention of causing minimal impact to the operation of the road network during construction.*
- *The applicant should submit plans showing all turning paths for the design vehicle for all movements into and within the site.*

In relation to the first dot point the 117 Direction has the following objectives:

Objective

(1) The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:

- (a) improving access to housing, jobs and services by walking, cycling and public transport, and*
- (b) increasing the choice of available transport and reducing dependence on cars, and*
- (c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and*
- (d) supporting the efficient and viable operation of public transport services, and*
- (e) providing for the efficient movement of freight.*

The development is considered to generally satisfy these objectives by locating higher density residential development close to existing services and public transport (including bus and train station). It also provides for bicycle and motorcycle parking.

The second point will be addressed as a condition of consent and a Council Traffic Engineer has reviewed access arrangements and has advised that they are acceptable subject to conditions. The proposal is therefore acceptable in relation to the SEPP considerations.

State Environmental Planning Policy 71 – Coastal Protection

The site is located within the Coastal Zone.

Discussion of Clause 8 matters for consideration is outlined under **Appendix H**. The proposed development is considered acceptable in that it does not adversely affect the Coastal environment nor is it impacted by Coastal processes.

State Environmental Planning Policy (Urban Renewal) 2010

The development is consistent with the SEPP in that it supports higher density mixed use housing / commercial development.

State Environmental Planning Policy 55 – Remediation of Land

Contamination was discussed under Concept Plan considerations, Section 6 of this report. The submitted RAP is considered to satisfy the requirements of SEPP 55 and the site will be suitable for the proposed use.

(a)(ii) the provisions of any draft environmental planning instrument

There are currently no draft instruments applying to the subject site. However, the Newcastle LEP 2012 was in draft form at the time the application was lodged and the plan was gazetted in 15 June 2012. Under the current NLEP 2012 the site is zoned B4 mixed use within which both residential flat buildings and visitor and tourist accommodation are permissible with consent. The height and FSR controls are the same as the former NCCLEP 2008 (the applicable instrument for this application). The proposed development is considered acceptable in relation to the current NLEP 2012 having regards to the height and FSR non-compliance as this is justified against the Concept Plan which takes precedence.

The site is identified as being within the draft Newcastle Urban Renewal Strategy 2012. Concern was raised in a public submission that the proposal is inconsistent with the future desired landuse. The site is proposed to be zoned R4 High density residential. A residential flat building is a mandated permissible use under the standard instrument and tourist and visitor accommodation is also permissible within this zone under the current NLEP 2012 and would therefore likely to remain permissible under any future LEP instrument. Accordingly the proposed development is considered to be consistent with the intent of the draft Strategy.

(a)(iii) any development control plans

As outlined previously Clause 3B of Schedule 6A of the Act sets out transitional arrangements which apply on the repeal of Part 3A. The proposals compliance with the DCP is discussed below having regards to the relationship with the Concept Plan.

Royal Newcastle Hospital Site – Section 6.11

This section provides for the principal design guidelines for the subject site but as outlined above is effectively overridden by the Concept Plan which provides for heights, envelope (footprint), and maximum GFA. The Concept Plan also has associated Site Design Guidelines that were discussed previously in this report. The remaining applicable guidelines of the DCP are:

Section 6.7.2)a) Access Corridors

The DCP has a desired pedestrian pathway in an east west direction through the site. The applicant has argued that this is not possible due to the retention of the David Maddison Building. It is agreed that this is not realistic and given the relatively small size of the city block is not considered necessary to increase permeability in this way. The north-south pedestrian access has already been provided through The Royal development to the north and will be retained.

Section 6.7.3)e) Building Setbacks

The DCP requires a minimum setback of 3m from Shortland Esplanade. The Site design Guidelines under the Concept Plan (which takes precedence) have been amended to enable the building to be aligned to the front boundary and is therefore considered acceptable.

Subdivision – Section 3.01

The application proposes to Stratum subdivide the multi-storey car park to assign parking to the David Maddison Building. The subdivision is considered acceptable and would appropriately formalise parking arrangements. It is noted that “The Royal” development to the north also has similar stratum subdivision arrangements within its basement car park.

