

JRPP No.	2012HCC019
DA No.	DA2012/0549
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

### Supplementary Assessment Report – 2

12 August 2013

JRPP Request	Applicants Response	Council Comment
1) Objection letter from JW Planning		<p>A copy of the letter of objection by JW Planning, dated 17 May 2013 is at <b>Appendix A</b>.</p> <p>The letter of objection was received outside the notification period. However, the issues raised were still considered in Council's original assessment report 13 June 2013 as was indicated in Part 4 of that report. A response to the specific issues is outlined below.</p> <p>Information – The submission suggests that there is insufficient information to enable a full assessment of the application. Council is of the opinion that the assessment reports provided to the JRPP provide a comprehensive assessment of environmental impacts to enable the JRPP to make a determination of the development application.</p> <p>Hotel impacts – Council's assessment report of 13 June 2013 (Section 7b)) considered impacts of the Hotel. The primary impact is considered to be noise. The submitted acoustic report was reviewed by Council and impacts considered acceptable subject to the recommended conditions. Further conditions requiring a Plan of Management and CCTV were also included to manage anti-social behaviour. It is considered that no further</p>

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		<p>measures can be included at development application stage. If during future operation of the hotel it became evident that the principles of Responsible Service of Alcohol were not being observed than this would be a matter for the Licensing Police.</p> <p>Further discussion on the Social Plan by Heather Nesbitt Planning is outlined below under Section 7)c).</p> <p>Traffic and Parking – In relation to parking within the Newcastle City Centre all non-residential use requires parking at a rate 1 space per 60m<sup>2</sup> of GFA in accordance with the Newcastle Development Control Plan (DCP) 2012. As outlined in Council's original assessment report 13 June 2013 the proposal complies with this requirement. Any visitors that were not guests of the hotel, or otherwise arranged to utilise on-site parking, would need to utilise on-street parking or parking station within the vicinity. This is not considered unreasonable within an inner city location, particularly considering peak demand would likely be outside regular business hours.</p> <p>Traffic impacts were discussed in detail under previous reports to the JRPP and are acceptable.</p> <p>Views – Consideration against the revised Site Design Principles was discussed under Section 6 of the report to the JRPP, dated 13 June 2013. Further view considerations were also discussed under Section 7)b) of the report, including consideration of the planning principle on view sharing established by the Land and Environment Court.</p> <p>The applicant has submitted further view analysis as outlined below. It is considered that view</p>

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		<p>impacts are acceptable.</p> <p>Setbacks – The objector indicates floor plans were not available for their review. A full set of architectural plans were available to the public at Council's administration building during public exhibition of the proposed development. Separation distances were discussed under Section 6 of the report to the JRPP, dated 13 June 2013. Separation distances are discussed in greater detail below under Section 3)d) and considered compliant with the Residential Flat Design Guidelines.</p>
<p>2) The JRPP requested copies of the following:</p> <ul style="list-style-type: none"> <li>• MP05_0062 - Concept Plan approved documentation.</li> <li>• MP07_0133 – Stage 1A and 1B</li> </ul>		<p>A copy of the approved documentation under the Concept Plan is at <b>Appendix B</b>.</p> <p>MP07_0133 – While Council did not assess this application Council was provided with a hardcopy set of the approved plans by the Department of Planning and Infrastructure, dated 9 July 2008. These can be provided for viewing by the JRPP if desired. For clarity MP07_0133 did <u>not</u> include the subject site. Under this application the subject site was referred to as future Stage 1C. This application included subdivision approval to excise Stage 1C from Stage 1A and 1B. The current title for the subject site reflects this subdivision approval.</p>
<p><b>3) Building Envelopes and Built Form</b></p> <p>a) Does the Concept Plan approval facilitate extending the building footprint to the extent proposed to accommodate the proposed one storey building comprising part car park, part hospitality area and associated facilities with porte</p>	<p>Council have already provided supplementary information to the JRPP in this regard. This aspect of the development should be considered having regard to Clause 3B (d) of Schedule 6a of the Environmental Planning and Assessment Act 1979, relating to development applications</p>	<p>Council has received its own legal advice. The advice was provided in legal privilege but the full advice can be provided to members of the JRPP under confidence if required.</p> <p>The advice concluded that it is well open to the determining authority, the Joint Regional Planning Panel, to be satisfied that the development</p>

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<p>cochere and landscaped space above taking into consideration that Schedule 1 and Conditions 1, 3 and 4 of the Concept Plan approval identify that the approval relates to building envelopes being both footprints and heights? Is a modification to the Concept Plan approval required before the Panel could lawfully approve the current development application?</p>	<p>made under a Concept Plan, which states:</p> <p><i>“A consent authority must not grant consent under Part 4 for the development unless it is satisfied that the development is generally consistent with the terms of approval of the concept plan.”</i></p> <p>That part of the site above the hospitality area is to remain open and will accommodate a landscaped forecourt area as envisaged in the approved Concept Plan documentation. Therefore the proposed development is generally consistent with the Concept Plan.</p> <p>The applicant has advised that their solicitors, Norton Rose Fulbright reviewed Council's previous response to the JRPP (supplementary report submitted 2 July 2013), and indicated that their in their view this accurately summarises the “generally consistent” test which applies to the application.</p>	<p>proposed under DA2012/0549 is generally consistent with the approved modified concept plan, as required by clause 3B of Schedule 6A to the EP&amp;A Act. Therefore a modification to the Concept Plan is not required.</p> <p>The reasoning is that ‘Generally consistent with’ does not require strict and complete consistency. ‘Consistent’ itself is a word which allows some, perhaps limited, divergence. Small differences will not make a development inconsistent with a concept plan. Had strict identity been required, the legislature would have used a different word. When the word ‘consistent’ is qualified by the word ‘generally’ the composite expression allows of even more divergence.</p> <p>The degree to which a development can diverge from an approved concept plan is a matter for judgment. Any differences must still be relatively minor in the context of the total development.</p> <p>The legal advice considered the issue of concern to the JRPP being the one storey structure comprising part car park, part hospitality area and associated facilities with port cochere. Part of this proposed building is outside the building envelopes approved under the concept plan.</p> <p>The legal advice also considered Council's assessment on this matter that some of this structure is within the envelope for one of the buildings under the concept plan, and some is outside of any such envelope, but that the area outside of the envelopes is about 1% of the total development. It is Council officers view that such a small divergence does not cause the development to cease to be generally consistent with the approved concept plan.</p>

