

JOINT REGIONAL PLANNING PANEL

HUNTER AND CENTRAL COAST

JRPP No.	2016HCC018
DA Number	DA 2016/00346
Local Government Area	Newcastle
Proposed Development	Demolition of existing buildings, construction of a 20 storey shop top housing development (in two towers) including 197 residential apartments, commercial and retail space, four floors of parking (257 spaces), associated site works and a 202 lot strata subdivision.
Street Address	470 King Street, Newcastle West
Applicant	Windham Development Pty Ltd
Number of Submissions	Nil
List of All Relevant s79C(1)(a) Matters	Environmental planning instruments: s79C(1)(a)(i) • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Urban Renewal) 2010 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy No. 55 - Remediation of Land • State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development • State Environmental Planning Policy No. 71 - Coastal Protection • State Environmental Planning Policy (Building and Sustainability Index: BASIX) 2004 • Newcastle Local Environmental Plan 2012 (LEP) Development Control Plan: s79C(1)(a)(iii) • Newcastle Development Control Plan 2012 (DCP) • Section 94A Development Contributions Plan 2009
List all documents submitted with this report for the panel's consideration	Appendix A - Plans, Elevations Appendix B - Landscape Plan and proposed public walkway along Cottage Creek Appendix C - Draft conditions of consent Appendix D - Streetscape Perspective Appendix E - Internal and External Referrals

	Appendix F - Design Verification Statement and SEPP 65 Design Quality Statement
Recommendation	Approval
Report by	David Paine
Report date	8 September 2016

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

The proposed development is seeking redevelopment of the site known as 470 King Street, Newcastle West. The project has undergone a rigorous design review process with Council's Urban Design Consultative Group and a Design Excellence Panel. The value of works is \$73,626,869.00 million and is a significant project for Newcastle West.

Proposed development

The proposal is seeking consent for the demolition of the existing buildings on site and construction of a 20 storey shop top housing development, in two buildings. The development consists of 197 residential apartments, commercial and retail space, four floors of parking (257 spaces), associated site works and a 202 lot strata subdivision.

Permissibility

The site is zoned B3 Commercial Core under the Newcastle Local Environmental Plan 2012 (LEP). The proposed use is defined as shop top housing which is permissible with consent in the B3 Commercial Core zone.

Consultation

The proposal was placed on public exhibition for a period of 14 days from 18 April to 3 May 2016 in accordance with the *Environmental Planning & Assessment Act 1979* (EP&A Act), *Environmental Planning & Assessment Regulations 2000* (EP&A Regulations) and Section 8 of Newcastle Development Control Plan 2012 (DCP). Council received no public submissions during the exhibition period.

The application was referred to the Roads and Maritime Authority (RMS) and the Mine Subsidence Board in accordance with the provisions of S91 of *Environmental Planning and Assessment Act 1979* and State Environmental Planning Policy (Infrastructure) 2007. The RMS provided no objections to the development, subject to a number of conditions of approval. The MSB also approved the proposal with conditions.

Key Issues

The key issues raised in the assessment relate to two significant elements within the design. The first relates to the two existing buildings located to the north of the site on Hunter Street, which are currently owned by Hunter Water Corporation. The second issue relates to the proposal to create a pedestrian link between King Street and Hunter Street along Cottage Creek.

Whilst not directly related to the development site, the buildings located at 681 Hunter Street Newcastle (on the adjoining site to the north) have been identified for demolition since 2012 in Council's Newcastle City Wide Floodplain Risk Management Study and Plan. The demolition of these buildings is consistent with Council's long term plan for Hunter Street. The applicant and Council have been negotiating with Hunter Water Corporation to purchase the site in order for these buildings to be demolished. This will enable the significant flood risk to be removed (as the buildings are restricting the

drainage of the Creek) and will enable the creation of a public walk way between King Street and Hunter Street, Newcastle West. This is seen as a key concept as identified in Council's Hunter Street Revitalisation Final Strategic Framework and the Development Control Plan for the West End.

The demolition of these buildings and the creation of the pedestrian link will be beneficial for the subject development and the broader community. It will assist with the creation of an active public domain area orientated towards Cottage Creek and will increase passive surveillance to the development.

Referral to Joint Regional Planning Panel

The proposal is referred to the Joint Regional Planning Panel as the development has a capital investment value of more than \$20 million. The application submitted to Council nominates the value of the project as \$73,626,869.00 pursuant to the requirements of State Environmental Planning Policy (State and Regional Development) 2011.

The proposal is classified as '*Integrated development*' and requires approval from the Mine Subsidence Board (requires approval under *Section 15, Mine Subsidence Compensation Act 1961*).

The above agency has provided their approval and all recommended conditions have been included in the draft schedule of conditions (**Appendix C**).

Recommendation

It is recommended that the Hunter & Central Coast Joint Regional Planning Panel approve Development Application No. 2016/00346 for the demolition of the existing buildings on site and construction of a shop top housing development comprising of two, 20 storey towers (197 units) plus four levels of car parking (257 spaces), subject to the nominated draft conditions of consent as detailed in **Appendix C**.

1. BACKGROUND

The subject site is known as Lot 3 DP 593753 with a street address of 464-470 King Street, Newcastle West. The site has an area of 4,585m², a southern frontage to King Street of 80.73m, and an eastern frontage to Cottage Creek of 86.44m.

The applicant has recently purchased the small triangle parcel of land known as Lot 2, DP 81601 with a street address of 12 Steel Street, Newcastle West. This parcel of land has now been incorporated into the DA and will enable the creation of the pedestrian path along Cottage Creek.

The site is currently occupied by large commercial type premises, with a small open car park along the eastern boundary of the site, accessed from King Street. The existing buildings are predominantly single storey with a small double storey building occupying the south-eastern corner.

The site is located in a commercial area within an urban block bound by King Street to the south, Steel Street to the east, Hunter Street to the north and National Park Street to the west. Cottage Creek runs in a north-west to south-east direction, directly adjacent to the eastern boundary of the site.