Safety and Security – Section 4.04

The application has been referred to the NSW Police Service for comments in relation to CPTED. Advice dated 31 July 2012 has been received. The police have raised no objection to the proposal and make some recommendations to improve safety around the site including:

- Vegetation – Avoid hiding opportunities.
- Lighting – Ensure appropriate lighting.
- Access control – Ensure access to car park and throughout building controlled through use of swipe cards or the like.
- Other – proposed whistle screen may create noise nuisance.

Having regards to the advice the landscaping is considered acceptable. Conditions have been included addressing matters relating to providing appropriate lighting, access control and noise control (condition H7).

Social Impact – Section 4.05

The Statement of Commitments in the approved Concept Plan required consideration of the recommendations of the social plan by Heather Nesbitt Planning. This was discussed under Concept plan consideration under section 6 of this report. The proposed development is considered acceptable from a social perspective.

Soil Management – Section 5.01

The proposal involves extensive excavations associated with the basement car park. This is considered acceptable in this regard. Appropriate conditions will be included for soil erosion.

Land Contamination – Section 5.02

Land contamination discussed under Concept Plan considerations under Section 6 of this report. The submitted RAP is considered acceptable and the land will be suitable for its intended use.

Aboriginal Heritage – Section 5.04

The Statement of Heritage Impact has identified that it is unlikely that any Aboriginal archaeology would be present.

An AHIMS web based search has been carried out and no Aboriginal sites or places were identified.

Heritage Items – Section 5.05

The Statement of Heritage Impact has identified that the proposal will unlikely affect any of the heritage items within the vicinity. This was discussed in further detail under Concept Plan considerations, Section 6 of this report.

Archaeological Management – Section 5.06

The Statement of Heritage Impact has identified that the proposal will unlikely affect any archaeological relics.

Heritage Conservation Areas – Section 5.07

The Statement of Heritage Impact has identified that the proposal will not adversely affect heritage conservation area.

Landscaping, Open Space and Visual Amenity – Section 7.02

The proposal is categorised as a Class 3 development under the DCP. In accordance with the DCP the application has been accompanied by a landscape concept plan and landscape design report prepared by a landscape architect. The provision of landscaping on the site is considered acceptable for the context and would complement the development. In particular the landscaping to the western side of the development is considered to be well resolved providing shaded access to the entry areas and incorporating outdoor showers.

Traffic, Parking and Access – Section 7.03

Parking requirements of the DCP have been discussed under Concept Plan consideration in Section 6 of this report. The proposal is acceptable in this regard subject to conditions.

Council's Senior Traffic Engineer has also considered traffic impacts and access arrangements, with the following comments made.

“Upon reviewing the traffic report and analysing the impacts of the additional traffic generated by this development on mid – block flows in surrounding streets it is concluded that the resulting increase is within acceptable limits. It is however noted that intersection performance will be the governing factor in this location rather than mid block flows when determining the performance of the local road network.

The traffic consultant has reviewed the operation of key intersections surrounding the site pre and post development using the Sidra Program. This analysis has confirmed that surrounding intersections continue to operate within acceptable limits having regard to the additional traffic generated by this development.

Upon reviewing the scale and type of the development proposed for the site and the resulting increase in pedestrian activity in this area it is considered appropriate that the developer improve the streetscape across the frontage of the site and improvements to pedestrian facilities. In this regard an appropriate condition has been recommended for this application requiring the applicant to reconstruct the footway across the frontage of the site in heritage flagstone pattern concrete paving with appropriate street trees and the provision of a raised marked foot crossing incorporating kerb extensions in Shortland Esplanade to cater for pedestrian activity between the site and Newcastle Beach.

The applicant will also be required to address regulatory signage across the frontage of the site.

In accordance with Council's NDCP 2012 this proposal is considered to be 'major new development' and accordingly requires a Green Travel Plan (GTP) to be submitted in support of this application.

The applicant has not submitted a GTP in support of this application. Accordingly an appropriate condition has been recommended for this application requiring the preparation of this plan. This plan is to incorporate the provision of end of trip facilities for staff associated with the hotel to encourage walking and cycling in accordance with 'Element 7.03.03 C. End of Trip Facilities' of Council's adopted Newcastle Development Control Plan 2012'.