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		<p>The legal advice indicates that the JRPP would be justified in reaching the same conclusion that the proposal is 'generally consistent with' the Concept Plan. If so satisfied the JRPP has the power to grant consent.</p> <p>The advice added that if the JRPP is of the opinion that the proposal is generally consistent with the Concept Plan that it should include in its decision a reference to being satisfied that despite the differences between the proposal and the modified concept plan, it is generally consistent with that plan. This has been included in the recommendation to this report.</p>
<p>b) Does the current DA encroach into any land which was the subject of the Stage 1A and Stage 1B Project Approval? Was the site through link approved and constructed as part of the Project Application approval and if so in what form? Was any other public domain in the vicinity of the site subject to the current DA approved as part of the Project Approval? The purpose of these questions is to ascertain whether any part of the site proposed to be developed for the hospitality area with porte cochere and hotel forecourt above was approved as open space/public domain under the Stage 1 approval and to ascertain the approved width of the site through link and whether or not the current proposal maintains the link in its approved form].</p>	<p>No, the current DA does not encroach onto land which was the subject of Stage 1A and Stage 1B Project Approval. The DA relates specifically to Lot 5 DP1145847 and Lot 4 DP1029006 as shown in the Registered Survey Plan at <b>Appendix C</b>. The Registered Survey Plan also shows a clear delineation between the DA site and land and buildings associated with the Stage 1A and 1B Project Approval.</p> <p>A pedestrian through link from Shortland Esplanade to Pacific Street was constructed as part of the previous project approvals. This link will be unaffected by the current application.</p>	<p>A review of the project approval MP07_0133 for Stage 1A and 1B identifies that it did <u>not</u> apply to the subject site. The subject site was identified as a future Stage 1C.</p> <p>The approved Public Domain Plan, by Tzannes Architects, Rev A, dated 02/05/2008 (<b>Appendix D</b>) as referenced in the approved documentation under MP07_0133 does not include the subject site. The through site link has been constructed as per that approval.</p> <p>DP 1145847 incorporates an easement for public access over the through site link. This easement for public access does not extend onto the subject site (Lot 5 DP1145847) and the proposed development therefore does not affect this public access way.</p>
<p>c) Did assessment of the Concept Plan approval include consideration</p>	<p>Yes, one of the amendments to the Concept Plan included moving the</p>	<p>Council did not assess the Concept Plan modification and is therefore not in a position to</p>

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<p>of any potential impacts on views and amenity of the residential apartments and hotel rooms surrounding the proposed podium?</p>	<p>envelope of the northern building (the subject of the current DA) 6.7m further south to increase separation between it and the buildings approved under Stage 1A and 1B. This increase in building separation enhances east and west views from buildings approved under Stage 1A and 1B and is considered to accord with the view sharing principles set out in Tenacity Consulting vs Warringah. A view impact analysis using the established Tenacity principles was provided to the PAC (refer <b>Appendix E</b>). This view impact analysis included lower level eastern and western views from the existing Sebel building.</p> <p>View loss impacts as a result of the proposed building envelope amendments were also considered in detail by the PAC (refer PAC Assessment Report at <b>Appendix F</b>) and were found to be reasonable.</p>	<p>provide comment on the assessment of such. It is however agreed with the applicant that by moving the building further south has improved view sharing from the adjoining building to the north.</p> <p>The forecourt area will project above the existing open space ground levels adjoining to the north. The four lower level hotel rooms in the southern wing of the adjoining northern building would have view to the south partially obscured (to a similar impact to the existing site hoarding). The splaying of the north-east corner of the forecourt/hospitality area enables some view to still be maintained to the eastern side of this structure, by viewing along the public pedestrian access way, to Fletcher Park and the ocean beyond. No objection was raised to the proposed development on loss of views from hotel rooms and the view loss is considered minor and acceptable. The forecourt area would not impact on any views from residential dwellings to the north as they all sit well above this level.</p>
<p>d) It is understood that the building envelopes for Stages 1A and 1B were modified as part of the Part 3A Project application approval and therefore the buildings as constructed may not reflect the envelopes shown in the approved Concept Plan (as modified). I request Council provide the Panel with a plan that clearly shows the relationship of the existing buildings already developed on the Royal Newcastle Hospital site as per the Project Approval with the proposed development.</p> <p>Could Council please also confirm</p>	<p>The Registered Survey Plan at <b>Appendix C</b> shows the relationship of existing buildings already developed on the hospital site as part of Stage 1A and 1B.</p> <p>The current DA relates specifically to Lot 5 DP1145847 and Lot 4 DP1029006 as shown on the plan.</p> <p>Condition 5 of the approved Concept Plan requires the following:</p> <p><i>(a) The building separation distances between all building proposed on the subject site and the building separation distances between buildings proposed on the subject site and the United Services Club site building must</i></p>	<p>Council's Supplementary Assessment Report submitted to the Panel Secretariat 2 July 2013 contained this plan (Figure 1 of report) that clearly showed existing buildings (i.e. Stage 1) and the proposed development within the context of the approved Concept Plan envelopes. It demonstrates that a number of the buildings approved under MP07_0133 for Stage 1 deviate from the approved envelopes of the Concept Plan. As a comparison the subject proposal is considered far more consistent with the Concept Plan.</p> <p><u>Separation Distances</u></p> <p>In relation to separation distances Condition 5 of the Concept Plan refers to separation distances of</p>

