

JRPP No.	2014HCC019 DA
DA No.	DA2014/847
Proposal	Mixed use development with lower ground and ground floor commercial, part ground floor residential and 14 floors of residential comprising 161 units
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 erection of a new mixed used building including lower ground floor commercial uses, ground floor commercial and residential uses with residential above.

The proposal includes five levels of basement parking for 221 cars and associated storage and garbage facilities, parking for 6 cars on a landscaped podium level, lower ground and ground floor commercial uses, 5 residential units at ground floor and 156 residential units over 14 levels above the ground floor.

The proposed new building will replace an approved, but not yet constructed, building in the same location.

The previous approval (DA 2012/549) included two stages and the current application involves the 'northern building' of that approval. The 'southern building' comprises nine-storeys (as viewed from street level) of residential dwellings (55 dwellings). The previous approval also involved the partial demolition of an existing multi deck carpark.

The most significant change from the previous approval is the deletion of a hotel and replacement with additional residential units.

Referral to Joint Regional Planning Panel

The proposal is referred to the Joint Regional Planning Panel (JRPP) for determination pursuant to Schedule 4A of the Environmental Planning and Assessment Act 1979, given the application has a capital investment value of more than \$20 million. The application submitted to Council nominates the value of the project as \$44,727,600.

Permissibility

The site is zoned R4 High Density Residential pursuant to the Newcastle Local Environmental Plan 2012. The proposal is categorised as a residential flat building and commercial premises. Business premises, food and drink premises and office premises are permissible in the R4 zone, however it is noted that other types of retail premises are prohibited in the zone.

In relation to the prohibited types of commercial premises (i.e. types of retail premises), the applicant has advised that:

Notwithstanding the above, the Department of Planning and Environment Circular PS 11-014 issued in May 2011 sets out that Councils should assess development proposals on sites which are the subject of an approved concept plan consistently with the approved concept plan, notwithstanding any:

- 1. prohibition, and*

2. non-compliance with any development standard that would otherwise apply in any relevant environmental planning instrument.

Condition 5 of amended concept plan makes reference to the following:

“Predominantly residential and hotel uses and non-residential uses including a mix of ancillary retail, restaurant and commercial office suites”

On this basis we do not see any clear reason to amend the proposal to include business premises, office premises or food and drink premises, as the future use of the commercial space will be consistent with that set out in the concept plan.

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 commercial uses are consistent with the terms of approval of the Concept Plan MP05_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 12-26 August 2014 and a second time from 3-17 September 2014 due to an administration issue with the original notification period. As a result of the exhibition periods, two letters of objection and one letter of support were received.

Key Issues

The main issues identified in the assessment and/or raised in the submissions are 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 Local Environmental Plan 2012 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 unreasonably obstructs view.
- Whether the development has adequate building separation to adjoining buildings.

Recommendation

Grant approval to DA2014/0847, 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 part of the stage 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. 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 it was not a transitional project therefore the proposal is to be assessed under Part 4 of the Act. The proposal is, however, one for which an approved concept plan still applies.

On 4 December 2013 the JRPP granted consent to DA 2012/549 for demolition of structures and erection of a commercial/residential building including 95 residential apartments, 100 room hotel and basement car park to be completed in two stages and stratum subdivision of car park. This consent involved two new buildings on the site, the Northern building and the Southern building. The current application involves the northern building, which comprised four levels of parking including storage and garbage areas, a 100 room hotel (Ground Level 1 – Level 6) and 95 residential units (Levels 7 – 14). In this regard, the applicant advises:

'It is proposed to construct the approved Northern building to podium level at which point it will be replaced by the development the subject of this DA.'

No changes are proposed to the Southern building as part of this DA.

A number of modifications have been approved by Council following the approval of DA2012/549. These modifications were considered in accordance with Section 96 (1A) of the Environmental Planning and Assessment Act 1979, and are detailed below:

Determination date	Description
10.2.14	North Building - Additional basement level comprising 19 parking spaces, car wash bay and storage area.
26.3.14	North Building – consolidate 5 units to 2 units (level 14)
23.6.14	Modification to staging, allowing southern building to be completed prior to the northern building.
23.6.14	Modification to allow applicant to seek a Voluntary Planning Agreement. Should any party decide not to proceed with agreement, the standard contributions continue to apply.
24.6.14	North Building – consolidate eight units into two units (level 12 & 13).
8.10.14	North Building – consolidate two units in to one unit (level 13)

Accordingly, the approved DA2012/549 for the northern building, as modified, comprises 5 levels of parking including storage and garbage areas, a 100 room hotel (Ground Level – Level 6), 347m² of function area (relating to hotel) and 85 residential units (Levels 7 - 14 above).

2. Site and Locality Description

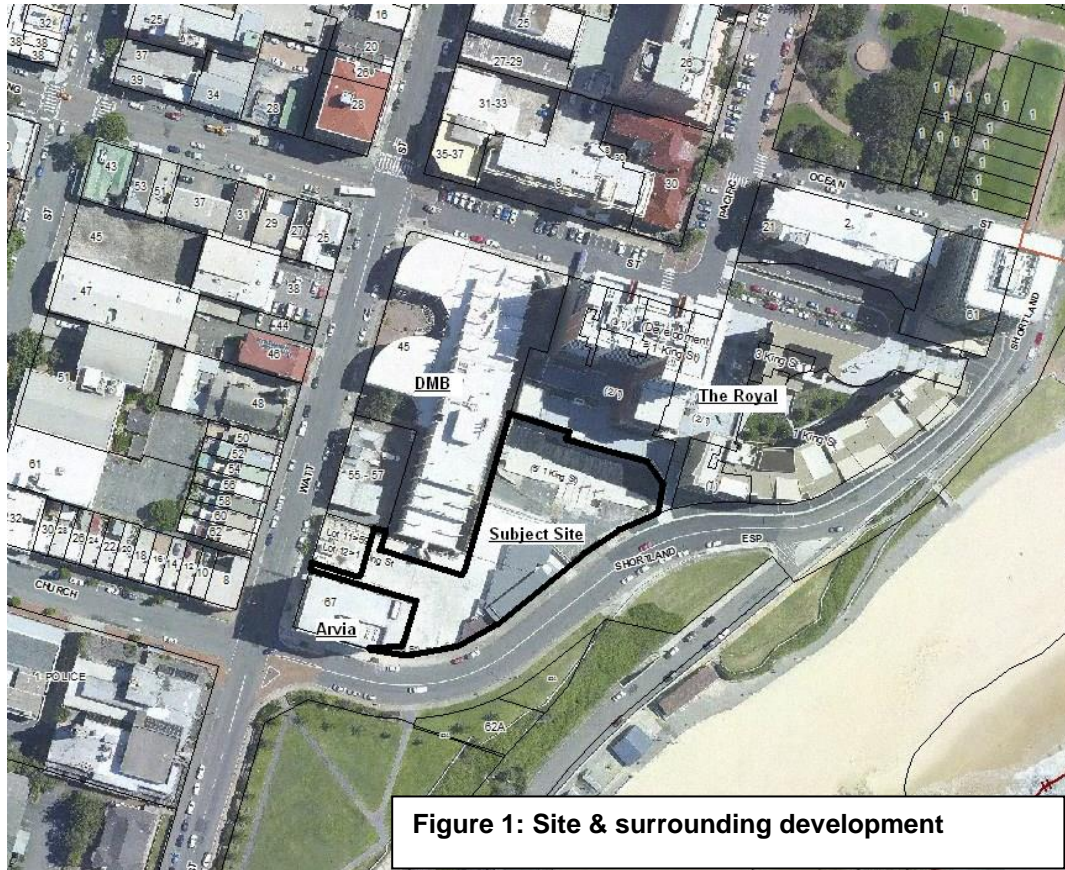
The subject site comprises Lot: 5 DP: 1145847 and Lot: 4 DP: 1029006, 1 King Street Newcastle. The site is irregularly shaped with a total frontage of 101.75m to Shortland Esplanade and a total area of 3,619m². The site is located on the northern side of Shortland Esplanade, to the east of the intersection with Watt Street. The lodged development application relates to the northern part of the site.

The adjoining 'southern building' was approved to comprise two levels of parking and eight levels containing 55 residential units. This area of the site also includes the existing David Maddison Building carpark. The overall site 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 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 publicly pedestrian access leads from the public accessible plaza of 'The Royal' development along the eastern side of the subject site through to Shortland Esplanade.

The site (as it relates to the northern building) currently has a number of different levels due to part of the site being occupied by the existing car park and part of the site, following demolition of the former hospital, being vacant. The existing levels range from RL22.3 at the south boundary (adjacent to Shortland Esplanade) to RL8.4 in the north-east corner (excavated area). For the purposes of considering appropriate levels a more useful reference point are the levels within Shortland Esplanade that range from RL 22.3 at the south-western end of the site to RL18 at the north-eastern end of the site.