The seven storey Travelodge building is located on the opposite side of Cottage Creek to the east, and the two storey ANZ building (fronting King Street) and Newcastle Leagues Club (fronting National Park Street) adjoins the site to the west.

The development directly adjoining the site to the north (fronting Hunter Street) consists of a mix of two storey commercial, retail and shop top housing developments. Little Birdwood Park is located opposite the site on the southern side of King Street, and Marketown shopping centre is located just beyond Little Birdwood Park to the south of Gibson Street.

The site is located within the Newcastle City Centre, within walking distance of the Honeysuckle Precinct, the future Light Rail Interchange, Marketown Shopping Centre, National Park, Hunter TAFE (King St campus) and the future Newcastle University City Campus.



Figure 1: The subject site

2. PROPOSAL

The proposed development is for the construction of a 20 storey shop top housing development, built in two towers. It consists of 197 residential apartments, 599m² of ground floor retail premises and 451m² of first floor commercial premises.

The proposed development incorporates the following:

- Demolition of the existing warehouse / office building and car park on the site
- Remediation of the site
- Earthworks, involving approximately 1.0 to 1.2m excavation below ground level for the semi-basement level car park
- Construction of an eight storey western podium building and two x 20 storey towers (from ground level) along the eastern side of the site incorporating:
 - a. 257 space car park over the first four (4) levels of the building (Lower Ground Floor to Level 2);
 - b. Three (3) retail premises on the Ground Floor (total GFA 599m²) plus a public pedestrian promenade fronting Cottage Creek;
 - c. Two (2) commercial premises on Level 1 (total GFA 451m²);

The full development plans are provided as an attachment to this report in **Appendix A**.

3. PLANNING ASSESSMENT

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

3.1.1 Section 23G – Joint Regional Planning Panels

Section 23G and Schedule 4A (3) of the EP&A Act requires the Joint Regional Planning Panel (JRPP) to determine applications for general development over \$20 million in value. The capital investment value of the application is \$73,626,869.00 including GST. The application is to be determined by the Hunter and Central Coast Regional Planning Panel.

3.1.2 Section 91 – Integrated development

The proposal is classified as '*Integrated development*' and requires approval from the Mine Subsidence Board (requires approval under *Section 15, Mine Subsidence Compensation Act 1961*).

The above agency has provided their approval and all recommended conditions have been included in the draft schedule of conditions (**Appendix C**).

3.1.3 Section 79C Evaluation

The proposal has been assessed under the relevant matters for consideration detailed in s.79C (1) EP&A Act as follows:

3.1.3.1 Section 79C(1)(a)(i) provisions of any environmental planning instrument

State Environmental Planning Policies

Consistent with the requirements of the *Environmental Planning and Assessment Act 1979* (the Act), the proposal has been assessed against the following State Environmental Planning Policies (SEPP's) which were identified as relevant to the proposed development:

- SEPP (Major Development) 2005
- SEPP No. 55 Remediation of Land
- SEPP (Urban Renewal) 2010
- SEPP No. 71 Coastal Protection
- SEPP (BASIX) 2004
- SEPP No. 65 Design Quality of Residential Apartment Development

SEPP (Major Development) 2005

The aims of this Policy are to:

- (c) *to facilitate the development, redevelopment or protection of important urban, coastal and regional sites of economic, environmental or social significance to the State so as to facilitate the orderly use, development or conservation of*

- those State significant sites for the benefit of the State,*
- (d) to facilitate service delivery outcomes for a range of public services and to provide for the development of major sites for a public purpose or redevelopment of major sites no longer appropriate or suitable for public purposes.*

Pursuant to the requirements of this SEPP, the application is referred to the Hunter & Central Coast Joint Regional Planning Panel as the development has a capital investment value of more than \$20 million. The application submitted to Council nominates the capital investment value of the project at \$73,626,869.00 million.

SEPP No 55 Remediation of land

The proposed development is subject to the provisions of SEPP 55 and, accordingly, the development requires assessment under this Policy.

Council's Regulatory Services Unit requested additional information in accordance with this Policy. After receipt of this information, the Regulatory Service Unit indicated that:

'The PCA prepared by Coffey Environments Australia dated 16 March 2016 identified several areas of contamination at the proposed site. The contaminated areas relate to the former service station infrastructure, former workshops, fill material and contaminated groundwater from the former gas works located to the southeast of the site. The contamination included Carcinogenic PAHs, TRH C6-C10 minus BTEX along with asbestos fragments detected in the soil. The PCA also identified that the infrastructure associated with the former workshop/ service station (i.e. underground fuel tanks and pipework) is currently still in situ and will be required to be removed.

The PCA confirmed that one 10,000L fuel tank is still onsite and potentially a further four tanks ranging from 2,000 to 10,000L may also be on site. The PCA also identified that PAH (slag) contaminated soil was identified on site above the landuse criteria; however it states that this area will not be excavated and therefore proposes to leave the material on site. The PCA concludes by stating that further contamination assessment is required to fully characterise along with the preparation of a RAP to address the identified contamination on site.

Section 6.7 of the RAP prepared by Coffey Environments Australia dated 16 March 2016 details the remedial strategy to address PAH contamination on site, whereby it states "The PAH contaminated soil, in the area of BH5, is proposed to be left in situ. As the PAH contamination will be covered by a concrete slab, it does not pose a risk to site users from the direct dermal contact, ingestion, or inhalation of contaminated soil as dust". The RSU interprets this as a cap and contain strategy.