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<p>that the building separation distances between the proposed development and all buildings developed on the Royal Newcastle Hospital site comply with the requirements of Condition 5 of the Concept Plan approval.</p>	<p><i>comply with the building separation provisions of SEPP 65.</i></p> <p><i>(b)The building separation agreement between the owner of the Wirraway Flats site and the Proponent, shall be amended such that the forth storey of the 4 storey building to the north of the Wirraway Flats complies with the building separation provisions of SEPP 65.</i></p> <p>In relation to (a) above, the proposed development is separated from the United Services Club by the David Maddison building which is to be retained.</p> <p>In relation to (b) above, the Residential Flat Design Code (RFDC) sets out suggested building separation dimensions of 12m between habitable rooms/balconies and 9m between habitable/balconies and non-habitable rooms (up to four storeys), and 18m between habitable rooms/balconies and 13m between habitable/balconies and non-habitable rooms for 5-8 storeys.</p> <p>It should be noted that the Wirraway Flats have since been redeveloped and become the Arvia Apartments. Initially Council did raise 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 addressed this by extending the blade wall or providing screening to all decks. The western façade of the southern building (facing Arvia) is now devoid of openings,</p>	<p>SEPP 65. The SEPP 65 itself does not contain any separation distances. It is considered that separation distance guidelines of the Residential Flat Design Code (RFDC) should be applied. Separation distances were discussed in the original report to the JRPP dated 13 June 2013 but are reconfirmed in greater detail below.</p> <p><u>Separation distances to ‘The Royal’ – Stage 1A &amp; 1B</u></p> <p>The following analysis has included a review of the approved plans for ‘The Royal’ under MP07_0133.</p> <p>The northern wall of proposed Building North is generally devoid of openings other than some narrow vertical windows proposed of obscure glass. It is therefore considered non-habitable. The southern wall of ‘The Royal’ building to the north contains habitable windows and balconies. The RFDC recommends for buildings nine-storey and above 18m between habitable room/balconies and non-habitable rooms. The separation is 25m and therefore satisfies the RFDC guidelines. The proposal would nevertheless even comply with the RFDC separation of 24m between habitable rooms/balconies.</p> <p>The eastern wall of the proposed Building North is habitable. This wall is 32m from the residential building within ‘The Royal’ located to the east. It is noted that the adjoining building has no western facing windows.</p> <p>The RFDC does not apply to commercial buildings. The proposed hospitality area to the existing restaurant at street level (across the public access way) is approximately 6m.</p> <p>The windows of the hospitality area do not face the</p>

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	<p>therefore non-habitable. Council's report confirms that the required 13m separation is achieved. Therefore the proposal complies with the building separation provisions set out in SEPP 65 and the RFDC as required by Condition 5 of the Concept Plan approval.</p>	<p>southern wing of the hotel/residential building to the north and therefore does not pose a privacy issue in this regard. The building to the north contains three levels of hotel rooms (to RL 28.9m compared to forecourt RL 22.4m). Even if the adjoining hotel rooms were considered habitable the RFDC would suggest a separation of 9m at this level. A separation of 9m is achieved.</p> <p>In summary the separation distances between the proposed development and 'The Royal' (Stage 1A &amp; 1B) are considered to be compliant with the RFDC guidelines.</p> <p><u>Separation distances from Building South to the 'Arvia' – 67 Watt Street</u></p> <p>The following analysis has included a review of the approved plans for the 'Arvia' under DA09/0766.</p> <p>Proposed ground level – The applicable separation distance under the RFDC is 9m between the eastern side of the 'Arvia' which is habitable rooms/balconies and the non-habitable wall of the proposal (noting that screening proposed to the western side of entry area at this level). The proposed separation is 10.2m and therefore complies.</p> <p>Proposed Levels 2 &amp; 3 - The applicable separation distance under the RFDC is 9m between the eastern side of the 'Arvia' which is habitable rooms/balconies and non-habitable wall of the proposal (noting that no windows in the western wall). The proposed separation distance is 9m and therefore complies.</p> <p>Proposed Level 4 – The applicable separation distance under the RFDC is 9m between the eastern side of the 'Arvia' which is habitable rooms/balconies and non-habitable wall of the</p>



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		<p>proposal (noting that no windows in the western wall). The proposed separation is 13m and therefore complies.</p> <p>Proposed Levels 5 to 8 – At these levels there is a 600mm wide vertical window in the living room wall of Unit 7 at each level. However the applicant has confirmed that this is proposed of obscure glass. This would not present any privacy issues and the wall is still considered non-habitable for the purposes of the RFDC which would require 13m separation to the habitable room/balconies of the 'Arvia'. The proposed separation is 13m and therefore complies. To confirm this compliance a new condition has been included under the recommendation to ensure these windows are of obscure glass.</p> <p>In summary the proposed development is considered compliant with the RFDC to all surrounding buildings.</p>
e) I assume that the flexibility of the Part 3A process enabled the project application envelopes to differ from the concept plan envelopes without modification to the concept plan approval and I would seek further advice on whether such flexibility exists in considering the current application under Part 4.		Refer 3)a) above.
f) In relation to built form, the Council assessment report indicates that <i>"the guidelines require upper level setbacks of minimum 4.5m. The Plan showing Proposed Concept Area and Revised Building E, dated October 2012 override these</i>	The Site Design Principles document dated 24 November 2006 formed <b>Appendix G</b> of the Director General's Environmental Assessment Report at the time the original Concept Plan was approved. The Site Design Principle document contains the following	<p>An assessment of the proposed development against the revised Site Design Principles was included under Section 6 of Council's report to the JRPP dated 13 June 2013.</p> <p>It is considered that, despite the minor non-compliance with the upper level setback along</p>