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. 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 a new mixed used building including ground floor commercial/residential uses with residential above. This building is proposed to replace the Northern building currently approved pursuant to DA2012/549 as modified. It is proposed to construct the approved Northern building to podium level at which point it will be replaced by the development the subject of this DA. The DA does not seek approval for any changes to the Southern building, which will continue to be constructed in accordance with DA2012/549, as modified.'

The new building includes five levels of basement parking for 213 cars and associated storage and garbage facilities, in addition to parking for 6 cars on the podium level. The application includes:

'lower ground and ground floor commercial uses, 5 residential units at ground floor and 156 residential units over 14 levels above ground floor (161 units in total). Vehicle access to the basement parking areas is to be similar to that which is already approved ie via the existing service lane behind the David Maddison building and off Shortland Esplanade (Lower Ground Floor Level).'

The proposed unit mix is 24 x studios, 77 x 1 bed units, 54 x 2 bed units, 5 x 3 bed units and 1 x 4 bed unit. The individual levels of the proposal are described as:

- Basement Level 5 – 24 parking spaces and associated storage facilities;
- Basement Level 4 – 57 parking spaces and associated storage and garbage facilities;
- Basement Level 3 - 54 parking spaces and associated storage and garbage facilities;
- Basement Level 2 – 48 parking spaces and associated storage and garbage facilities, loading dock and vehicle access to the existing service lane behind the David Maddison Building;
- Lower Ground North – 30 parking spaces, service areas, vehicle access to Shortland Esplanade, 500m² commercial space and associated amenities;
- Ground Floor – 5 residential units, 129m² commercial space, landscaping and 6 podium parking spaces;
- Levels 1-6 – 12 residential units per level;
- Level 7 – 10 units;
- Levels 8 – 11 - 12 units;
- Level 12 - 7 units;
- Level 13 – 10 units;
- Level 14 – 9 units.

The Table below set out the proposed GFA by level, and compares each level to the previous DA 2012-549.

Table 1

Level	Proposed GFA m²	Description of proposed development	Approved GFA m² (DA2012-549)	Description of approved development (DA2012-549)
Lower Ground	500	Commercial	655	Hospitality
Ground	714.2 (including 129m ² commercial space with remainder residential)	Commercial/ residential	712	Hotel reception/cafe area, pool/gym, conference and back of house facilities.
Levels 1	654	Residential	635	Hotel

Levels 2-6	654 x 5 (3270)	Residential	710 x 5 (3,550)	Hotel
Level 7	672.6	Residential	691	Residential
Levels 8-11	718.9 x 4 (2875.6)	Residential	701 x 4 (2,804)	Residential
Level 12	698	Residential	701	Residential
Level 13	696.5	Residential	701	Residential
Level 14	695.1	Residential	701	Residential
Total	10,776		11,150	

Section 1.3 of the applicant's SEE notes the changes from the approved scheme (DA2012-549).

1.3 Proposed new Northern building subject of this DA

*The Northern building (Stage B) which is the subject of this DA will occupy the **same** building envelope as that which is already approved under DA2012/549. It is proposed to construct the approved Northern building to podium level at which point it will be replaced by the development the subject of this DA. The differences between the approved Northern building and the proposed new building are summarised as follows:*

- The new building will incorporate a revised basement parking level for 24 cars and storage. The revised basement parking level has a narrower configuration and a smaller area than that which is currently approved;*
- The proposed 100 room hotel is being deleted. The hotel occupying Lower Ground (hotel function area) and Ground Level– Level 6 is to be replaced by 77 additional residential units with some lower ground and ground floor commercial uses. Levels 7-14 will contain 84 apartments and lift overruns, making a total of 161 residential units throughout the building;*
- The layout and landscaping treatment of the forecourt area of the building has been amended to reflect its predominantly residential nature as opposed to the previous mixed hotel/residential use (refer landscape plan and report at **Appendix 17**);*
- Minor amendments are proposed to the facades of the Northern Building in response to changes in use described above. The lower seven levels of the northern building provide a strong base, with a clear visual separation (level 7) between the upper and lower halves of the building. Levels 1 - 6 will now incorporate decks on both east and west elevations for individual apartments. Level 7 retains its open balcony and remains unchanged from DA Approved. Levels 8 to 14 are more lightweight and include additional glazed elements, completing a vertical tripartite composition of base, middle, and top for the Shortland Esplanade streetscape. Projections and elemental detailing provide layers and differing textures to the overall facade treatment. There are no facade changes to Levels 8-14.*

A copy of the submitted plans, and a plan comparing the building envelope proposed and previously approved is attached at **Appendix B**.

4. Consultation

In accordance with Council's Development Control Plan (Section 8.0 – Public Participation) the application was notified from 12-26 August 2014 and a second time from 3-17 September 2014 due to an administration issue with the original notification period.

As a result of the exhibition periods, 2 letters of objection and 1 letter of support were received.

The principal issues raised are outlined below. A detailed consideration of these issues is contained within this report.

- Traffic congestion on King Street from use of lane
- Level of information, and potential impacts from proposed commercial spaces
- Adequacy of traffic information

5 Referrals

The proposal was considered by Council's Urban Design Consultative Group (UDCG). The advice is considered and discussed under Section 7 of the report.

Internal comments were sought from Council's Development Engineering Team and Regulatory Services Unit.

Referral comments 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 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.

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 Environmental Planning Instruments, including SEPP 65 and BASIX and relevant Building Code of Australia 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 competition/s which will include representatives of Landcom and the Department of Planning.	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.
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 (copy attached at Appendix E) has been carried out as detailed beneath this table.
4. Access, traffic and parking	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	Details of the traffic analysis will be undertaken as part of the relevant Project Application(s). Construction management plans will be prepared as part of the relevant Project	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 accommodates adequate parking. It is noted that the report did not make

	<p>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>	Application(s).	<p>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 intersection performance was also submitted upon request from Council.</p> <p>A Construction Management Plan would be required as a condition of consent.</p> <p>Traffic impacts are discussed in detail later in this assessment report.</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.	<p>Neither the Site Design Guidelines nor the support control drawings specifically nominate any public plaza on the subject site. However, details are included in the Preferred Project Report prepared by JBA Urban Planning Consultants dated 24 November 2006, which is referred to in the Concept Plan approval.</p> <p>This document included a drawing (refer Appendix F) identifying the building envelopes and open space envisaged on the site at the time.</p> <p>It is also noted that Section 6.7.3 of the Site Design Principles approved as part of the Concept Plan sets out the principles and objectives in relation to the public domain.</p> <p>As discussed later in this assessment, it is considered that the proposal is acceptable having regard to these objectives relating to the public domain.</p> <p>In addition, the recommended schedule of conditions (Appendix A) requires the</p>

			<p>works in the public road required under DA2012/549 to be completed prior to the issue of the Occupation Certificate for this current application. These requirements include:</p> <ul style="list-style-type: none"> - New pedestrian crossing on Shortland Esplanade. - New footpath pavement along the Shortland Esplanade frontage. - Street tree planting along Shortland Esplanade frontage. - Upgrades to street lighting
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	<p>The following are to Accompany subsequent Project Application(s) at the detailed development design stage:</p> <p>A Statement of Heritage Impact (SOHI) prepared in accordance with the recommendations</p>	<p>A Statement of Heritage Impact will be 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</p>	<p>A Statement of Heritage Impact has 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 in relation to assessing the proposal's impact in terms of both non-</p>

	<p>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>in conjunction with the first project applications seeking approval for buildings and public realm works.</p>	<p>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> <p>The report also concludes that the impact of the proposal on heritage conservation area and heritage items in the vicinity is acceptable.</p>
9. Ecologically sustainable design and water management	<p>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.</p>	<p>Addressed at the detailed development design stage as part of the relevant Project Application(s).</p>	<p>Council's engineering assessment has considered the proposal in accordance with the water efficiency requirements of the Newcastle Development Control Plan 2012 (DCP 2012) and BASIX requirements. The proposal is considered to be acceptable.</p>
10. Wind conditions	<p>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</p>	<p>Analysis of the impacts on wind will be undertaken as part of the relevant Project Application(s).</p>	<p>The applicant has submitted a wind analysis in relation to the proposal.</p> <p>The report concludes that wind conditions at pedestrian level around the development are expected to be suitable for pedestrians.</p>

	thoroughfares and around public open spaces).		
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>The recommendations of the social plan by Heather Nesbitt Planning have been reviewed. The principal design commitments outlined are to facilitate social mix within the area by providing a mix of 1, 2 and 3 bedroom dwellings.</p> <p>The proposal does contain a mix of units types, and accordingly satisfies this recommendation.</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	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.	A Remediation Action Plan will accompany any relevant Project Application(s).	The applicant submitted a RAP with the development application, which has been considered by Council's Regulatory Services Unit (RSU). In this regard, the RSU was satisfied that the development site can be made suitable for the proposed development provided the RAP is implemented. The implementation of the RAP is addressed by a condition of consent.
13. Geotechnical conditions	Subsequent Project Application(s) will be required to incorporate the recommendations included in the Geotechnical Investigation prepared by Coffey Geosciences Pty Ltd.	As part of the relevant Project Application(s).	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, previous geotechnical reports indicate that mine workings were encountered during construction of the adjoining project. Both the geotechnical report as part of the concept plan and that under the current application do not raise any issue that would preclude the

			development. Compliance with the recommendations of the submitted geotechnical report 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. The proposal is 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 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</p>	As part of the issuing of the Construction Certificate for each Project Application(s).	<p>The project is 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 \$44,727,600. At a rate of 2% equates to a contribution payable of \$894,552.</p>

	<p>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>		
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Site Design Principles

Built Form

- Street wall heights and upper storey setbacks

The Site Design Principles require upper level setbacks of a minimum of 4.5m. The Plan Showing Proposed Concept Area and Revised Building Envelopes, dated 29 October 2012 override these guidelines and effectively provide for an upper level setback well in excess of 4.5m.