Any subsequent approval of this development application would require a construction traffic management plan to be submitted to Council for approval prior to the commencement of site works. This plan is to detail installation of advance

warning signs for motorists in the public road reserve of construction traffic / truck movements. These signs are to be installed in accordance with AS 1742.3 – Traffic Control Devices for Works on Roads.”

A number of submissions raised concern in relation to traffic congestion within King Street, indicating that the development should gain access from other streets.

The Site Design Guidelines (as approved under the Concept Plan) indicates preferred vehicular access from King Street and Watt Street. Accordingly access from King Street is, in principle, a preferred access point. Nevertheless traffic conflict / impacts need to be acceptable. This aspect has been assessed by Council's Senior Traffic Engineer who advised:

“King Street between Watt and Pacific Streets is classified as a local road and in accordance with RMS guidelines for the functional classification of roads would typically carry mid-block peak hour flows of up to 250 vehicles per hour. The traffic report submitted in support of this application confirms that existing am/pm peak flows are in the order of 225 and 220 (both directions) respectively. The additional traffic likely to be generated by this development has been estimated, in accordance with RMS Guidelines, to be approximately 30 vehicles in the peak period. This equates to 255 vehicles am peak and 250 vehicles pm peak, within acceptable limits for a local road.”

A number of submissions raised concern in relation to site access conflicts within King Street between the laneway access behind the David Maddison Building and the adjoining 'Royal' development access. Council's Senior Traffic Engineer has reviewed the access arrangements and advised:

“The laneway access off King Street has been inspected and is considered to comply with AS 2890.1 – Parking Facilities in relation to width and driver sight lines.”

Council initially raised concern that the laneway behind the David Maddison Building had a 'pinch point' caused by a projecting staircase. The applicant subsequently addressed this issue by modifying the consent for the David Maddison Building to delete the external staircase in lieu of an internal staircase. The engineering advice concluded:

“To address possible conflicts in the laneway between vehicles and pedestrians associated with this development and the adjacent David Madison Building and appropriate condition has been recommended for this application requiring the preparation and of a 'Traffic Management Plan', such being implemented with occupation of the premises.”

In summary the proposed development is considered to be acceptable in terms of parking, access and traffic impacts.

Energy Efficiency – Section 7.05

A BASIX Certificate has been submitted and is acceptable.

Stormwater – Section 7.06

Council's Development Engineer has reviewed the submitted stormwater management plan and has advised that it meets the requirements of the DCP for detention and discharge requirements. The 60m³ rainwater harvesting tank is

appropriately sized in accordance with Newcastle DCP 2012 and is in excess of BASIX requirement of 40m³. Owners consent has been provided for required downstream drainage easements.

Water Efficiency – Section 7.07

The submitted stormwater plan satisfies water efficiency requirements and will also be addressed by standard conditions of consent.

Waste Management – Section 7.08

A waste management plan has been submitted and satisfactorily addresses demolition and operational waste matters.

In summary the proposed development is considered acceptable in relation to the Newcastle DCP 2012, subject to conditions.

(a)(iia) any planning agreement that has been entered into or any draft planning agreement that the developer has offered to enter into

Not applicable to this application.

(a)(iv) any matters prescribed by the regulations

The proposed demolition is considered to be acceptable.

In relation to the NSW Coastal Policy the proposal is considered satisfactory.

(b) the likely impacts of the development

Impacts upon the natural and built environment have been discussed within this report in the context of relevant policy, including the Concept Plan, LEP and DCP considerations. In addition the following impacts are considered relevant:

- **Overshadowing** - The shadow impacts are largely a product of the Concept Plan approval. Nevertheless the shadow diagrams submitted with the subject application demonstrate that the 'Arvia' would be completely unaffected by shadow by at least late morning (including from the 'David Maddison' building). Accordingly adequate sunlight access would be achieved in accordance with SEPP 65 (RFDC) requirements, which requires two hours of sunlight to at least 70% of units in mid winter. The overshadowing of adjoining buildings and the beach is considered to be acceptable.
- **Views** - Objection was raised to the proposed development on the grounds of potential view loss. Objectors believe the development will obstruct views from 'The Royal' (McCaffrey Wing) and suggest moving the building as far west and south as possible. Other objectors believe the proposed development would obstruct easterly views from the 'Arvia' apartments at 67 Watt Street. They believe the development does not satisfy the planning principles on View Sharing.