A Cap and Contain strategy is not in accordance with Council's Contaminated Land policy outlined in Element 5.02 of the Newcastle Development Control Plan (DCP) 2012. Given that the proposed development is for a change of use to residential and the applicant wishes to proceed with a Cap and Contain strategy, an independent and authoritative review of the submitted contamination information will be required for Council to make an informed planning decision. In accordance with the

provisions of Council's Contaminated Land Policy, the RSU requires a NSW accredited Site Auditor undertakes a review of all relevant contamination documentation associated with the assessment of the premises and provides a Site Audit Statement in accordance with the NSW Site Auditor Scheme (site audit form) in relation to:

- To determine land use suitability (please specify intended use[s])*

The applicant submitted to Council a Remediation Action Plan (RAP) prepared by Coffey Environments dated 12 August 2016. The RAP in Section 5 recommends that additional investigation will be required, as access to all sampling points was restricted due to the presence of the existing buildings. The RAP states that further assessment will be required to fully characterise the site following demolition. The additional investigation is to include:

- Provide characterisation of the site in accordance with NSW EPA (1995) guidelines;*
- Further assess the extent of soil and groundwater contamination (if present) in the western and southern portions of the site, in the area of former service station and workshops;*
- Further assess the fill material in the area of the bulk excavation for the semi-basement car park to allow for waste classification prior to excavation.*

This will be addressed by an appropriate condition of consent.

The RAP proposes to address the petroleum infrastructure, hydrocarbon contaminated soil on the western side and asbestos contaminated soils on site by excavating the contaminated area and disposing the material to a licenced facility that can lawfully accept this waste. Following remediation works being carried out, the site will be validated and the report submitted to Council and the Principal Certifying Authority. The RSU supports this method and will address this by an appropriate condition of consent.

The applicant has proposed to deal with the PAH contamination by capping and containing the material on site. Given the risk of exposure to the PAH contamination is unlikely due to the absence of any potential pathway to the soils along with the physical barrier (concrete slab); the RSU will look to address this with an appropriate condition of consent. The applicant will be required to submit a Site Audit Statement in accordance with appropriate NSW EPA Guidelines along with a site management plan and a validation certificate prior to an Occupation Certificate being issued'.

Based on the preliminary contamination report, Council's Regulatory Services Unit is satisfied that the contamination issues identified can be addressed by way of conditions recommended in **Appendix C**.

SEPP (Urban Renewal) 2010

State Environmental Planning Policy (Urban Renewal) 2010 was introduced on 15 December 2010 to identify urban renewal precincts and to facilitate the orderly

development of sites in and around such precincts in line with applicable state, regional or metropolitan strategies. The Newcastle Urban Renewal Strategy was subsequently prepared to provide a framework and an implementation plan to support growth of Newcastle over a 25 year period. The place based initiatives of relevance to the current concept proposal include the reshaping of Hunter Street as a key destination within the city; the revitalising of Hunter Street Mall; and recognising Newcastle's heritage as an asset. The 'West End' is identified as being appropriate for future development and, as such, the proposed development is in accordance with the aims of this policy.

State Environmental Planning Policy (Infrastructure) 2007

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) was introduced to facilitate the delivery of infrastructure across the State by improving regulatory certainty and efficiency. Schedule 3 of ISEPP, relates to traffic generating development and requires certain applications to be referred to the RTA (now known as the RMS). The application was referred to the RMS as the development has parking for over 200 vehicles.

The RMS provided a response on 1 June 2016 stating they have no objections to the development on the basis that certain conditions regarding vehicular access are included in the consent. In addition, they stated that all matters relating to internal arrangements on site are matters for Council to determine.

SEPP No 71 Coastal Protection

State Environmental Planning Policy No. 71 - Coastal Protection applies to the subject land which is identified on Greater Metropolitan Region Map 2 as being in the NSW coastal zone. The aims and objectives of SEPP 71 are to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast by protecting and improving existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore.

The proposed development is located within a well-established densely urban setting and there are no likely impacts to surrounding coastal environment, especially with regards to maintaining public access, views and amenity. The development will not impact on the foreshore or the interface with the waterways and related activities and as such is considered to be consistent with Clauses 2 and 8 of SEPP 71.

SEPP (BASIX) 2004

This SEPP applies to the Newcastle Local Government Area and is applicable to the proposed dwellings. The applicant has submitted a BASIX Certificate demonstrating that the design of the proposed dwellings complies with energy rating requirements. A consent condition will ensure compliance with the submitted Certificate.

SEPP No 65 Design Quality of Residential Apartment Development

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 being:

- | | |
|---|---|
| (i) <i>Context</i> | (ii) <i>Landscape</i> |
| (iii) <i>Scale</i> | (iv) <i>Amenity</i> |
| (v) <i>Built form</i> | (vi) <i>Safety and security</i> |
| (vii) <i>Density</i> | (viii) <i>Social dimensions and housing affordability</i> |
| (ix) <i>Resource, energy and water efficiency</i> | (x) <i>Aesthetics.</i> |

As required under clause 50 of the *Environmental Planning and Assessment Regulation 2000*, the application has been supported by a design verification statement prepared by a qualified designer (architect) outlining how the development achieves the ten design quality principles. The application has also been supported by extensive photomontage analysis and other information as required by the Regulations.

SEPP 65 also requires the consent authority to consider the advice of the relevant design review panel in relation to the design quality of the development. The Urban Design Consultative Group (UDCG) is the constituted SEPP 65 panel for The City of Newcastle. The UDCG has reviewed the proposed development against the ten design quality principles on two occasions and was very supportive of the proposal. Their advice and the responses from the proponent's architect are discussed in greater detail below under the respective design quality principles.

Given that the project is over 48m in height, Council's Local Environmental Plan (clause 7.5 Design Excellence) specifies that a design competition is required. The applicant approached Council and the Department of Public Works (Government Architects Office) in the very early stages of the design process to seek an endorsement to waive the design excellence competition. The Department felt the initial design concept and support from Council's UDCG warranted waiving the competition in lieu of establishing a Design Excellence Panel (DEP). The DEP was formed with members of Council's Urban Design Consultative Group including Professor Peter Webber and Dr Phillip Pollard, along with a Government Architect. Their advice and the responses from the proponent's architect are also noted below under the respective design quality principles.