This application, which relates to the northern building, generally complies with this requirement, with the exception of a small corner element where the building adjoins the southern building.

It is considered that, despite the minor noncompliance with the upper level setback along 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.

In terms of amenity impacts this variation would create negligible difference to shadowing and does not affect views from surrounding buildings.

It should be noted that the statement within the Site Design Principles document that '*objectives and design principles **may** be used as part of the assessment of Project Applications for new development on the site*' strongly suggests that the site design principles are a guideline only.

In any regard there is a clear delineation between the lower building adjoining Shortland Esplanade and the northern tower element and the setbacks are considered acceptable.

- Building setbacks

The original Site Design Principles (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 current DA, which relates to the northern building, has setbacks well in excess of the required setbacks to No. 67 Watt Street (Arvia apartments).

- Building separation

The Site Design Principles 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 Principles (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 applicant has submitted a view impact analysis, including 3D graphical view analysis taken from 'The Royal' and 'Arvia' (**Appendix G**). It demonstrates graphically the extent of view impacts and also identifies that view sharing is still achieved from both 'The Royal' and the 'Arvia'.

The orientation and position of the building is constrained by the approved envelope. It is noted that the building 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.

In respect to the current DA, which will replace the previously approved building from the podium up, it is noted that the landuses within the building itself have no affect on view sharing. The location of the additional decks would not affect view sharing. On balance, given the constraints of the approved envelope, the view sharing is considered reasonable.

Building Character

- Building articulation and façade treatment

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

The plans have incorporated a vertical recessed section that provides a clear delineation between the northern and southern building. The façade treatment of the design also provides for articulation and modulation. The amended proposal is considered to be acceptable.

- Active frontages and pedestrian amenity

The Site Design Principles do not require an active frontage (i.e. commercial use) or pedestrian awning to Shortland Esplanade. However, it is noted that the proposed commercial spaces at lower ground level and ground level provide an active frontage to the forecourt area and pedestrian link through the site respectively. The proposal is considered to be acceptable in this regard.

- Vehicle access and carparking

The Site Design Principles indicate preferred vehicular access from King and Watt Street. The amended Site Design Principles (as approved under the modified Concept Plan) discuss 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 Maddison Building) and two from Shortland Esplanade. One of the Shortland Esplanade access points provides direct access into the basement car park while the second, further to the east, provides access to a small at-grade visitor car park adjacent to the entrance of the building.

It is noted that the 'entrance driveway' from Shortland Esplanade was previously the porte-cochere for the hotel element approved under DA 2012-549. The retention of this access, now that the hotel is deleted from the scheme, has been considered in terms of desirability. It is considered that the retention of this driveway and associated carpark does maintain a drop off/pick up zone for residents and visitors of the residential building. As there are 161 units proposed in the northern building, along with the commercial tenancies, it is not unreasonable to assume that this facility will be highly utilised for this purpose. The second access is likely to assist in dispersing some traffic impacts and may reduce congestion on Shortland Esplanade, as well as minimising visitor use of the King Street access. To this end, a condition has been recommended to require these spaces to be short term visitor spaces only.

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 Principles (as approved under the Concept Plan) indicate preferred vehicular access from King Street and Watt Street. Direct access from Watt Street is not possible due to land ownership. Accordingly access from King Street is, in principle, a preferred access point. Nevertheless traffic conflict / impacts need to be acceptable. In this regard the access arrangements have been considered by Council's Senior Development Officer (Traffic), and are deemed to be acceptable.

It should be noted that currently proposed access arrangements mirror those approved under DA 2012/549.

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

In summary, the access arrangements are acceptable from a traffic and safety perspective and are therefore considered acceptable against the Site Design Principles.

- Heritage and archaeology

The Site Design Principles 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 applicant has advised:

‘An Interpretation Strategy for the former Royal Newcastle Hospital Site was prepared on behalf of Mirvac Properties 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 Site Design Principles 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 Site Design Principles 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 following table outlines and responds to the requirements of the Site Design Principles in relation to public domain.

Objectives	
• <i>To create dynamic public spaces with permeable interfaces between the public and private domain;</i>	It is considered that the northern building, through the location of the commercial spaces, at varying levels sympathetic to adjacent public spaces, has achieved this objective.
• <i>To provide safe, accessible, convenient and legible movement network for vehicles, pedestrians and cyclists along streets and through public open spaces;</i>	It is considered that the proposal is acceptable in this regard.
• <i>To minimize the negative effects of new buildings on adjacent public spaces;</i>	The proposal does not negatively effect any adjacent public spaces including in relation to public access, overshadowing or visual impacts.
• <i>To provide integrated water cycle management on the site.</i>	The proposal is acceptable in this regard.
Design Principles	
• <i>Development is to ensure the distinction between public and private open space;</i>	The design of the forecourt, which is a semi-public domain, clearly distinguishes between public and private open space. The courtyards and entrances to the residential building are appropriately secured, while the

	commercial spaces will activate the building to the public forecourt.
• <i>All new development should adopt design strategies to minimize environmental effects on surrounding public spaces, especially overshadowing, wind turbulence and glare;</i>	The applicant has demonstrated that the proposal is acceptable in relation to these matters.
• <i>Ensure public open space is of a high quality and provides a range of experiences and facilities;</i>	The proposal does not involve any new public open space. The proposed semi-public spaces are considered to be acceptable.
• <i>Ensure appropriate access for those with a disability and those with limited mobility;</i>	The applicant has provided an Accessibility Review in relation to the proposal. Based on the information provided, the proposal can comply with the relevant access requirements, subject to the construction certificate process.
• <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>	It is considered that the proposal is acceptable having regard to CPTED principles.

- 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 Principles.

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 gross floor area (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. Further, the applicant submitted plans and area calculations for Stage 1A and 1B prepared by Denny Linker & Co Consulting Surveyors that were prepared in 23 December 2008. On the basis of this submitted information, it is noted that the previous DA 2012/549 was supported.

The area calculations as submitted indicate a GFA of 25,092.5m² for Stage 1A and 1B, within the maximum of 25,222m² as permitted under the concept plan (as amended).

Based upon the figure of 25,222m² there remains **15,494m²** of GFA available for Stage 1C, including the north and south building. Factoring the approval of DA 2012/549, the south building had a GFA of 3,469m², resulting in a remaining GFA of 12,025m².

The applicant has submitted area calculations for the northern building, which demonstrates that the GFA is 10,776m². The applicant has included any decks that are substantially enclosed (i.e. loggias) in this calculation.

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 24 car parking spaces when having regard to the parking requirements of the Newcastle Development Control Plan (DCP) 2012.

This excess parking equates to an additional 478m². 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 parking spaces allocated to the David Maddison Building as part of the previous DA 2012/549 (GFA of 677.28m²) will in part satisfy this requirement, meeting the '*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, with an overall GFA of 11,254m².

Condition 3 Building Envelopes

The site (as it relates to the northern building) currently has a number of different levels due to part of the site being occupied by the existing car park and part of the site, following demolition of the former hospital, being vacant. The existing levels range from RL22.3 at the south boundary (adjacent to Shortland Esplanade) to RL8.4 in the north-east corner (excavated area). For the purposes of considering appropriate levels a more useful reference point are the levels within Shortland Esplanade that range from RL 22.3 at the south-western end of the site to RL18 at the north-eastern end of the site.