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<p><i>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".</i> Further clarification is requested in relation to the setback requirements of the site design principles. Do the site design principles operate in addition to the approved building envelopes and was the upper level setback of 4.5m deleted from the guidelines as part of the recent modification? The Panel does not have a copy of the site design principles. Does the proposed development comply with all the site design principles for built form?</p>	<p>statement in the introduction:</p> <p><i>"This document accompanies the Royal Newcastle Hospital Concept Plan 2006. The objectives and design principles outlines in the document underpinned the preparation of the Concept Plan and will help establish the framework for the detailed design and implementation of the Concept Plan. As such these objectives and design principles <b>may</b> be used as part of the assessment of Project Applications for new development on the site."</i></p> <p>2.1(d) of the Site Design Principles sets out street wall heights and upper storey setbacks and contains the following:</p> <p><i>"Objectives</i></p> <ul style="list-style-type: none"> <li><i>• To provide a human scale to streets and other public places;</i></li> <li><i>• To encourage building massing and forms that are consistent with and sympathetic to the prevailing building forms within the City East locality;</i></li> <li><i>• To ensure new street are provide with an appropriate proportion and scale</i></li> </ul> <p><i>Design Principles</i></p> <ul style="list-style-type: none"> <li><i>• Maximum street wall heights are shown in Figures 6-10;</i></li> <li><i>• <b>Where required, an upper level setback is to be a minimum of 4.5m"</b></i></li> </ul>	<p>Shortland Esplanade, the development still achieves the objectives of the guidelines, that is the building massing and form will remain consistent with and sympathetic to the prevailing building forms within the City East locality (particularly the adjoining 'Arvia') and a human scale will be ensured to Shortland Esplanade. It is noted that Council's Urban Design Consultative Group (SEPP 65 panel) raised no concern in this regard.</p> <p>In terms of amenity impacts this variation would create negligible difference to shadowing and does not in any way affect views from surrounding buildings.</p> <p>It should be noted that the statement within the Site Design Principles document that '<i>objectives and design principles <b>may</b> be used as part of the assessment of Project Applications for new development on the site</i>' strongly suggests that the site design principles are a guideline only.</p>

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	<p>The upper level setback requirement of 4.5m was not deleted from the Site Design Principles as part of the recent modifications to the Concept Plan and is still relevant. Notwithstanding this, Councils report states that the only area where the 4.5m setback is not achieved is in the eastern corner of the southern building where the setback reduces due to the curving nature of Shortland Esplanade. However the 4.5m setback control is not designed to be read as an absolute control, but rather as a performance based control i.e. if the setback does not comply with the requirement in a particular area, are the objectives still achieved.</p>	
<p><b>4) View loss and view sharing</b></p> <p>a) The community has expressed concern that insufficient information was submitted with the application to adequately assess view impacts. Council's assessment report indicates that the applicant submitted a detailed view analysis to the Department of Planning &amp; Infrastructure to support their Section 75W application to modify the Concept Plan. The Concept Plan approval Statement of Commitments requires <i>"an analysis of visual impacts will be submitted with the subsequent Project Applications (s) to ensure that the location and detailed design of the buildings will preserve important visual corridors and are consistent</i></p>	<p>The Concept Plan approved Statement of Commitments requires an analysis of visual impacts to be submitted with subsequent project applications. Part 6.7 of Council's Development Control Plan 2005 also contains specific controls in relation to the Royal Newcastle Hospital Site. In particular, 6.7.2 (f) and (g) require an analysis of View Corridors and View Sharing.</p> <p>The Statement of Environmental Effects submitted with the DA contained the following statement in response to these requirements:</p> <p><i>"Central to the approved concept plan and the design approach for the project</i></p>	<p>Consideration against the revised Site Design Principles was discussed under Section 6 of the report to the JRPP, dated 13 June 2013. Further view considerations were also discussed under Section 7)b) of the same report, including consideration of the planning principle on view sharing established by the Land and Environment Court.</p> <p>The Council report made the following comment in relation to the Site Design Principles on view sharing:</p> <p><i>"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'</i></p>

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<p><i>with the Site Design Principles submitted with the Concept Plan.”</i></p>	<p><i>is the concept of view sharing i.e. creating areas of minimal development to enable existing residents in the Sebel and Arvia Apartments to enjoy at least some of the outlook currently permitted by the absence of development on the Esplanade Project site.</i></p> <p><i>This results in a ‘clear zone’ to the south east corner of the site where development is limited to a single storey above the Shortland Esplanade ‘ground level’. This has allowed for views through the site to the beach, headland and beyond whilst maintaining the opportunity to create activation on the pedestrian zone through the whole precinct connecting King Street and Shortland Esplanade.</i></p> <p><i>The proposed building envelope maintains the intent of the approved concept plan, with a tower set well back from the street to ensure a break in the walling of the street frontage and to mitigate loss of view for neighbourhood buildings including the Sebel.”</i></p> <p>Given the above, an analysis of view impacts was submitted with the DA in accordance with the requirements of the Concept Plan approval and Statement of Commitments.</p> <p>In addition to the above, a view impact analysis using the established Tenacity principles was provided to the PAC (refer <b>Appendix E</b>). View loss impacts as a result of the proposed building envelope amendments were also considered in detail by the PAC (refer PAC Assessment</p>	<p><i>development to the north. The land uses within the building itself have no affect on view sharing. The location of decks and windows would not affect view sharing. While some floor space 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.”</i></p> <p>The applicant has submitted a further comprehensive view impact analysis, including 3D graphical view analysis taken from ‘The Royal’ and ‘Arvia’ (<b>Appendix G</b>). It demonstrates graphically the extent of view impacts and also identifies that view sharing is still achieved from both ‘The Royal’ and the ‘Arvia’.</p>