It should be noted that the DEP will be involved for the duration of the project, including completion of the Construction Certificate, the tendering process and any Section 96 applications. While most of the design issues have been resolved, the ongoing involvement of the DEP will ensure the project continues to achieve design excellence. A condition of consent has been included in the draft schedule of conditions (**Appendix C**).

1. Context and Neighbourhood Character

The design has successfully addressed the context and the evolving character of the immediate area of Newcastle West. It will establish a quality streetscape in relation to the King Street frontage and will activate and beautify the existing desolate frontage to Cottage Creek.

2. Built Form and Scale

The UDCG provided the following advice in relation to built form:

'The configuration of the building forms is essentially unchanged from the original form, with the two towers, the 5-storey King Street podium with recessed floor above, and the internal landscaped courtyard over the carpark three levels above ground. The issues which were raised have been satisfactorily resolved:-

- 'The height of the podium at the street frontage is slightly over the 16 metre planning control but is acceptable given the width of King Street and there being no consequential adverse impacts.*
- The awning along King Street is now continuous and would provide cover and shelter for its full length, and around into the eastern colonnade of the southern tower.*
- The main King Street façade of the southern tower remains on the boundary which is considered to be acceptable given the relatively small size of the tower, the continuous street awning, and the articulation linking the tower and podium.*
- The challenge of dealing with the interface of the footpath and the raised ground floor retail/commercial areas due to flood levels has been addressed by providing steps internally which results in a more attractive street frontage'.*

The applicant has provided eye level montages from a number of key locations. The montages demonstrate that the proposed design is well considered and will have a significant contribution to the redevelopment of the area in terms of quality design (refer to **Appendix D**). As such, the proposed built form is considered acceptable.

3. Density

The density is compliant with the relevant controls such as FSR and height limit under the LEP and is acceptable.

4. Sustainability

The application has been supported by a detailed stormwater management plan which includes water reuse and other energy saving measures within the development. The proposed design is considered acceptable in relation to resource, energy and water efficiency.

5. Landscape

The applicant's Landscape Architect provided the following summary:

The proposal to establish bays with large trees and undercover 'rain-garden' planting along the King Street frontage appears to be an excellent initiative: this would allow for adequate canopy spread assist in treating rainwater run-off into Cottage Creek, and is stated to not result in loss of kerbside parking. It will require consultation with and support by Council.

The landscape design was considered to be of a high standard, and suggested changes are by way of further design refinements.

These suggestions include the provision of some seating in the residents' landscaped area at ground level facing Cottage Creek. There is an opportunity to utilise the wide walkway that provides residents' access to the northern tower, to provide some informal meeting/seating areas for residents, some of which could be under shelter.

There also is an opportunity to provide some landscape inclusions at the northern end of the podium landscaped area that will serve as play stimulation for smaller children. These may include imagination-stimulating sculptural structures such as a beached boat, or vehicle (train, truck), that children can safely climb into and onto. A small sandpit can be included in this design, which would be an ancillary to, and in sight of, the adults barbecue/ shaded area.

Maintain low level fences / planting between podium level apartment private open space and the communal garden area to ensure outlook and a sense of communal ownership is retained. Maintain direct access (via gates as currently indicated) between the Private open spaces and the communal open space'.

The landscape plan incorporates tree planting that would assist in reducing the perceived bulk of the development and would provide for increased screening for adjoining properties. On balance, it is considered that the proposed landscaping for the site is of a good quality design and would complement the aesthetic quality and amenity for the development and surrounds.

6. Amenity

The UDCG considered the proposed development would have a high level of residential amenity:

'The quality of residential flats would be of very good standard, more than satisfying the recommendations of the Apartment Design Guide. The issue raised at pre-DA stage of privacy in bedrooms in the tower blocks facing each other has been well resolved by way of screening and orientation. The access corridors in the tower blocks would have excellent daylight and outlook. The podium courtyard would also provide a very pleasant environment and attractive outlook for residents'.

The UDCG stated the following detailed matters should be addressed:

- *Explore options for natural light/ventilation to car parking, at least at topmost level*
- *Balconies in the tower blocks will be extremely exposed to winds: the Balconies along the King Street frontage will be exposed to constant road noise, headlight glare etc.: consider acoustic treatment to balcony soffits and other measures.*
- *Support double glazing to lower level residential apartments facing King Street.*
- *Provide communal spaces/facilities.*

The applicant has provided the following response:

'We have designed a perforated screen to the east facing car park wall facing the public plaza between the two buildings as well as to the northern end of the east facing carpark wall. This is detailed in the DA drawings. The screen serves a number of purposes:

- to provide natural light and ventilation to the car park,
- to act as a 'home coming' that leads from the car park to the tower lobby entries'.

The issues around residential amenity have been adequately resolved.

7. Safety

The proposed development provides for passive surveillance of the street and communal areas. The internal driveway design should ensure low speed traffic movements to facilitate pedestrian safety. As such, the proposed development is considered acceptable in relation to safety and security.

8. Housing Diversity and Social Interaction

The proposed development provides for a mix of residential accommodation which supports social mix and housing affordability.

9. Aesthetics

In terms of aesthetics the UDCG made the following comments:

'The general character and architectural expression is fully supported. In relation to external materials and finishes it is recommended that there should be some warmth in the colours and tones which empathise with traditional Newcastle ambience, rather than the somewhat cool in tone in the appearance suggested by the montage views.'

The podium at the side and rear boundaries will be a substantial structure, which is likely to remain visible for an extended period until future development abuts it. It was suggested that the appearance of this needed to be further considered. The possibility of plain blockwork being regularly graffitied was also a concern. Means of dealing with this include the addition or inclusion of artwork - possibly associated with deeply embossed pre-cast patterning, or painted murals / street art, or the inclusion of robust plants such as climbing fig'.

The proposed development is considered to be of high quality design having adequately addressed most of the issues raised by the DEP and UDCG. Consequently, the design is considered to be acceptable in relation to the ten design quality principles of SEPP 65.