The proposed forecourt area (Car Park Level roof – sheet DA215) is nominated at RL22.2, which is at the same level as Shortland Esplanade at the driveway entry point of this forecourt area. Due to the slope of the land the forecourt extends to a height of approximately 4m (or one-storey) above Shortland Esplanade at the eastern side and includes parking and a commercial element underneath. This parking and commercial area, that sits above street level (from approximately Grid Line 5 on Sheet DA214 Car Park Level), is approximately 350m² in area. The JRPP queried during the consideration of the previous DA2012-549 whether this area is permitted under the Concept Plan building envelopes. In the case of this current DA, it should be noted that the applicant intends to build to the podium level in accordance with the previous approval (DA 2012-549).

This aspect of the development has been considered having regard to Clause 3B) d) of Schedule 6A of the Environmental Planning and Assessment Act 1979, relating to development applications made under a Concept Plan, which states:

'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 the approval of the concept plan.'

The proposed development needs only to be 'generally' consistent with the Concept Plan to be permitted. The Concept Plan approval indicates that the modifications (i.e. conditions) to Concept Plan take precedence to the extent of any inconsistency with the approved documentation.

Condition 4 states:

'Approved building heights are to be in accordance with the drawing referenced 2911-CONCEPT AREA 29/10/2012 titled Newcastle Royal Hospital Site Plan Showing Proposed Concept Plan Area & Revised Building Envelopes, prepared by deWitt Consulting, dated 29/10/2012.'

Council has received legal advice in relation to this consideration. The advice concluded 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.

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.

Figure 2 below is the proposed site plan with the approved Concept Plan building envelope map overlain.

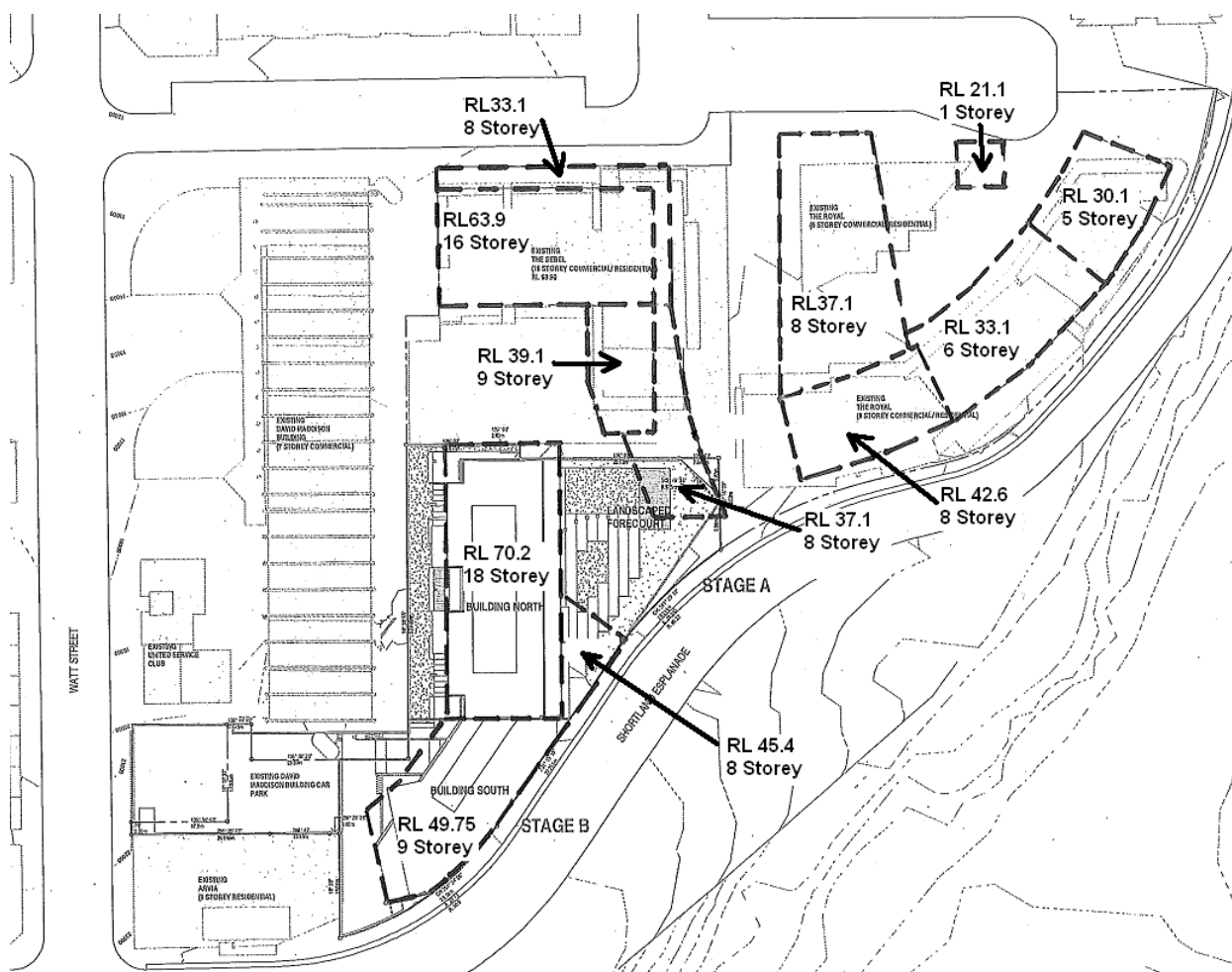


Figure 2 - Proposed Site Plan with Concept Plan MP05_0062 building envelopes overlain.

The highest part of the Car Park Level falls primarily within the envelope nominated at 8 Storeys/RL37.1. It is apparent that the Concept Plan did envisage that there could be built form within this section of the site. The area of the Car Park Level that sits above street level and outside the eight storey envelope is approximately 170m² in area. This represents approximately 1% of the entire development's GFA. Such a minor variation is considered to be generally consistent with the building envelopes of the Concept Plan.

The approved Concept Plan envelope map does not provide any guidance on the areas between the envelopes. A thorough review of all approved documentation under the Concept Plan has been undertaken. The Site Design Principles as approved under the Concept Plan are silent on the matter of the treatment of the areas between the building envelopes. The Preferred Project Report dated 24 November 2006 (as referenced in the Concept Plan approved documentation) proposed the following heights (Figure 3).



Figure 3 – Proposed building heights – Preferred Project Report, dated 24 November 2006 (Concept Plan MP05_0062)

The proposed height map (Figure 3), while generally superseded by the Concept Plan building envelope map, does provide some further clarity in terms of the areas between the envelopes. It indicates open space between the envelopes and also has a level of RL18.5 nominated at the north-west corner of the open space area within which the forecourt is proposed (not visible at scale). This level is similar to Shortland Esplanade at the eastern end of the site which would imply that a level open space area adjacent to the Shortland Esplanade frontage is desired. It is noted that useable level open space between the higher building footprints is desirable and the proposed development is considered consistent in this regard. Such a level also confirms that under the Concept Plan it was envisaged that the sections of the site currently below Shortland Esplanade can be built on, outside the

nominated building envelopes. This is also supported by the description of the Concept Plan which included 'basement car parking'.

However, the nominated level at RL18.5 on this map is not practically achievable. Such a level in this open space area would require a cut of approximately 4m below Shortland Esplanade at the western side. Due to slope it is not possible to achieve a continuous level open space area along the Shortland Esplanade frontage without either a cut or fill. An objective of the Concept Plan (outlined within the Preferred Project Report, dated 24 November 2006) was to improve the pedestrian amenity of Shortland Esplanade. It would be highly undesirable to the activation of Shortland Esplanade to locate the open space area up to 4m below the footpath level. It would also raise ongoing safety concerns for Council, with safety railing required to prevent pedestrian falling into the site.

The proposed development, which has a progressively elevated open space area terminating in the commercial area underneath (at the eastern end) is considered a much more resolved outcome, enabling a more active street edge. It is therefore considered that the forecourt area of the proposed development has achieved the objective of the Concept Plan and that the habitable area underneath is a positive design outcome for the site and public domain area.

It has been considered that the area outside of the envelopes is about 1% of the total development. It is considered that such a small divergence does not cause the development to cease to be generally consistent with the approved concept plan.

In summary the 'forecourt' area is considered to be consistent with the objectives of the Concept Plan to improve pedestrian amenity of, and achieve level open space adjacent to, Shortland Esplanade. The elevated nature of the forecourt area, at the eastern end, is a product of the sloping nature of Shortland Esplanade. It is considered that to utilise underneath the forecourt area for car parking and commercial space (i.e. the 'Car Park Level') is not inconsistent with the Concept Plan. In any regards the higher sections of this level (at the eastern end) sit generally within a building envelope nominated as up to eight storeys in height. Accordingly the 'Car Park Level' is considered to be generally consistent with the Concept Plan, including the building envelopes and therefore can be permitted.