It is noted that Concept Plan 05_0062 was approved in January 2007, before the development application DA2009/0766 for the 'Arvia' was lodged (29 June 2009) and accordingly the impact upon views was effectively predetermined. The proposed buildings are cited as far south and west as could possibly be accommodated as per the current Concept Plan envelope (footprint) as a number of the objectors have requested. The applicant submitted, to the NSW Department of Planning and Infrastructure, a detailed view analysis to support their application to modify the Concept Plan. This analysis has been reviewed and it is agreed that the 'splaying' of the southern envelope effectively maintains view sharing as per the original Concept Plan. Given that the proposal sits within the approved envelope (footprint) under the Concept Plan as modified 9 April 2013 it could not reasonably be considered unreasonable in the circumstances.

Considering the NSW Land and Environment Court principle on 'views' as established under *Tenacity Consulting V Warringah Council*.

- Step 1 – Assess views to be affected – The ocean views are generally highly valued.
- Step 2 – Where are the views obtained – The views of the ocean from the 'Arvia' (which are of concern to the objectors) are gained across a side boundary. The principles of the Court acknowledge that side views are difficult to retain. This is particularly relevant in this case where the Concept Plan had already been approved prior to the affected 'Arvia' development application being lodged.
- Step 3 – Extent of impact – The ocean views from 'The Royal' would be relatively unaffected. The impact to the 'Arvia' to the west will be more significant. The majority of the 99 units within this development would currently have some ocean view. A review of the approved plans for this development would suggest that approximately 44 of these 99 units (44%) that currently have some ocean view towards the east (over the subject site) will lose that view. The remaining units would still maintain at least some of the ocean view. The affected units within the 'Arvia' are single aspect facing towards a side boundary and are therefore highly susceptible to view loss as adjacent sites are developed. It is therefore unrealistic to expect that all units could maintain ocean views.
- Step 4 – Reasonableness of the proposal – The proposal complies with the height, envelope and GFA of the Concept Plan. While some floor space could possibly be redistributed on the site (e.g. reduced height or gap between the north and south building) it could only reasonably be placed into the eastern portion of the envelope. This would compromise the forecourt area which is considered a highly positive design aspect of the proposal and would then likely compromise southerly views from 'The Royal'. Both these aspects are considered undesirable. Having regards to the controls on the site the proposal is considered to be reasonable.

On balance, given the constraints of the approved envelope, the impact upon views is considered reasonable and acceptable.

- ESD principles - A BASIX Certificate for the development has been submitted with the application and meets the statutory requirements of the SEPP, in relation to mandatory water and energy reduction. Compliance with the submitted Basix Certificate will be conditioned. The proposal in general supports ESD principles

by located higher density living in close proximity to services, thereby reducing travel demand and utilising existing infrastructure and services.

- Health and Safety - The proposed development is considered satisfactory in this regard. The proposal can comply with BCA regulations and can be addressed in documentation at Construction Certificate stage.
- Flora and fauna - The site is devoid of any vegetation and would have minimal impact on any flora or fauna in the area.
- Noise - Objection was raised to the proposed development on the grounds of the hotel use and the acoustic impacts upon neighbouring residential properties. The applicant was requested to submit an acoustic report to ascertain potential noise impacts from the proposed development on surrounding existing development and also any potential noise impacts upon the development itself. The applicant submitted a Noise Impact Assessment by Reverb Acoustics. The report makes a number of recommendations to manage potential noise impacts from the proposed Hotel bar / hospitality area, including:
 - Restricting entertainment to duos or trios with drum machine accompaniment.
 - Doors to the hotel/bar must remain closed when amplified entertainment is occurring.
 - All glazing is to achieve a minimum Rw33 rating, typically achieved with 6.38mm laminated glass or similar.
 - Management of patrons leaving the venue to avoid congregating outside.
 - Acoustically shield plant equipment.
 - Implement a noise management program after opening, including patrolling area, to ensure amenity of neighbours is maintained.