Apartment Design Guidelines

In addition to consideration of the ten design quality principles, Clause 30 of the SEPP also requires Council to have regard to the recent publication 'Apartment Design Guide'

(ADG) produced by the NSW Planning and Environment. The relevant quantitative guidelines under the ADG are discussed below:

2A Primary Controls:

The proposed development is considered acceptable in relation to the above guidelines on building form. The development establishes a scale and form appropriate for its location within the west end precinct. The proposal provides good presentation to the street with a mixture of active street frontage at ground level with retail areas and one level of commercial office space above followed by three levels of residential apartments fronting King Street. The proposal provides for appropriate building depth and bulk, and also affords for a reasonable level of landscaping. The inclusion of the six metre wide pedestrian link is considered to be a positive outcome for the city centre.

2B Building Envelopes:

The proposed development is considered acceptable in relation to building envelopes.

2C Building Height:

The site has a maximum height limit of 60 metres under the Local Environmental Plan 2012. The proposed development results in a maximum building height of 66m. However, clause 7.5(6) of NLEP 2012 permits the erection of a building to which that clause applies that has a height of not more than 10% greater than that allowed by Clause 4.3 (being 60m), but only if the design of the building has been reviewed by a design review panel.

In accordance with Clause 7.5(6), the design of the development has been reviewed by Council's Urban Design Consultative Group Panel as well as a Design Excellence Panel. The proposed building height of 66 metres is considered consistent with LEP 2012.

2D Floor Space Ratio:

The proposed development complies with FSR control specified by the LEP 2012, being 0.4:1. The proposed density is also considered acceptable.

2E Building Depth:

The depth of the building envelope provides a variety of articulating elements to ensure the massing and bulk of the building is reduced and responsive to the context of the site. The depth of apartments is considered acceptable under the ADG and was supported by the UDCG and by DEP.

2F Building Separation:

Building separation is the distance measured between the building envelopes or buildings. The separation distances between the proposed buildings contribute to the urban form and ensure reasonable and appropriate levels of amenity and open space between buildings having regards to the nature of the development, its character and location within the city centre.

2G Street Setbacks:

The issue of street setbacks, especially along King Street, was discussed at length during the original meeting of the UDCG:

'The options circulated to the Panel before the meeting all included four levels of above-ground parking with a landscaped courtyard above, lower buildings fronting King Street, activation of the King Street and Cottage Creek ground floor frontages, and variously configured tower buildings. All options complied with height and density controls and overall appeared to provide excellent amenity for the residential flats. Whilst all options had positive features, the least attractive was that with the continuous 'wall' of high buildings along the eastern Cottage Creek frontage, which would result in unacceptable visual and overshadowing impacts.

A further option stated to be preferred by the applicant was tabled at the meeting, and this was also considered to be the preferred option by the Panel. The following are very positive attributes of this scheme:-

- *Activation of the King Street frontage with retail/commercial uses*
- *Opening up and activation of the Cottage Creek frontage with a landscaped pedestrian promenade which could in the future extend through to Hunter Street.*
- *Parking concealed in the centre of the site with an attractive landscaped communal podium above*
- *Two relatively slender 'fan-shaped' residential towers with a substantial space between, -allowing good sunlight access to the podium*
- *Compliance with height and density controls for the towers and King Street frontage.*

The one aspect of this scheme about which there are reservations is the location of the southern tower directly on the King Street frontage. Although articulation and modelling could mitigate the visual impact of a tower on this corner, it would inevitably be a dominant form which could compromise the scale of the streetscape. A further concern is that no matter how elegant the design of this tower might be, it would set an undesirable precedent undermining the intention of the new controls to create a consistent human-scale along the frontage. With other close-by high-rise-zoned sites to the east and west also awaiting redevelopment it is critical for development on the subject site to be an urbane model for other new buildings. It is recommended that there be a modest setback of the tower from the King Street frontage: the King Street/Cottage Creek corner of the podium form should visually reinforce this corner.

The indicative 'Section B' drawing suggests a satisfactory form for the King Street frontage, -with emphasis on the street-level activities, compliance with the control in relation to the 16m podium height, and a possible additional level set well back from the frontage.

Along Cottage Creek it will also be very important to ensure comfortable ambience along this potentially very attractive walkway, whether by way of small setback of the towers, strong articulation of the base, awnings, or some combination of these devices.

The two towers might be better if there were to be some small variation in their heights, and certainly strong articulation of the roof silhouette profiles would be desirable'.

The applicant provided the following response regarding the streetscape:

'The option preferred by the Applicant and supported in principle by the UDCG has been adopted, and explored in detail with various planning configurations for the residential and commercial units. The applicant advised that this work has confirmed its commercial viability, and demonstrated that the form and scale of the development would be satisfactory in principle. The two relatively slender towers would have considerably less visual bulk than other options, and their location would allow some morning sunlight into the central communal space. Two key issues require consideration:-

- The proposed street wall height of the podium is approximately 18 metres, which exceeds the 16 metre planning control. The non-compliance is considered to be acceptable in view of the fact that this section of King Street being very wide, the proposed height would not be out of proportion, and there would be only minor additional overshadowing on the street.*
- The location of the southern tower on the street alignment remains problematic in relation to the scale of the street and the important junction with the canal, as well as the precedent which it would establish. It is considered that this concern could potentially be resolved with very creative attention to details of the building form and character. The critical objectives are that the scale of the full King Street frontage is consistent for its full length, and that the proposed tower will not be visually assertive in the streetscape. The 18 metre podium height should be strongly reflected in the base levels of the tower, for example with solid balustrades, emphasis on screening to balconies, slightly darker tones etc at these levels, and lighter expression of the tower above. Some small setback of the tower, of the order of 1 to 2 metres might also be further explored to assist in achieving the above objectives.*
- The manner in which the raised level of the ground floor is handled requires further study to ensure that the street frontage is welcoming and accessible.*

Increased setbacks are applied as the building increases in height, to respond to neighbouring sites and ensure there is less visibility of the upper forms. This ensures the prominence of the built form to the street frontage, while also maximising solar access to neighbouring properties. The proposed setback and built form is acceptable under this clause.