As detailed in the above assessment, it is considered that the development complies with the building envelope as amended 9 April 2013.

It is, however reiterated that irrespective, the applicant intends to build structural elements to the podium level in accordance with an existing approval (DA2012-549).

Condition 4 Building Heights

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 RL68.13 (excluding plant). The plant is approximately 3.8m high. Therefore the northern building complies.

The proposal is considered satisfactory in relation to height.

Condition 5 Building Separation

The concept plan requires building separation to comply with State Environmental Planning Policy (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.

Applicant has stated:

The orientation of the apartments allows the majority of them to maximise the views to the South-East and South overlooking Newcastle Beach, Newcastle Baths and the horizon and to the North, and West across the inner city of Newcastle, Christ Church Cathedral and some apartments with vistas of the harbour. The apartments orientation and the treatment of outdoor spaces also provides visual privacy between dwellings and the upper levels, while the variation of upper levels of the building contributes to visual privacy for the units and streets below.

The Residential Flat Design Code sets out suggested building separation dimensions of 12 metres between habitable rooms/balconies (up to four storeys), 18 metres between habitable room/balconies for five to eight storeys and 24m between habitable rooms/balconies for nine storeys and above.

Building north is separated from the previous David Maddison Building (now Watt Street Commercial) to the west by approximately 13.9m. The David Maddison Building has been refurbished as A-Grade space over six levels. Up to 4 storeys, the separation between habitable rooms complies with the 12 m requirement. At levels 5 and 6 adjacent to the uppermost habitable level of the Watt Street Commercial Building, the separation between the two buildings will be approximately 13.9m, which is below the 18m suggested separation.

This separation between buildings is consistent with that which has already been approved, notwithstanding that the new building will now contain residential units on levels 1-6 where a hotel was located previously, is generally consistent with the Concept Plan, and in our opinion acceptable in relation to the requirements of the Residential Flat Design Code.

To address privacy concerns, and in particular the minor separation non compliance for western facing apartments on levels 5 and 6, balconies on units on the western side have been recessed to limit overlooking and the internal livable space is directed on to these balconies effectively orienting the dwelling parallel to the Watt Street Commercial Building. As a result of this, we believe all residential apartments comply with the intent of privacy concerns either by linear distance or through the orientation of windows and balconies to be perpendicular to neighbours.

Following a request from Council officers for further clarification in relation to building separation, the applicant advised that the windows to level 5 and 6 would have translucent glazing (refer to details shown on façade treatment plan at **Appendix H**)..

In relation to solar access considerations as they relate to building separation, the applicant advises:

'The proposed building provides amenity through the physical, spatial and environmental quality of its design and therefore meets the intent of SEPP 65. The orientation of the apartments allows the majority of them to maximise the views to the South-East and South overlooking Newcastle Beach, Newcastle Baths and the horizon and to the North, and West across the inner city of Newcastle, Christ Church Cathedral and some apartments with vistas of the harbour.

*There are 161 apartments in the proposed building including approved apartment combinations. All apartments on Levels 7 to 14 facing the eastern beachfront aspect receive 2 hours and greater of direct sunlight, while all apartments from levels 5 to 14 facing the western city aspect receive 2 hours and greater of direct sunlight. 15 apartments between Levels 4 and 6 facing the eastern beachfront aspect also receive 2 hours and greater of direct sunlight. Most of the remaining apartments facing both the eastern beachfront and the western city aspect receive between 1 and 2 hours of direct sunlight. Only 38 apartments from level 1 to part of level 6 receive less than 2 hours of direct sunlight. The subsequent proportion of apartments which receive 2 hours and greater of direct sunlight is 76.4% which is consistent with the 70% requirement set out in the RFDC. Further, all privacy measures including deck screens, balustrades, louvers and windows generally accommodate solar access to units. A shadow assessment is included in drawings DA 901A and 902A at **Attachment 4.***

In relation to the separation distances to 'The Royal' – Stage 1A & 1B analysis has included a review of the approved plans for 'The Royal' under MP07_0133, and the site analysis plan provided by the applicant (refer **Appendix B**).

The northern wall (facing 'The Royal' development) 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 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.

In summary the separation distances between the proposed development and 'The Royal' (Stage 1A & 1B) are considered to be compliant with the RFDC guidelines.

Condition 6 Car parking

The Concept Plan requires compliance with the Newcastle Development Control Plan 2005, which is now replaced with the Newcastle Development Control Plan 2012. It is noted that the parking requirements did not differ between the two plans.

The Newcastle DCP 2012 specifies the following car parking rates:

Type	Rate	Requirement
Residential - Small (<75m ² or 1 bedroom) carparking	Average 0.6 spaces per dwelling X 101 units	60.6 spaces
Residential - Medium (75m ² - 100m ² or 2 bedrooms) carparking	Average 0.9 spaces per dwelling X 54 units	48.6 spaces
Residential - Large (>100m ² or 3 bedrooms)	Average 1.4 spaces per dwelling X 6 units	8.4 spaces
Residential - visitor carparking	1 space for the first 3 dwellings plus 1 space for every 5 thereafter or part thereof	32.6 spaces

	X161 units	
Non-residential development	1 space per 60m ² gross floor area X 629m ²	10.5 spaces
TOTAL		161

The proposal complies, providing 219 spaces including 10 spaces associated with the commercial tenancies, and 34 spaces that are allocated to the adjacent David Maddison development.

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 allocated excess parking spaces will in part meet this requirement.

Accordingly the proposal is considered to comply with the DCP requirements.

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. A 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

The resulting 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.”

In relation to the current DA, the applicant states:

‘The current DA seeks only minor changes to aspects of the built form of the northern building. In particular, levels 1-6 will now incorporate decks on both east and west elevations for individual apartments. Level 7 retains its open balcony and remains unchanged from DA Approved. Levels 8 to 14 are more lightweight and include additional glazed elements, completing a vertical tripartite composition of base, middle, and top for the Shortland Esplanade streetscape. Projections and elemental detailing provide layers and differing textures to the overall facade treatment. There are no facade changes to Levels 8-14.

The proposed new northern building continues to achieve a high quality built form and urban design outcome as a result of the design competition held in accordance with Condition 8 of the Concept Plan.'

The applicant has further advised:

It should be noted that the purpose of the design competition was to select a preferred architect rather than prescribe a design outcome. This was achieved with the selection of Suturs who remain the project architects. Details re the design competition are included in the SEE and appendices. The current DA seeks only minor changes to aspects of the built form of the northern building when compared with that which is already approved. In particular, levels 1-6 will now incorporate decks on both east and west elevations for individual apartments. Level 7 retains its open balcony and remains unchanged from DA Approved. Levels 8 to 14 are more lightweight and include additional glazed elements, completing a vertical tripartite composition of base, middle, and top for the Shortland Esplanade streetscape. Projections and elemental detailing provide layers and differing textures to the overall facade treatment. There are no façade changes to Levels 8-14.

The proposed new northern building continues to achieve a high quality built form and urban design outcome as a result of the design competition held in accordance with Condition 8 of the Concept Plan.

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 \$44,727,600. At a rate of 2%, this equates to a contribution payable of \$894,552.

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 Principles.

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 following 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 Local Environmental Plan (NLEP) 2012

The application was lodged 1 August 2014. The amendments to the Newcastle Local Environmental Plan (NLEP) 2012 city centre provisions were gazetted on 29 July 2014. Accordingly, the amended provisions are applicable to this proposal.

The site is zoned R4 High Density Residential pursuant to the Newcastle Local Environmental Plan 2012. The proposal is categorised as a residential flat building and commercial premises. Business premises, food and drink premises and office premises are permissible in the R4 zone, however it is noted that other types of retail premises are prohibited in the zone.

In relation to the prohibited types of commercial premises (i.e. types of retail premises), the applicant has advised that:

Notwithstanding the above, the Department of Planning and Environment Circular PS 11-014 issued in May 2011 sets out that Councils should assess development proposals on sites which are the subject of an approved concept plan consistently with the approved concept plan, notwithstanding any:

- 1. prohibition, and*
- 2. non-compliance with any development standard that would otherwise apply in any relevant environmental planning instrument.*

Condition 5 of amended concept plan makes reference to the following:

“Predominantly residential and hotel uses and non-residential uses including a mix of ancillary retail, restaurant and commercial office suites”

On this basis we do not see any clear reason to amend the proposal to include business premises, office premises or food and drink premises, as the future use of the commercial space will be consistent with that set out in the concept plan.

An assessment against the NLEP 2012 provisions is at **Appendix I**. The development is considered acceptable in relation to the LEP considerations with any variations, such as height and FSR, being consistent with the Concept Plan which takes precedence.

State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP65)

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 montage of the building 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. A copy of the UDCG meeting minutes is contained at **Appendix C**. The UDCG was generally supportive of the proposal with relevant discussion under the principles below.