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	<p>Report at <b>Appendix F</b>) and were found to be reasonable.</p> <p>The recent Concept Plan amendments contained in MP_05_0062MOD2, introduced the following new site design principle in relation to View Sharing:</p> <p><i>Objectives</i></p> <ul style="list-style-type: none"> <li>• <i>Provide for view sharing between new and existing buildings;</i></li> <li>• <i>Maximise outlook and views from principal rooms and private open spaces without compromising visual privacy;</i></li> </ul> <p><i>Design Principles</i></p> <ul style="list-style-type: none"> <li>• <i>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.</i></li> </ul> <p>Further to this new design principle, the applicant has provided an additional view sharing analysis which responds to the above principles and objectives at <b>Appendix G</b>. This view sharing analysis is consistent with that provided to the PAC at <b>Appendix E</b>, and which followed the established view sharing principles set out in Tenacity Consulting vs Warringah (2004) NSWLEC 140.</p>	

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b) In accordance with the above requirements was a view analysis also submitted to Council as part of the development application package and did such an analysis demonstrate how the proposed development meets the new site design guideline for view impacts applied to the Concept Plan approval as part of the most recent modification?	Refer 4)a) above	Refer 4)a) above.
c) Council's assessment report state <i>"view impacts were effectively predetermined under the Concept Plan approval and considered to be within acceptable limits"</i> . It is understood that the recent modification to the Concept Plan approved maximum building envelopes but also added a new design principle dealing specifically with view impacts that would require further consideration be given to this matter at the DA stage. Additional clarification and if necessary assessment is requested to be provided to the Panel in this regard.	Refer 4)a) above	Refer 4)a) above.
d) The Council assessment report indicates that a review of the approved plans for the Arvia development would suggest that approximately 44 of the 99 units (44%) within that development that currently have some ocean view towards the east (over the subject site) will lose that view. More	The matter of views from the Arvia apartments is covered in detail in the PAC Assessment Report ( <b>Appendix F</b> ). The north-eastern units of the Arvia Apartments up to Level 8 enjoy side views to the ocean. Whilst ocean views are considered valuable, it should be noted that the building envelopes under the original Concept Plan would already	Refer 4)a) above.

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<p>detailed assessment is requested in relation to how the development addresses the new site design principle for these potential view impacts.</p>	<p>partially obstruct these views.</p> <p>The amended Concept Plan allows for oblique views to the ocean to be retained. As part of the amendments to the Concept Plan, a splayed corner was provided at the south-western point of the envelope so that the revised envelope is no further south than the approved envelope. This ensures no additional view impacts occur for these units. Diagrams demonstrating this point are included in the PAC report at <b>Appendix F</b>.</p> <p>With respect to views from the Arvia apartments, it is important to note that at the time the original Concept Plan was approved, the DA for Arvia had not been approved by Council. The DA would have had to factor in the approved building envelopes in the design of the layout of the units to address potentially impeded view corridors to the east given the retention of view corridors to the south.</p>	
<p><b>5) Building Separation</b></p> <p>The Community has expressed some concerns relating to non-compliance with building separation distances. Residents have indicated that the proposal is closer to the McCaffrey Wing of the Royal. The Council assessment report indicates that the proposal complies with the required separation distance under SEPP 65 on the basis that the proposal includes non-habitable rooms at the western end of the development, although the</p>		<p>Refer 3)d) above – The proposal complies with the RFDC separation distances to all surrounding buildings.</p> <p>The applicant also added the following observations:</p> <p><i>“Given that the Sebel building is located forward of the alignment of proposed building north at the lower levels, and subject to the northern edge of balconies in the new building being screened making the northern elevation of</i></p>

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<p>plans appear to show some habitable rooms in this part of the proposed building. As compliance with the building separation controls of RFDC is particularly important on this site due to the requirements of the Concept Plan approval and the potential view loss impacts I would request on behalf of the Panel that confirmation is provided that the proposal complies with the required building separation distances between Building South and Arvia Apartments and between Building North and The Royal and McCaffrey apartment buildings, as constructed under the Stage 1 project approval.</p>		<p><i>building north devoid of openings, therefore non-habitable, the proposal complies with the building separation requirements set out in SEPP 65 and the RFDC.</i></p> <p><i>It should also be noted that the two buildings are orientated differently, with the Sebel having a north-south orientation and the proposed new northern building having an east-west orientation, with balconies screened to reduce overlooking between buildings. Views from balconies within the Sebel are out across the water towards the south and south east, and have been improved by moving the proposed northern building 6.7m further south."</i></p>
<p><b>6) Open Space</b></p> <p>a) The community has raised concerns in relation to the loss of open space on the site due to the David Maddison building not being redeveloped and the subsequent loss of amenity for residents. Could Council please advise whether the proposal encroaches on any open space areas identified in the Concept Plan or Stage 1 approval.</p>	<p>The proposal does not encroach on any open space areas identified in the Concept Plan or Stage 1 approval.</p> <p>It is worth noting that moving the northern building 6.7m south allows the area between the Stage 1A and 1B buildings and the proposed northern building (currently approximately 400m<sup>2</sup>) to be used as a public plaza. It should also be noted that the open area in front of the Mirvac building is currently 5-6m above the level of the existing laneway to the north. Given this change in levels, a plaza in the manner envisaged in the original Concept Plan would be difficult to achieve.</p> <p>With respect to loss of open space, the Residential Flat Design Code sets broad parameters for good residential flat</p>	<p>As discussed under Section 7)d) of Council's assessment report dated 13 June 2013 in response to this issue raised by objectors:</p> <p><i>"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 amended 9 April 2013 and is therefore considered acceptable."</i></p> <p>A copy of the Public Domain Plan approved under MP07_0133 for Stage 1 is at <b>Appendix D</b>. The works did not include the subject site, being nominated on the plan as 'Stage 1C subject to future design competition'.</p>