The report concludes:

“Providing the recommendations presented in this report are implemented, operation of the hotel/bar will not have any long term adverse noise impact upon the acoustic amenity of nearby residents. We therefore see no acoustic reason why the proposal should be denied.”

The applicant has clarified that the hospitality area will be part of the hotel and accordingly it is considered that the facility would be somewhat self managing as the potential for impacts upon the development itself are just as great as surrounding properties. Council’s Compliance Services Unit have reviewed the acoustic report and agreed with the recommendations of the report and that the proposal will be acceptable from an acoustic perspective. A condition of consent requiring compliance with the recommendations of the acoustic report is included in the Draft Schedule of Conditions, **Appendix A**. A number of further conditions have also been recommended, including restricting hours of the hospitality section of the hotel to 12pm. Further conditions requiring a Plan of Management and CCTV have also been included to manage any anti-social behaviour.

- Wind Impacts - The site is at times exposed to harsh coastal winds and accordingly wind impacts should be considered. The Statement of Commitments of the Concept Plan required further wind analysis to be carried out. Accordingly the applicant was requested to submit a wind analysis. The applicant originally

submitted the wind modelling that was carried out for Stage 1A & B (The Mirvac development) however this report provided no detailed assessment of or useful recommendations in relation to the subject proposal. A further wind study specifically for the subject development was requested and subsequently submitted. The report concludes:

Due to the local topography and buildings, and the orientation of the buildings to the prevailing strong wind directions, the inclusion of the proposed building will have an influence on the local wind environment by inducing downwash. The provision of awnings and trees around the development will offer some protection to pedestrians. Wind conditions at pedestrian level around the development are expected to be suitable for use as a public accessway.

The proposed development incorporates an awning over the hotel entrance and large tree planting within the forecourt area that will facilitate pedestrian amenity. The residential entrance lobbies are located to the western side of the building which would be largely protected from the prevailing ocean winds. The proposed development is considered to be acceptable from a wind impact perspective.

- Staging - The development is proposed to be completed in two stages. **Appendix B** contains a set of plans indicating the extent of Stage 1 and Stage 2.

Consideration needs to be made as to whether the development would be an acceptable outcome at the conclusion of stage 1, in the unlikely event Stage 2 were not to proceed. In this regard there are two critical issues. Firstly whether sufficient parking will be available, and secondly whether the development would be a suitable urban design outcome.

As outlined under Section 6 of this report it has been identified that adequate on-site parking will be available at Stage 1. In relation to urban design it is considered that the Stage 1 (north building) would generally be an acceptable outcome provided the southern façade was appropriately treated. This can be addressed as a condition of consent.

(c) the suitability of the site for development

The subject property is known to be affected by:

- Mine Subsidence (although not actually within a proclaimed mine subsidence area i.e. not integrated development).
- Contaminated soils.

No other hazards are known to impact on the property.

Geotechnical reports submitted do not raise any prohibitive issues to preclude the development but indicates that further geotechnical assessment would be required after demolition prior to final design work.

A RAP has been submitted that will address contamination issues.

The site is otherwise suitable for the proposed development.

(d) any submissions made in accordance with this Act or the Regulations

In accordance with Council's Development Control Plan (Section 8.0 – Public Participation – Newcastle DCP 2012) the application was notified from 15 June 2012

to 29 June 2012 by letter to owners and occupiers in the locality and a total of 34 submissions were received. Six of the submissions were received after the notification period but have nevertheless been considered within this report. The principal issues raised are addressed within the proceeding sections of this report except for the following:

Open space

Objection was raised to the proposed development on the grounds that as a result of the 'David Maddison' building not being redeveloped results in less open space on the Royal Newcastle Hospital site and subsequent loss of amenity for existing residents. Believe it results in the new proposal being closer to the McCaffrey Wing of The Royal.

The extent of open space over the 'concept plan' site has effectively been predetermined under that plan. The proposal provides open space in excess of the requirements of the Concept Plan MP05_0062 as 9 April 2013 and is therefore considered acceptable.