1. Context

The site was previously occupied by the Royal Newcastle Hospital, and was subsequently partially developed largely in accordance with an approved master plan as Stages 1A and 1B by Mirvac. These stages include ground floor retail and a small bar, a four storey hotel, and residential apartments above. Following acquisition of the remaining development site by Kred Pty Ltd, Stage 1C has included the major refurbishment of the former David Madison medical research building as office space, which represented a departure from the master plan that anticipated high-rise commercial and residential development on the DMB site. The Group strongly supported the retention of the DMB, which is considered to be an excellent building of its era, which contributes positively to the urban form of Watt and King Streets.

The residential and commercial project which formed the December 2013 JRPP approval, and the proposed changes to that approval identified in this application, form the completion of the overall project.

The context is considered suitable for the proposed residential and commercial use.

2. Scale

No change is proposed to the previously approved building envelope.

3. Built Form

The proposed change of use from hotel rooms to apartments has brought with it the addition of balconies that will enjoy very attractive south easterly views over a forecourt area to Newcastle Beach. The addition of balconies offers the opportunity of providing more dynamic interest to the lower 7 storeys of the building façade, and it is anticipated that they will be well used by residents whenever weather conditions permit.

The provision of some degree of privacy for residents using the balconies and an associated degree of screening of the view from the forecourt and the street beyond, was discussed at length. The adjacent approved “Building South” includes operable screens which protect privacy and views into balconies. The proposed use of full clear glass balustrades, with no screening at all to the balconies, was questioned although it was acknowledged that the subject block is more removed from the road than “Building South” is. The applicant noted an expressed desire on behalf of potential purchasers for a maximized view from the apartments across the balconies, which was also acknowledged.

On balance, while the Group agreed that it was not necessary or desirable to continue the extensive degree of screening applied to the balconies of “Building South” apartments to the subject development, a moderate degree of screening would be most useful both for residents’ comfort and for the external appearance of the building. This need not detract from the attractive views available from the apartment interiors. This moderate screening could readily be achieved by including a low upstand to the edge of the balconies, with clear glass balustrade above. This solid upstand could be reduced in its height on higher floors if desired, as privacy considerations are reduced. The need also to provide

screening to reduce overlooking between apartment balconies was also identified, and the applicant undertook to address this concern.

4. Density

No issues were raised in respect to density.

5. Resource, Energy and Water Efficiency

No information was supplied to the Group in respect to any implications in respect to these criteria which might arise from the proposed changes to the current DA.

6. Landscape

The forecourt area to the east of the buildings was not proposed to be changed significantly from the approved design. In the previously approved form, the area had been necessary to provide a vehicular drop-off to the hotel reception in the forecourt, and six parking spaces on this open area are retained in the current scheme for use by the small commercial area on the southern end of the ground floor level. The Group questioned whether these car parks might be more appropriately provided in the basement area with the remainder of the provided parking, which would allow a more extensive landscaping of the forecourt. It would also provide much greater capacity to manage parking for the commercial operator.

While it was acknowledged that the site is extremely exposed to salt-laden southerly winds, with a consequent difficulty in obtaining any substantial tree or large shrub growth, there is an opportunity to use low screens and salt-resistant low shrubs and ground covers to soften the appearance of this forecourt area. This more extensive use of vegetation would also be cooler in summer when extensive hard pavement in the area would otherwise absorb and reflect heat into the apartments. It would provide a more attractive foreground to the otherwise desirable beach and ocean views available to the residents.

7. Amenity

While winter solar access is limited to some of the apartments because of the ESE orientation of the living spaces, this is largely unavoidable because of the site and its previous master planning decisions. The very pleasant outlook of the dwellings will provide occupants with good aspect, and the design generally is considered to provide quite a high level of amenity to residents.

8. Safety and Security

As mentioned under Landscape above, the parking for the small commercial area would be more efficiently managed if located with the remainder of the car parking in the secure basement.

Pedestrian access to the Lower Floor Commercial area is very close to the driveway, and the Group recommends further design resolution to make this entry safer and more visually appealing.

9. Social Dimensions

There is some opportunity to design for greater informal social interaction between residents in the development. While it may not be possible at this stage to provide a common room and landscaped area at roof level, provision should be made for residents to casually meet in the foyer and possibly in the commercial space if this is fitted out as a café in the future. It was also suggested that any proposed outdoor seating associated with the commercial use be clearly

defined, and egress ways from fire stairs protected from potential obstruction by furniture and diners.

Provision of seating for residents in the foyer and in the forecourt, should also be provided with the view to enhancing resident interaction.

10. Aesthetics

The aesthetics of the proposal were generally considered to be quite acceptable, subject to resolution of matters identified above – including some limited visual screening of balconies, and the softening of the forecourt with the removal of parked vehicles and the more extensive use of low shrubs and groundcovers.

The render colour to the rectangular frame defining the balcony edges, which appears white in some renderings, should be similar to the tone depicted in item “F” in the colour palette provided.

Recommendation: Subject to the satisfactory addressing of the issues identified above, the proposal is supported by the Panel.

In response to the comments made by the UDCG, the applicant provided the following response:

1. Balcony Upstand

We debated this at length.

There are many examples where this hasn't needed to occur to balconies on other neighbouring buildings both to street fronts and within their sites. In addition to this our building is set in off the street alignment meaning the issue of privacy to the lower level apartments is reduced as street level passersby are a significant distance from the majority of units and the landscaped forecourt is not an accessible space for the public to roam through.

As for the privacy to those balconies which have some opportunity for overlooking the balcony below, I would suggest we will provide translucent glass to these sides.

2. Landscape.

More green in the landscape is requested.

The carpark is unavailable to be converted to an entirely soft landscaped space as we need this area as part of our vehicular requirements and it provides a good activation for this area related to short term visitors and the commercial operation at ground level. Whereas the amount of soft landscape treatments is comparable to the previously approved landscape design, it may be feasible to provide a minor amount of additional green to what we already have while maintaining the intent of the current landscape design framework.

3. Safety and Security.

We believe the current design meets the intent of the SEPP requirements.

The proposed scheme doesn't differ greatly from the currently approved design and in our opinion adequately meets the challenges of safety and security for an inner city development that is passively surveilled around the clock.

4. Social Dimension.

Communal meeting/seating.

We agree that a cafe if developed would be a good meeting place and in addition, the landscape design allows for seating. With regards to the commercial outdoor seating, we would anticipate that the Strata Plan in addition to the provisions of the BCA would ensure such seating doesn't interfere with fire escape exit.

5. Aesthetics.

The group has accepted the colours we've prepared, and whilst there is a suggestion that the landscape can be "greener", the cars have to stay and their provision is consistent with the intent of our original approved scheme.

In all, we believe the issues raised are relatively minor in nature and with the exception of those items we believe are currently addressed in the proposed design in accordance with the intent of SEPP 65, can for the most part can be resolved as part of our design development

It is noted that the previous development application was also considered by the UDCG. Further commentary relevant to the current proposal was also made, including:

"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."

It is considered 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 J**.

Considerations of the draft amendments to the SEPP65 are discussed at **Appendix K**.

State Environmental Planning Policy (Urban Renewal) 2010 (Urban Renewal SEPP)

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

State Environmental Planning Policy 55 – Remediation of Land (SEEP55)

Contamination was discussed under Part 6 Concept Plan of this report. Council's Regulatory Services Unit have provided the following comments in relation to contamination:

'A Preliminary Contamination Assessment prepared by Douglas Partners Pty Ltd dated May 2012 was completed as part of the previous Development Application for the site (Development Application No: 2012/0549). The Preliminary Contamination Assessment prepared by Douglas Partners Pty Ltd dated May 2012 identified imported fill material beneath existing pavements as a potential source of contamination at the site. The Remediation Action Plan (RAP) prepared by Douglas Partners Pty Ltd dated October 2012 noted potential contaminants would be removed from the site as part of the excavation for the basement carparking area of the previously approved development at the site. However, the RAP prepared by Douglas Partners Pty Ltd dated October 2012 recommended additional sampling would be required to determine the extent of contamination and for waste classification and validation purposes.

The Contamination Investigation prepared by Douglas Partners Pty Ltd dated April 2014 has undertaken additional sampling of soil and groundwater at the proposed development site. Soil sampling revealed the absence of gross contamination within the fill material, but elevated levels of Benzo(a)Pyrene (BaP) were identified in three samples. The elevated levels of BaP were associated with asphalt materials in the sample and all asphalt material will be removed from the site as part of the proposed excavation activities.

Waste classification sampling has revealed the soil may be removed from the site as general solid waste and excavation of materials should be undertaken in accordance with the RAP prepared by Douglas Partners Pty Ltd dated October 2012.