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	<p>design. With regard to Open Space, the objectives of the code are:</p> <ul style="list-style-type: none"> <li>• To provide residents with passive and active recreational opportunities;</li> <li>• To provide an area on the site that enables soft landscaping and deep soil planting;</li> <li>• To ensure that communal open space is consolidated, configured and designed to be useable and attractive;</li> <li>• To provide a pleasant outlook.</li> </ul> <p>In terms of the rules of thumb, the area of communal open space should generally be at least between 25 and 30% of the site area. Larger sites and brownfield sites may have the potential for more than 30%. Where developments are unable to achieve the recommended communal open space, such as those in dense urban areas, they must demonstrate that residential amenity is achieved in the form of increased private open space and/or in a contribution to public open space. The Communal Open Space Drawing (<b>Appendix H</b>) shows that the required rule of thumb of 25-30% communal open space is still achieved for the proposed development. Based on the drawing, the communal open space area is 1014m<sup>2</sup>, which represents 28% of the site area (3619m<sup>2</sup>).</p>	
b) The Statement of Commitments indicate that <i>“detailed design of the development will incorporate public domain works in accordance with</i>	No specific public domain works are outlined in the approved Concept Plan itself. However the Preferred Project Report prepared by JBA Urban Planning	It is agreed with the applicant as to the nature of public domain works envisaged under the Concept Plan. The proposal is consistent in this regard, having regards to the areas that have now been

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<p><i>the Concept Plan and will be provided in accordance with Council's reasonable requirements. What public domain works were outlined in the Concept Plan approval? Did a public domain or landscape plan form part of that approval?</i></p>	<p>Consultants dated 24 November 2006, which is referred to in the Concept Plan approval, does include a Concept Plan drawing (refer <b>Appendix I</b>) showing building envelopes and open space envisaged on the site at the time.</p> <p>6.7.3 of the Site Design Principles document dated 24 November 2006 (also referred to in the Concept Plan approval) also sets out the following Design Principles and Objectives in relation to the public domain:</p> <p><i>Objectives</i></p> <ul style="list-style-type: none"> <li><i>• To create dynamic public spaces with permeable interfaces between the public and private domain;</i></li> <li><i>• To provide safe, accessible, convenient and legible movement network for vehicles, pedestrians and cyclists along streets and through public open spaces;</i></li> <li><i>• To minimize the negative effects of new buildings on adjacent public spaces;</i></li> <li><i>• To provide integrated water cycle management on the site.</i></li> </ul> <p><i>Design Principles</i></p> <ul style="list-style-type: none"> <li><i>• Development is to ensure the distinction between public and private open space;</i></li> <li><i>• All new development should adopt design strategies to minimize environmental effects on surrounding public spaces,</i></li> </ul>	<p>excised from the Concept Plan.</p> <p>In addition the recommended schedule of conditions (<b>Appendix A</b> under Council's assessment report dated 13 June 2013) includes:</p> <ul style="list-style-type: none"> <li>• F19 – New pedestrian crossing on Shortland Esplanade.</li> <li>• F20 – New footpath pavement along the Shortland Esplanade frontage.</li> <li>• F21 – Street tree planting along Shortland Esplanade frontage.</li> <li>• F22 – Upgrades to street lighting</li> </ul>

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	<p><i>especially overshadowing, wind turbulence and glare;</i></p> <ul style="list-style-type: none"> <li>• <i>Ensure public open space is of a high quality and provides a range of experiences and facilities;</i></li> <li>• <i>Ensure appropriate access for those with a disability and those with limited mobility;</i></li> <li>• <i>Issues of safety, security and surveillance are to be assessed against the principles of Crime Prevention through Environmental Design (CPTED) in the project application.</i></li> </ul> <p>The public domain associated with the proposal in its current form is consistent with all of the above.</p>	
<p><b>7) Proposed Hotel</b></p> <p>a) Further assessment is requested from Council that specifically considers any impacts on amenity to residential and hotel apartments in close proximity to the proposed hospitality area and rooftop porte cochere and hotel open space areas. Did the acoustic report deal with vehicle, pedestrian and hotel guest noise associated with these spaces? What distances are provided between the proposed forecourt area and adjoining apartments and hotel rooms? How is privacy to be addressed between the forecourt and adjoining residential and hotel uses?</p>	<p>The proposal is for a 100 Room Residential Hotel with associated hospitality areas including Restaurant/ Café and associated bar area, function room, meeting rooms, pool etc. While the hotel operator is yet to be determined, it is envisaged that the hotel will be a 4 to 4.5 star rating branded hotel with no gaming or take away liquor from any associated bar area. The Noise Impact Assessment submitted with the DA in support of the proposed hotel is included at <b>Appendix J</b> and makes recommendations regarding acoustic treatment, patrons congregating outside the building for prolonged periods of time, the implementation of a noise management program as well as other matters. Recommended condition F24 requires acoustic treatment to be</p>	<p>Council's assessment report of 13 June 2013 (Section 7)b)) considered impacts of the Hotel. The primary impact is considered to be noise. The submitted acoustic report assessed mechanical plant, entertainment and patron noise. The report was reviewed by Council's Compliance Service Unit and impacts considered acceptable subject to the recommended conditions. Vehicle drop-off movements would not be expected to generate any significant noise impacts. Further conditions requiring a Plan of Management and CCTV were also included to manage anti-social behaviour. It is considered that no further measures can be included at development application stage. If during future operation of the hotel it became evident that the principles of Responsible Service of Alcohol were not being observed than this would be a matter for the Licensing Police.</p>