2H Side and Rear Setbacks:

The side and rear setbacks as proposed are appropriate and reasonable in relation to the existing streetscape and the adjoining built environment.

Part 3 Siting and Development:

The proposed development responds appropriately to the existing streetscape and is compatible with the future desired direction of the area.

3C Public Domain interface:

The proposal includes a public domain plan which encompasses replacement street tree planting and infrastructure works. A condition of consent has been included in the draft schedule of conditions (**Appendix C**).

3D Communal and Public open space:

In terms of communal and public open space the submitted landscape report indicates that:

'An approx. 6 metre wide public way is proposed along the entire canal frontage, which features an integrated and lush landscape design on deep soil. This public realm provides the scope for the potential future public link from King Street to Hunter Street.

The building podium is raised above the 1% AEP Ocean and local catchment flooding levels and provides an equal access route and spill-out zones to the commercial spaces. Landscaped terraces step and ramp from the podium down to the public access corridor along Cottage Creek. The public access corridor bridges over a WSUD planting strip that filters the sites stormwater run-off prior to entering the Canal.

Centrally along the proposed public access way the two towers frame a new generous Urban Green Square, also in deep soil. The raised terrace widens for outdoor seating and steps down onto 'The Green' with seating edges. A play area is proposed at the mid terrace on the Northern end of the landscape corridor and creates an equal access link between the podium and the boardwalk. The generous play space is framed by seating edges and lush screen planting and tree planting to provide natural shade and an engaging destination.

The selection of planting and trees is layered to create a mix of open and intimate terraced spaces in between the podium and the boardwalk access. The trees provide shade and a sense of scale to the proposed towers'.

The proposed landscaping includes tree planting that would assist in reducing the apparent bulk of the development and would provide for increased screening of the adjoining properties. The inclusion of the public pedestrian link along Cottage Creek is a significant contribution to the city centre.

On balance, it is considered that the proposed landscaping for the site is of a high quality design and would complement the aesthetic quality and amenity for the development and surrounds.

3E Deep Soil Zones:

The required area available for deep soil planting has been met and provides for a good selection of planting. The applicant is also intending to plant four street trees along King Street. The proposal meets the relevant requirements for deep soil planting.

3F Visual Privacy:

The towers generally have a 12m setback to the neighbouring boundaries to comply with the 24m building separation requirements for future development on surrounding sites. Podium apartments generally have a 6m setback to boundaries in accordance with ADG. The separation between the two towers is slightly less than the ADG recommendation, being between 16m and 22.5m. However, this is considered acceptable because the main orientation to the two towers is north-east and south-west, resulting in the side elevations facing each other. These side elevations have secondary living room windows, kitchen, bedroom and bathroom windows. The proposal includes the use of solid wall panels and external vertical louvres which will also provide for privacy and solar control.

3G Pedestrian Access and Entries:

There are two distinct building entries, one for the towers and the other for the podium units. Both open directly from the public footpath on King Street.

3H Vehicle Access:

The vehicular entry point provides adequate separation from the pedestrian entry. The width of the driveway crossing is considered adequate to cater for vehicle movement.

3J Bicycle and Car Parking:

The traffic report compiled by Council's Senior Traffic Engineer advises that compliance is achieved with the necessary NDCP 2012 requirements regarding car parking rates.

Part 4 Designing the Building:

4A Solar and Daylight Access:

The ADG indicates that it is desirable for 70% of units to receive a minimum of three hours of sunlight in mid-winter. In dense urban areas, two hours may be acceptable.

All units in the proposed development have good solar access and would achieve a reasonable level of solar access. The applicant has provided a breakdown of individual units and has demonstrated that at least 88.8% of units will receive more than two hours of winter solar access on 21 June and 62.4 % achieve three hours of sunlight in mid-winter. All units will receive at least one hour of sun in mid-winter.

4B Natural Ventilation:

The ADG indicates that it is desirable that 60% of residential units are naturally cross ventilated and 25% of kitchens should have access to natural ventilation. The ADG indicates that corner apartments and double aspects apartments achieve the best cross ventilation.

All habitable rooms are naturally ventilated and many have multiple windows in different facades.

4C Ceiling Height:

All rooms within the proposal are designed with a floor to ceiling height of greater than 2.7m. The retail areas are designed with a floor to ceiling height of 3.95m.

4D Apartment Size and Layout:

The ADG outlines desirable unit depths to promote improved solar access and cross ventilation. In this regard, the ADG nominates a maximum depth of 8m for single aspect apartments and 15m for cross-over apartments. All apartments comply with these depths.

4E Private Open Space and Balconies:

The ADG indicates that balconies should have a minimum depth of 2m. The balconies of all units are at least 2m deep in part.

4F Common Circulation and Spaces:

The proposed configuration of apartments is such that the maximum number of apartments accessible from any single corridor is less than eight. The proposal provides a maximum of six dwellings off a single core and therefore complies.

4G Storage:

All units have good access to storage facilities.

4H Acoustic Privacy:

The majority of apartments on site have been designed to be located away from major traffic noise. Apartments on the street frontage have been designed so that secondary openings are always available on the quiet side of the building. All wall construction and glazing is in accordance with the Acoustic Engineer's recommendations.

Regional Environmental Plan

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

Newcastle Local Environmental Plan 2012

The subject site is zoned *B3 Commercial Core* under the provisions of NLEP 2012. The objectives of this zone are:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To provide for commercial floor space within a mixed use development.*
- *To strengthen the role of the Newcastle City Centre as the regional business, retail and cultural centre of the Hunter region.*
- *To provide for the retention and creation of view corridors.*

The proposed development is defined as a shop top housing which is a permissible use in accordance with the land use tables for the zone, with development consent.

The proposed development is generally consistent with the zone objectives and is compatible with the future character of the area.