The Contamination Investigation prepared by Douglas Partners Pty Ltd dated April 2014 has also undertaken sampling of groundwater. Sampling revealed elevated levels of cadmium, copper and zinc in groundwater. However, the elevated levels of zinc appear to be consistent with natural background conditions while the levels of cadmium and copper are isolated levels. Due to the distance to receiving waters the levels of contaminants are likely to dissipate due to natural attenuation and will not result in adverse environmental impacts. Therefore, no further remediation of groundwater will be required to be undertaken.

Council is satisfied the development site can be made suitable for the proposed development provided the RAP prepared by Douglas Partners Pty Ltd dated October 2012 is implemented. The requirement for implementation

of the RAP is addressed by an appropriate condition of consent. A validation report for the proposed remediation method is required to be prepared at the conclusion of works in accordance with the Environment Protection Authority's (EPA) 'Guidelines for Consultants Reporting on Contaminated Sites' and 'Guidelines for the NSW Site Auditor Scheme'. The validation report will be required to be submitted to the Principal Certifying Authority (PCA) and Council prior to the issue of an Occupation Certificate. The requirement for submission of a validation report will be addressed by an appropriate condition of consent.'

The submitted RAP is considered to satisfy the requirements of SEPP 55 and subsequently 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.

(a)(iii) any development control plans

An assessment against the Newcastle Development Control Plan 2012 provisions is at **Appendix L**. The development is considered acceptable in relation to the DCP considerations, noting that, as outlined previously, Clause 3B of Schedule 6A of the Act sets out transitional arrangements which apply on the repeal of Part 3A. In this regard, the proposals compliance with the DCP is considered having regard to the relationship with the Concept Plan.

Note: Following the lodgement of the development application, the NSW Department of Planning and Environment adopted a revised Section 6.01 to the NDCP2012. This revision included the site in the 'city centre' Section. It is unclear whether this repeals the Section 6.11 Royal Newcastle Hospital Site. For completeness, both the Section 6.11 and the new 6.01 sections are discussed.

(a)(iiia) 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 potential impacts are considered relevant:

- Traffic, Access and Parking

Access Arrangements

In relation to access arrangements, the applicant's Traffic Consultant has advised:

'Access arrangements to the Northern building will be provided from Shortland Esplanade (car park and set-down/pick-up area) and King Street (car park via existing lane located to the west of the subject site).'

'The easternmost driveway onto Shortland Esplanade and the service lane access off King Street, located adjacent to the western boundary of the site, will provide combined entry and exit driveways accessing the basement car park. In addition, a set down/pick up area will be located on the northern side of Shortland Esplanade to the west of the basement access driveway. The combined entry/exit driveway to the set-down/pick-up area will be suitable for cars, van and small commercial vehicles.'

'Servicing of the site will be provided via a loading dock with access via the existing service lane off King Street. The loading dock has been designed to cater for service vehicles ranging from vans and small commercial vehicles to medium rigid trucks up to 8.8 metres in length. The loading dock has been designed to allow service vehicles to enter and exit via King Street in a forward direction. The loading dock will allow service vehicles to be accommodated totally within the site and will allow convenient access and circulation to/from King Street.'

'Access via King Street will be restricted to only residential component of the development. The access onto Shortland Esplanade will be available for residential, commercial and residential visitors.'

The current application maintains the previously approved access arrangements, which separate the northern and southern building parking areas.

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 basement car park while the second, further to the west, provides access to a small at-grade visitor car park adjacent to the entrance of the building.

In terms of whether the driveway crossing for the small at-grade car park is justified, as there are 161 units proposed in the northern building, along with the commercial tenancies, it is not unreasonable to assume that this facility will be highly utilised. The second access is likely to assist in dispersing some traffic impacts and may reduce congestion on Shortland Esplanade. To this end, a condition has been recommended to require these spaces to be short term visitor spaces only.

The loading dock is considered acceptable on the basis that access is restricted to a maximum medium rigid truck 8.8m in length. An appropriate condition will be required in relation to this matter.

Council's Senior Development Officer (Traffic) raised no concerns in relation to the proposed access arrangements, which have not changed from the previously approved scheme.

Traffic Generation

Council's Senior Development Officer (Traffic) has considered traffic impacts, with the following comments made.

The amended development has been supported by a Traffic report prepared by Colston Budd Hunt & Kafes Pty Ltd. which has identified that because of the residential nature of the new development the traffic generation from the proposed amended development will in fact be slightly less than the already approved hotel development on the site (8 vph). This would suggest the proposed amendments would from a traffic perspective result in a slightly better outcome than the currently approved development.

However on review (of the originally submitted report) it is considered that the traffic generation rates used were not in accordance with latest RMS data which says for high density residential flat developments in regional areas the rates to be used are ;

- 1. 0.53 vtpm per unit in the AM peak and 0.32 vtpm in the PM peak. RMS Technical Direction TDT 2013/04.*
- 2. Commercial spaces – 2 per 100 m² GFA*

Use of the correct rates is likely to at least double the predicted traffic from the site and the traffic report should be amended appropriately. However the net result is not likely to change (that) the intersections are currently operating with good levels of service and even doubling the traffic generation from the site would not be expected to result in unacceptable LoS at the affected intersections based on the current operation of the intersections.

In response, the applicant's Traffic Consultant advised:

'(The rates in the original report) were adopted as they reflect the lower parking rates adopted by Council for residential and commercial development within Newcastle East, reflecting the sites close proximity to Newcastle CBD, public transport services and Council's objectives to encourage travel by means other than car and reducing reliance on car based travel.

Furthermore the rates suggested by Council are not considered appropriate for the following reasons:

- the residential rates suggested are based on surveys of two residential developments (Wollongong – 9 units and Charlestown – 108 units). The small size of the Wollongong site suggests that it is not relevant to the site in Newcastle East. The Charlestown site was found to have generation rates of 0.4 trips per 100m² in the AM/PM peak hour and a higher proportion of larger units (31x1 bed, 53x2 bed and 24 x3 bed) compared to the proposed development in Newcastle East (24x studio, 77 x1 bed, 54 x 2 bed and 6 x3+ bed); and*
- the commercial rate (2 trips/100m²) suggested by Council is from the RTA Guide to Traffic Generation Developments. For developments with unconstrained parking this is the equivalent of 0.8 trips per space. However, RMS technical direction TDT 2013/04 has provided updated traffic generation rates. The TDT included surveys of a site in Newcastle, which was found to have generation rates of 0.57/0.63 trips per parking space in AM/PM peak hour with a parking provision of 1 space per 55m².*

Based on the above we have revised the traffic generation of the proposed development based on the following rates:

- 0.3 trips per residential unit (adjusting the surveyed rate from Charlestown to take into account the higher number of smaller units in Newcastle East and the subject sites higher accessibility to public transport and services); and
- 0.52/0.57 trips per commercial space in the AM/PM peak period after adjusting the Newcastle surveys for the more constrained parking provision at Newcastle East (1/60m2).

Using these rates the proposed development (161 units and 45 commercial spaces) would generate some 71/74 vehicles per hour two-way in the AM/PM peak hours. By comparison, the approved development (using the same rates) would have generated some 88/95 vehicles per hour two-way in the AM/PM peak periods. Hence, the proposed development will have a lower traffic generation than the approved development.'

Following the receipt of the submitted additional information, Council's Senior Development Officer (Traffic) advised:

The rates of 0.3 trips per residential unit and 0.52/0.57 trips per commercial space in the AM/PM peak period are considered acceptable having regard for the availability of public transport services and Council's reduced parking provision of 1 per 60M2 for the Newcastle CBD respectively.

Utilising these rates the following aspects of the report are of particular note:

1. *The proposed development will generate around 17/21 vehicles less than the approved development*
2. *Access to King Street will be restricted to the residential component of the development together with service vehicle activity with a similar level of traffic generation to the approved development due to minor changes in traffic flows at each access and an increase in parking spaces from 19 to 24 on the lower parking level.*
3. *Existing intersections will continue to operate at acceptable levels of service post development during both AM/PM peak periods*
4. *Queue lengths in King Street on eastern approach to the intersection of Watt Street are comparable with the approved development at approximately 3 vehicles*

Note:

While the submitted traffic reports have not identified the installation of an additional marked foot crossing in King Street on the western approach to the intersection with Watt Street, this should not result in an increase in queue lengths for the King Street eastern approach to this intersection.

Council officers have reviewed the sidra data and are satisfied that this data supports the findings of the Colston Budd Hunt & Kafes Pty Ltd amended report dated 30 October 2014.

The application is therefore supported on traffic grounds with the inclusion of appropriate conditions of consent.

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 will continue to operate within acceptable limits having

regard to the additional traffic generated by this development. Accordingly, it is considered that the proposal is acceptable in relation to traffic generation.