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	implemented in accordance with the report.	The adjoining residential building to the east (across the public access way) has ground floor restaurant addressing the access way, in a similar manner to that proposed for the hospitality area. The residential dwellings above have no western facing windows and therefore no visual privacy impacts would occur. To the north is three levels of hotel rooms and therefore privacy is considered acceptable.
b) Council are requested to confirm whether their assessment includes an assessment of parking requirements for the proposed hotel uses including the proposed function room which could be used by outside patrons.	The proposed hotel has a GFA of 5582m <sup>2</sup> and generates a parking requirement of 93 spaces based on Council's requirement within Newcastle City Centre of 1 space per 60m <sup>2</sup> GFA. Council's assessment concludes that the proposed hotel use complies with this requirement. There is no separate parking requirement for function rooms.	Under Council's Newcastle Development Control Plan 2012 all non-residential development requires parking at a rate of 1 space per 60m <sup>2</sup> of GFA. This approach has been consistently applied across the Newcastle City Centre to other applications including Hotels. The proposed development complies with this parking rate.
c) Council is requested to provide more information on how the proposed development takes account of the Social Plan prepared by Heather Nesbitt Planning as per the Concept Plan approval Statement of Commitments.	<p>Council's report addresses the recommendations of the Heather Nesbit Social Plan in relation to unit mix. However the Social Plan also contains other design based recommendations related to enhancing public safety, equitable access and enhancing public open space.</p> <p>The issue of public safety is addressed in Council's report (P32). The applicant also submitted a Crime Prevention Through Environmental Design (CPTED) statement with the DA as well an amended design in relation to the ground floor (Unit 1) to address security concerns during the assessment process.</p> <p>With respect to equitable access, the applicant submitted a Disability Report as</p>	<p>The principal recommendations of the Social Plan were discussed under Council's assessment report of 13 June 2012. Further detail is discussed below.</p> <p>The 10 key themes of the Social Plan and associated actions are:</p> <ul style="list-style-type: none"> <li>• <b>Community Integration and Connection</b> <ul style="list-style-type: none"> <li>▪ Provide mix of land uses</li> <li>▪ Public domain reflecting the beach culture</li> <li>▪ Investigate potential for multi-purpose facility/community facility.</li> <li>▪ Increased pedestrian access including widened footpaths.</li> <li>▪ Open space linkages connecting Watt, King and Pacific Streets.</li> <li>▪ Extend King Street.</li> <li>▪ Ensure bus services including stops.</li> <li>▪ Consultation at each stage.</li> </ul> </li> </ul>

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	<p>part of the original DA documentation. The drawings for the development have been reviewed against all the requirements of the Building Code of Australia 2011 and the Disability Discrimination Act 1992 with regards to access for persons with a disability. The requirements of the Disability Standards for Access to Premises (Buildings) and the draft Access Code for Buildings have also been addressed. The drawings generally comply with the Building Code of Australia 2011 and the intent of the Disability Discrimination Act 1992.</p> <p>With respect to enhancing public open space, a landscape design report was submitted with the DA. The main landscape works for the project involve the design of a forecourt and common area on the eastern side of the lower ground floor of Building North and a walkway providing access to residents of the upper floor apartments on the building's western side.</p>	<p>The proposal includes a mix of land uses. The proposed materials of the forecourt area and proposed Norfolk Island Pines complement the beach environment. While the proposal does not include community facilities it is noted that there now exists a nearby community facility at 48 Watt Street and a new multi purpose facility has been constructed at Newcastle East (adjacent Fort Scratchley) which services the area. The pedestrian footpath in Shortland Esplanade was widened under Stage 1 and it is a recommended condition to construct a pedestrian crossing. The linkages were established under Stage 1 as was extension to King Street. The site is serviced by buses including bus stops within vicinity. The DA included standard public exhibition.</p> <ul style="list-style-type: none"> <li>• <b>A Public Place</b> <ul style="list-style-type: none"> <li>▪ Provide one major public open place.</li> <li>▪ Investigate potential for multipurpose centre/community facility.</li> <li>▪ Prepare cultural and public art plan.</li> </ul> </li> </ul> <p>The principle public open space area on the site was provided as part of Stage 1 and is considered functional. As above in relation to community facilities. The Site Design Principles required a similar strategy to be prepared. As discussed under Council's report 13 June 2013 this was addressed under Stage 1.</p> <ul style="list-style-type: none"> <li>• <b>A Safe Place</b> <ul style="list-style-type: none"> <li>▪ Provide one major public space on the site that has good surveillance and lighting and easy to maintain.</li> <li>▪ Ensure any public facility meets the above requirements.</li> <li>▪ Ensure CPTED principles throughout</li> </ul> </li> </ul>

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		<p>design.</p> <ul style="list-style-type: none"> <li>▪ Separate public and private areas to avoid noise complaints and improve public safety.</li> <li>▪ Encourage mix of public and private land uses to ensure reasonable pedestrian activity within and surrounding the site.</li> <li>▪ Refer application to Police for comment.</li> </ul> <p>The major public open space provided under Stage 1 has good surveillance, lighting and constructed of durable materials. No public facility is provided as discussed above. CPTED principles are acceptable as discussed under Council assessment report of 13 June 2013. The development has residential access to the western side of the building to avoid conflict with the hotel. The level change between hotel forecourt and adjoining open space will assist in separating these land uses. The hotel use will enhance pedestrian activity. The application was referred to Police with comments incorporated into recommended conditions.</p> <ul style="list-style-type: none"> <li>• <b>Social Mix and Diversity</b> <ul style="list-style-type: none"> <li>▪ Provide for mix of 1, 2 &amp; 3 bedroom apartments.</li> <li>▪ Provide mix of land uses including residential, commercial and retail.</li> <li>▪ Provide separate studios and home offices as part of the residential component.</li> <li>▪ Provide moderate income housing in Landcom development.</li> </ul> </li> </ul> <p>The diversity of apartment mix is considered the principle issue of compliance with the Social Plan. While it does provide a mix of land uses the residential dwellings comprise 102 x 1-bed and 48 x 2-bed. As discussed under Council's assessment report 13 June 2013 the</p>