Clause 4.3 - Height of Buildings

The site has a maximum height limit of 60 metres. The proposed development results in a maximum building height of 66m. However, as noted previously, clause 7.5(6) of NLEP 2012 permits the erection of a building to which that clause applies that has a height of not more than 10% greater than that allowed by Clause 4.3 (being 60m), if the design of the building has been reviewed by a design review panel.

In accordance with Clause 7.5(6), the design of the development has been reviewed by Council's Urban Design Consultative Group Panel as well as a Design Excellence Panel. The proposed building height of 66 metres is consistent with the LEP 2012 and has been supported by the UDCG and DEP.

Clause 4.4 - Floor Space Ratio (FSR)

The site has a maximum FSR limit of 0.4:1. The application proposes a maximum FSR of approximately 0.4:1 and complies with this requirement.

Clause 5.5 Development within the Coastal Zone

This clause requires the consent authority to consider certain matters and be satisfied that the proposed development will protect the coastal environment and public access to the coast. The proposed development complies with this clause and does not restrict public access. The proposed development will also not impact on amenity with respect to overshadowing of the foreshore or loss of views from a public place to the coastal foreshore. It will also not impact on biodiversity and ecosystems, including water quality; and will not have adverse cumulative aspects on the coastal catchment.

Clause 5.9 Preservation of trees or vegetation

The proposal includes the removal of five street trees within the public domain and three trees from within the site. The trees located within the property boundary are not considered to be significant trees. As discussed in the assessment, the removal is considered to be acceptable subject to a number of conditions to reflect replacement street tree planting (refer to Section 5.03 Tree Management).

Clause 5.10 Heritage provisions

The subject site is located within the Newcastle City Centre Conservation area and is listed as a heritage item under the NLEP 2012, Schedule 5 Environmental Heritage, Part 1 Heritage items (identified as Lot 1, DP 1036640).

A Heritage Impact Statement (HIS), prepared by Heritas Heritage and Conservation, accompanied the development application and assessed the proposal's impact on the conservation area and on the adjoining heritage item. It concluded:

'The proposal for the construction of a mixed--use development at 464 --470 King Street is considered to have little impact on the significance of the Newcastle City Centre Heritage Conservation Area (West End), and minimal background visual impact on nearby heritage listed items. Each item will retain its micro--setting, and the greater Setting will be improved with an increase in architectural quality and character'.

The HIS was reviewed by Council's Heritage Officer and deemed acceptable.

Clause 6.1 Acid Sulfate Soils

The site is located on class 5 land and approximately 12m or more above AHD. As such, acid sulfate soils are not likely to be encountered during the redevelopment of the site. However, the applicant has engaged a consultant to provide an acid sulfate soils management plan in the event that acid sulfate soils are encountered during excavation.

Clause 7.3 Minimum Building Street Frontage

This clause requires that a building erected on land in the B3 Commercial Core zone must have at least one street frontage of at least 20m. The proposed development is consistent with this standard, having a frontage of 80.73m to King Street.

Clause 7.4 Building Separation

The LEP requires that a building must be erected so that the distance between the building to any other building is not less than 24m at 45m or higher above ground level. The separation between the two towers is slightly less than the 24m recommendation, being between 16m and 22.5m. However, as noted previously, this is considered acceptable because the main orientation of the two towers is north-east and south-west, resulting in the side elevations facing each other. These side elevations have secondary living room windows, kitchen, bedroom and bathroom windows. The proposal includes the use of solid wall panels and external vertical louvres which will also provide for privacy and solar control.

Clause 7.5 Design Excellence

As the proposal is over 48m in height, this clause would generally invoke the requirement for an architectural design competition to be held.

A request to waive the requirement for an architectural design competition was made to the Department of Planning and Environment and subsequently granted on 12 August, 2015. The Urban Design Consultative Panel also supported waiving this requirement. The proposed development was then presented and discussed at two Design Excellence Panel meetings held on the 7 October and 20 November, 2015.

It is also noted that Clause 7.5(6) permits the erection of a building to which this clause applies that has a height of not more than 10% greater than that allowed by Clause 4.3 (being 60m), but only if the design of the building has been reviewed by a design review panel.

Under Clause 7.5(6) the proposed development seeks a maximum height of 66m (10% above the HOB Map maximum identified height limit of 60m) and in accordance with this clause, as noted above, the design of the development has been reviewed by Council's Urban Design Consultative Group Panel as well as a Design Excellence Panel. No issues were raised with the proposed 66m height of the development.

The UDCG also considered whether a design competition would achieve a better design outcome. The group concluded that: *'that there would be no advantage in the competition process in this case in view of:-*

- *The excellent quality of the preliminary scheme presented*
- *The extensive examination of options already undertaken by the applicant*
- *The desirability of continuing close consultation with Council and the Panel from the very beginning and as the design develops to ensure that the scheme sets an ideal precedent for other future contiguous developments in this neighbourhood, -a process which is more difficult under a competition regime*
- *The priority on this site of achieving an urbane and modest outcome, rather than the unusual or 'iconic' designs which typically emerge from the competition process.*
- *The strong credentials of the applicant architects for work of excellent quality'.*

Clause 7.6 Active Street Frontage in Zone B3 Commercial Core

The LEP requires an active street frontage for land that is zoned B3 Commercial Core. The plans have addressed the above clause with the inclusion of the retail space at ground level and articulated windows facing King Street.

Clause 7.7 Residential Flat Buildings in Zone B3 Commercial Core

This clause requires that development consent must not be granted to a residential flat building on land in the B3 Commercial Core zone unless it is a component of a mixed use development involving a permitted non-residential use. The proposed development provides for a good mix of retail/commercial and residential use.

3.1.3.2 Section 79C(1)(a)(ii) any draft environmental planning instrument that is or has been placed on public exhibition

There is no exhibited draft environmental planning instrument relevant to the application.