Design

Objection was raised to the proposed development on the grounds of substandard architectural style and that the number of smaller apartments is also substandard and will impact property values of the Royal.

As outlined within this report the amended design is considered satisfactory and would be unlikely to negatively impact upon surrounding property values.

Deficient application

Objection was raised to the proposed development on the grounds that the Statement of Environmental Effects (SEE) has insufficient information to assess environmental impacts and is not in the public interest as should adhere to Newcastle LEP 2008 controls. A subsequent objection also believes there is insufficient information to assess view impacts.

One objector has indicated the following specific points:

- The notification plans did not indicate the approved envelope under the concept plan.
- The objector has pointed out that the transitional provisions under Clause 3B of Schedule 6A includes point (g) which states:

(g) any order or direction made under section 75P (2) when the concept plan was approved continues to have effect.

The former section 75P(2) reads as follows:

75P(2) If the Minister determines that approval to carry out the project or any particular stage of the project is to be subject to the other provisions of this Act, the following provisions apply:

- (a) the determination of a development application for the project or that stage of the project under Part 4 is to be generally consistent with the terms of the approval of the concept plan,*

(a1) any consent granted for the project or that stage of the project under Part 4 is to be subject to such conditions as the Minister directs for the purpose of fulfilling the obligations in a statement of commitments submitted by the proponent (in which case those conditions cannot be modified without the approval of the Minister and a person cannot appeal to the Court under this Act in respect of the direction or any such conditions imposed by the consent authority),

The objector believes that any variations from the concept plan would lead to an invalid consent.

The original application was considered to be deficient in information to fully assess environmental impacts. Most notably the application had not addressed the Statement of Commitments or the Site design Guidelines as contained in the approved documentation for the Concept Plan. Council made a number of information requests to the applicant to address information shortfalls. The applicant has subsequently submitted sufficient information to properly assess environmental impacts as outlined within this assessment report.

The notification plans were not required under the Environmental Planning and Assessment Act 1979 (Act) and associated Regulations to include the approved building envelope. The notification letter advised that full documentation was available for viewing at Council's Customer Enquiry Centre. This included a full set of plans which did include the envelope.

It is considered that there is sufficient information to assess view impacts.

In relation to point (g) of Schedule 6A of the Act, this refers to directions to fulfil a Statement of Commitments. The approved documentation of the Concept Plan (Condition 1) includes a reference to a Statement of Commitments that the applicant needs to address. As outlined in Section 6 of this report the applicant has now fulfilled the Statement of Commitments and the proposal is considered to be consistent with the Concept Plan.

In summary the proposed development is considered to be acceptable in relation to matters raised in submissions.

(e) the public interest

The proposed development does not raise any significant general public interest issues beyond matters already addressed in this report.

8. Conclusion

The proposed development is considered to be consistent with the Concept Plan approval. The proposed development has also been assessed having regard to the relevant heads of consideration under Section 79C(1) of the *Environmental Planning and Assessment Act 1979* (as amended) NSW and is considered to be acceptable subject to compliance with appropriate conditions. Any variations from the Newcastle City Centre Local Environmental Plan 2008 and the Newcastle Development Control Plan 2012 are justified against the Concept Plan which takes precedence.

Accordingly, it is recommended that the application be approved on the basis of the amended plans, subject to the nominated conditions of consent.

9. Recommendation

That the Joint Regional Planning Panel grant consent to DA2012/0549, subject to the conditions contained in Appendix A.

APPENDIX A - Conditions of Consent

APPENDIX B – Plans, Elevations, 3D perspectives, Materials, Stratum Subdivision, Staging Plans – 1 King Street, Newcastle

APPENDIX C – Agency referrals

APPENDIX D – Concept Plan MP05_0062 as amended 9 April 2013

APPENDIX E – UDCG meeting minutes

APPENDIX F – Newcastle City Centre Local Environmental Plan 2008 – Compliance Assessment

APPENDIX G – Residential Flat Design Code – Compliance Assessment

APPENDIX H – State Environmental Planning Policy 71 (Coastal Protection) – Compliance Assessment