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		<p>applicant argued the apartment mix under the entire Concept Plan will still be achieved, as Stage 1 contained a larger proportion of three-bedroom dwellings. This is accepted. The development is not a Landcom development however the smaller unit sizes will assist in providing more affordable housing.</p> <ul style="list-style-type: none"> <li>• <b>Access for All</b> <ul style="list-style-type: none"> <li>▪ Access requirements in accordance with the Building Code of Australia (BCA).</li> <li>▪ Cater for people with reduced mobility.</li> <li>▪ Proportion of residential units to meet AS4299 Class C – Adaptable housing.</li> <li>▪ Consider needs of older people/people with disability in any community facility.</li> </ul> </li> </ul> <p>The proposal would need to comply with BCA, with full assessment at construction certificate stage. The submitted access report identifies the proposal could satisfy this as discussed under Council's report 13 June 2013. Compliance with the BCA would address people with reduced mobility. No community facility is proposed but two exist within vicinity of the site.</p> <p>The applicant has confirmed that the units on the ground floor of the south building have the potential to meet the requirements of AS4299 Class C- Adaptable Housing.</p> <p>The applicant has advised that the Disability Access Report (page 6) prepared by Lindsey Perry that formed part of the DA submission sets out that there is no BCA requirement for apartments to be of an accessible nature, being private residences. The BCA requires access to common areas of the development and to the entry door of apartments. This is offered</p>

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		<p>through the provision of a lift to all levels of the buildings.</p> <ul style="list-style-type: none"> <li> <b>Cultural Significance</b> <ul style="list-style-type: none"> <li>Prepare cultural and public art plan.</li> <li>Provide one major public open space which facilitates public recreation.</li> <li>Investigate providing multipurpose centre/community facility.</li> </ul> </li> </ul> <p>These matters were previously discussed above.</p> <ul style="list-style-type: none"> <li> <b>Support Services to Meet Needs</b> <ul style="list-style-type: none"> <li>Investigate providing multipurpose centre/community facility. Such facility to consider needs of elderly.</li> <li>Provide private sector community-related services such as convenience stores, newsagent, hairdresser, gym etc.</li> <li>Ensure bus services to link to other services in CBD</li> </ul> </li> </ul> <p>The proposal does not include community centre as previously discussed. The proposal includes a hotel and Stage 1 includes restaurant and café. The commercial spaces under Stage 1 would be suitable for shops if market demand in the future dictated this. The site has bus stops in vicinity.</p> <ul style="list-style-type: none"> <li> <b>Strong Community Networks</b> <ul style="list-style-type: none"> <li>Provide a welcome program for new occupants and guide to city.</li> <li>Undertake community consultation at each stage.</li> </ul> </li> </ul> <p>Requiring an ongoing welcome guide is considered unnecessary considering the</p>



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		<p>availability of similar existing resources such as 'visitnewcastle', a free online resource. The development application followed standard exhibition processes.</p> <ul style="list-style-type: none"> <li>• <b>Access to Technology and Information</b> <ul style="list-style-type: none"> <li>▪ Provide broadband access.</li> <li>▪ Provide separate studios and home offices as part of residential development.</li> </ul> </li> </ul> <p>The Newcastle CBD has broadband access. The dwellings could be utilised for small home businesses if desired, subject to satisfying either 'exempt development' or otherwise development consent requirements.</p> <ul style="list-style-type: none"> <li>• <b>Significant Public Benefit</b> <ul style="list-style-type: none"> <li>▪ Investigate opportunities with the City of Newcastle Council and other key agencies to identify priorities and secure funding for upgrading the area.</li> <li>▪ Consider partnership opportunities for providing broader public benefits such as provision of childcare centre and public community centre.</li> </ul> </li> </ul> <p>As outlined previously public domain works for street tree planting, footpath upgrades and a new pedestrian crossing have been conditioned. The hotel would also provide ongoing employment for area and support tourism.</p>

### **Recommendation**

- 1) The JRPP note differences between the proposal and the modified Concept Plan, and are of the view that the proposal is generally consistent with that plan, and
- 2) Grant approval to DA2012/0549, subject to the schedule of conditions contained within **Appendix A** of the Council assessment report dated 13 June 2013 and the following additional conditions.
  - The windows in the western wall of proposed building south at Level 5 to 8 opposite No 67 Watt Street ('Arvia' apartments) are to have obscure glass.
  - The external door to the hospitality area being restricted to emergency exit only.

**Appendix A – Objection by JW Planning dated 17 May 2013**

**Appendix B – Concept Plan by JBA dated Aug 2006**

**Appendix B – Environmental Assessment by JBA dated Aug 2006**

**Appendix B – Preferred Project Report dated 24 Nov 2006**

**Appendix B – Draft Statement of Commitments dated 24 Nov 2006**

**Appendix B – Site Design Principles dated 24 Nov 2006**

**Appendix C – Survey Plan DP1145847**

**Appendix D – MP07\_0133 approved Public Domain Plan**

**Appendix E – Applicants submission to PAC dated 24 October 2012**

**Appendix F – PAC report Feb 2013**

**Appendix G – View Analysis dated 8 Jul 2013**

**Appendix H – Communal Open Space**

**Appendix I – Preferred Project Report dated 24 Nov 2006 – Open Space**

**Appendix J – Acoustic Report dated Sept 2012**