The submissions raised concern in relation to site access from King Street through the laneway access behind the David Maddison Building and the adjoining 'Royal' development access. As previously considered in the assessment of DA2012-549, this laneway access is considered to comply with AS 2890.1 – Parking Facilities in relation to width and driver sight lines. Further, to address possible conflicts in the laneway between vehicles and pedestrians associated with this development and the adjacent David Maddison Building an 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.

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 appropriate conditions were imposed on the previous DA2012-549 for the reconstruction of 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. Completion of these works prior to occupation, as required by DA2012-549, is a recommended condition of consent for the current application.

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. 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 commercial premises 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'.

The recommended conditions also 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.

On-site Car Parking

NDCP2012 requirements for Newcastle City Centre car parking are:

Type	Rate	Requirement
Residential - Small (<75m ² or 1 bedroom) carparking	Average 0.6 spaces per dwelling X 101 units	60.6 spaces
Residential - Medium (75m ² - 100m ² or 2 bedrooms) carparking	Average 0.9 spaces per dwelling X 54 units	48.6 spaces
Residential - Large (>100m ² or 3 bedrooms)	Average 1.4 spaces per dwelling X 6 units	8.4 spaces

Residential – visitor carparking	1 space for the first 3 dwellings plus 1 space for every 5 thereafter or part thereof X161 units	32.6 spaces
Non-residential development	1 space per 60m ² gross floor area X 629m ²	10.5 spaces
TOTAL		161

The proposal complies, providing 219 spaces including 10 spaces associated with the commercial tenancies, and 34 spaces that are allocated to the adjacent David Maddison development.

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 allocated excess parking spaces will in part meet this requirement.

The DCP2012 requirements for Newcastle City Centre bike and motorcycle parking are:

Type	Rate	Requirement	Provision
Resident bike parking	Bike parking of 1 space per dwelling is required unless separate storage is provided	161 spaces	Provided within the storage areas for each unit or in a common secure area.
Residential visitor bike parking	1 space per 10 dwellings	16 spaces	The proposal provides outdoor racks for visitors.
Residential motorcycle parking	1 space per 20 car spaces	8 spaces	18 spaces
Commercial bike parking	1 space per 200m ² GFA	3 spaces	The proposal provides outdoor racks for visitors.
Commercial motorcycle parking	1 space per 20 car spaces	Not required.	

As detailed above, the proposal complies with the requirements of NDCP2012 in relation to parking provision.

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

- Overshadowing of adjoining property

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). The

overshadowing of adjoining buildings and the beach is considered to be acceptable.

- Views

It is noted that during the assessment of the previous DA2012/549, the potential view loss to the easterly views from the 'Arvia' apartments at 67 Watt Street was raised in submissions received. While these objections were not re-iterated during the notification of this current DA, the potential view impacts to this building remain a consideration. However, it cannot be dismissed that the previous DA was approved, with the same building envelope as that now proposed.

Further, 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 sited as far south and west as could be accommodated as per the current Concept Plan envelope (footprint). 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 view sharing is considered reasonable.

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' 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 that currently have some ocean view towards the east (over the subject site) will lose that view. The remaining units would 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 regard to the controls on the site the proposal is considered to be reasonable.

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.

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

Council's Regulatory Services Unit have provided the following comments in relation to potential noise impacts:

'The proposed development is located adjacent to sub-arterial roads, Shortland Esplanade and Watt Street, and traffic noise may potentially affect the amenity of the residential and commercial units. The proposed development may also be affected by noise from other commercial activities in the area. To protect the amenity of future residents and commercial operators compliance with internal noise levels outlined in the Department of Planning's 'Development near rail corridors and busy roads – Interim Guideline' and Australian Standard 'AS 2107 – 2000 Acoustics – Recommended design sound levels and reverberation times for building interiors' is required.

The Noise Impact Assessment (NIA) prepared by Reverb Acoustics dated September 2014 has calculated the noise impact from the roadway at the external façade of the proposed residential and commercial receivers. The calculated noise level at the façade was 65dB(a) L_{eq} . Due to the calculated received noise level the NIA determined acoustic measures will be required to

ensure compliance with recommended internal levels. The NIA has utilised the methodology outlined in Australian Standard 'AS 3671 -1989 Acoustics – Road Traffic noise intrusion – Building siting and construction' to determine the recommended acoustic treatment of external walls, ceilings and windows to ensure internal noise levels are satisfactory. The recommended acoustic measures are required to be incorporated into the design of the proposed development and a sign-off from the acoustical consultant is needed. The implementation of the acoustic measures will be addressed by an appropriate condition of consent.

The Statement of Environmental Effects notes rooftop mechanical plant will be required for the proposed development. The installation of mechanical plant has the potential to generate adverse noise impacts for the surrounding residential buildings. However, the potential adverse noise impacts may be mitigated by the installation of appropriate acoustic measures. The selection of equipment is to be conducted in consultation with an acoustical consultant and determination of appropriate measures to mitigate noise shall be implemented prior to the issue of an Occupation Certificate. This requirement will be addressed by an appropriate condition of consent.'

Concern was raised in relation to the potential impacts of the future use of the non-residential tenancies spaces. As no specific use is identified for these spaces, it is difficult to suggest that unreasonable impacts would be created at this stage. However, to manage any future impacts, hours of operation are recommended as a condition of consent initially for these tenancies. It is reasonable to restrict them until 10pm, which aligns with noise sensitivity guidelines. Any future applications to increase these hours would be subject to a separate assessment.

- **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. In this regard, the report submitted by the applicant 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 commercial space entrance from Shortland Esplanade and 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.

(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.

A Remedial Action Plan 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) the application was notified from 12-26 August 2014 and a second time from 3-17 September 2014 due to an administration issue with the original notification period.

As a result of the exhibition periods, two letters of objection and one letter of support were received.

The letter of support advised that they considered that the proposed changes from the approved scheme (DA2012/549) addressed a number of issues such as reduced traffic, noise and number of visitations.

The matters raised in the objections are detailed below and responded to below:

Concern raised	Comment
Use of lane between the 'The Royal' and 'Watt Street Commercial'. Whether only for loading or all the apartments.	Similarly to that approved by DA2012/549, a residential parking entry is proposed via this lane.
Traffic congestion on King Street from use of lane, made worse from additional parking proposed, intersection restrictions and opening of refurbished David Maddison Building.	Council's Development Engineer has reviewed the Traffic Report prepared and concurs that the use of the lane does not create any unreasonable impacts.
<i>DA remains inconsistent with modified concept plan. The PAC approved modifications to the concept plan maintained a position that an access to/from Watt Street should still be provided for the Stage 1C site and further access to King St be limited to emergency vehicles or one-way only.</i>	The approved Concept Plan does not prohibit the use of this lane.
While deletion of hotel is beneficial with less noise, in relation to proposed commercial, there is no information on operating hours or noise. Many operational conditions imposed on last DA.	As noted in the assessment, standard commercial hours have been recommended as a condition of consent. Specific conditions relating to the hotel management no longer apply to the proposal.
By excluding the southern building from this DA the overall traffic impact is difficult to assess. <i>'The link between the southern section</i>	The submitted Traffic Report, and Council's Development Engineer assessment has considered the cumulative impacts of the overall site.

<i>building and the northern section subject to this new DA cannot be determined and operation and impacts on traffic flows therefore cannot be assessed.'</i>	It is noted that the northern and southern building have separate car parking and access arrangements.
Traffic and pedestrian management not adequately addressed or reconsidered.	Council's Development Engineer has reviewed the Traffic Report prepared and considers that the proposal will not create any unreasonable impacts.
Potential use of commercial space as 'pub' which is included in 'food and drink premises' definition.	'Pubs' are excluded from being 'complying development' in accordance with State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. Accordingly a separate DA would be required to use the commercial space for this use.

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 Local Environmental Plan 2012 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 DA2014/0847, subject to the conditions contained in Appendix A.

APPENDIX A - Conditions of Consent

APPENDIX B – Plans, Elevations, 3D perspectives, Colours and Materials, DA comparison plan – 1 King Street, Newcastle

APPENDIX C – Referral Comments, including UDCG meeting minutes

APPENDIX D – Concept Plan MP05_0062 as amended 9 April 2013

APPENDIX E – Concept Plan – Site Design Principles

APPENDIX F – Concept Plan – Building Envelopes Plan

APPENDIX G – View Impact Analysis (SEE extract)

APPENDIX H – Sketch of proposed façade treatment

APPENDIX I – Newcastle City Centre Local Environmental Plan 2012 – Compliance Assessment

APPENDIX J – Residential Flat Design Code – Compliance Assessment

APPENDIX K – Draft State Environmental Planning Policy 65 – Compliance Assessment

APPENDIX L – Newcastle Development Control Plan 2012 – Compliance Assessment