3.1.3.3 Section 79C(1)(a)(ii) any development control plan (and section 94 plan)

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

Section 3.01 Subdivision

The applicant undertook a site analysis as part of the proposal which considered the constraints and opportunities of the site. Preliminary sketches submitted with the application indicate that the design was amended several times to enable the best outcome for solar access to the units and the communal spaces. The design has maximised the number of living areas and open spaces that are orientated to the north. The orientation of the residential units was also considered in the SEPP 65 assessment and a BASIX Certificate has been submitted with the application.

Essential services including water, electricity, sewer and communications are available to the development and appropriate conditions will be placed on the consent in this regard.

Section 3.05 Residential Flat Buildings

The objective of this section of the DCP is to improve the quality of residential development. This can be achieved through a design that has a positive impact on the streetscape through its built form; maximising the amenity and safety on the site and creating a vibrant place for people to live in a compact and sustainable urban form.

A detailed assessment of the application has been made under SEPP 65 which has considered the design qualities and merits of the development, which is considered consistent with the requirements of the DCP.

Section 3.10 Commercial Uses

The DCP encourages commercial development that attracts pedestrian traffic and activates street frontages. The inclusion of retail and commercial uses on the ground and first floor of the development will provide an active street frontage to King St and Cottage Creek and will encourage pedestrian movement around and through the building.

The design has considered the interaction of the retail spaces with the public space through the provision of pedestrian ramps, glazing, awnings and landscaping resulting in a pleasant interface with King Street and Cottage Creek. In addition, it is envisaged that future pedestrian connections will be available from this development, along Cottage Creek to the foreshore of Newcastle.

Section 4.01 Flood Management

Council's Senior Stormwater Engineer has provided the following comments in terms of flood management:

'This site is affected by flooding being located adjacent to Cottage Creek at the bottom end of the catchment. A flood information certificate was issued by Council to Northrop, on 11 May 2015, which summarised the flood information from Council's records.

The calculated local catchment 1% Annual Exceedance Probability (AEP) flood level on the site is 2.32m AHD. The minimum required floor level for occupiable rooms set by Council is 2.82m AHD and this has been achieved in the ground floor retail premises.

In the June 2007 flood a shipping container partially blocked the downstream culvert under the railway line significantly raising flood levels in this area. The recorded peak flood level for this site was 3.1m AHD.

The estimated Probable Maximum Flood level on this site is 4.3m AHD. Upper floor levels will provide flood refuge for occupants and site users. The basement carpark has been designed to provide additional flood storage for extreme flood events. A Flood Emergency Response Plan will be required to best manage flood future scenarios in and around the building.

A flood assessment was undertaken by BMT WBM, local flood management consultants, to assess the potential flood impacts of the proposed development. The study found no significant flood impacts associated with the proposed development.

The flood impact assessment also assessed the benefits of removing the existing building in Hunter Street over Cottage Creek, which is proposed by the developer in an associated development, to provide a pedestrian link to Hunter Street. Due to the existing culvert/road level arrangement removal of the building would only provide benefits for floods greater than the 1% AEP event or for floods like the June 2007 flood where significant downstream blockage occurred raising upstream flood levels on the proposed development site'

Conditions are recommended to ensure that the submitted flood emergency response plan is developed and implemented as part of the site development works.

Section 4.03 Mine Subsidence

The site is within a Proclaimed Mine Subsidence District. The Mine Subsidence Board has assessed the proposal and has issued their General Terms of Approval which has been included as part of the conditions of consent.

Section 4.04 Safety and Security

The proposed development has addressed the principles of surveillance, access control, territorial reinforcement and space management. The mixed uses on the site

being - residential, retail and commercial - will allow for passive surveillance of the street and the communal areas facing Cottage Creek, due to the various hours of operation of such uses. There is currently minimal natural surveillance along the Cottage Creek frontage and the proposal will be an improvement to the existing safety of the site.

The residential access to the apartments is clearly separated from the other uses of the site. A concierge will be located within the residential lobby and security swipe tags will provide access to the residential floors and parking areas. Lightning is proposed in the stair voids and to the building entries.

There is a clear distinction between private and public spaces on the site through the use of territorial enforcement cues such as access points, security doors and signage. The car parking has been designed to separate the retail parking from the residential parking, as a second security gate is to be accessed to enter the residential parking area.

Section 4.05 Social Impact

A Social and Economic Impact Assessment was submitted with the application as required under the DCP. The assessment found that there is a demand for a range of housing types to cater for university students and young workers through to seniors in an integrated fashion and that housing close to jobs, transport and leisure activities will be in high demand. In addition, the assessment considered a range of positive and negative impacts of the development with the conclusion that the development will have a net positive impact. The benefits include:

- additional residential accommodation in the City Centre
- increased population will generate demand for services and facilities
- easy access to social, retail and leisure facilities for the residents
- increased population will assist with the demand for public transport
- job creation and investment with the retail and commercial uses of the site.

The development is also likely to have a positive social impact through providing additional housing choice within the CBD (ranging from courtyard apartments and studios to five bedroom apartments) and will activate the western end of King Street through the addition of commercial spaces on the ground floor.

Section 5.01 Soil Management

An Erosion and Sediment Control Plan was submitted with the application, which has provided sufficient strategies to prevent sediments, litter and construction waste from entering the waterways and public areas during the construction period. A condition will be placed on the consent in regards to this plan being implemented during the construction of the development.

The design of the development has allowed for minimal retaining walls on the boundaries of the site. Excavation works are proposed as part of the development and suitable conditions of consent have been proposed to minimise the impacts of these works.

Section 5.02 Land Contamination

The applicant submitted a Phase 1 and Phase 2 Environmental Site Assessment. This was reviewed by Council's Compliance Services Unit and is discussed in detail under State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55) section of this report.

Section 5.03 Tree Management

The development proposes the removal of all existing trees on the site, with the exception of one *Ficus* on Hunter Water land adjoining Cottage Creek. Several of these trees are stated as being in poor health.

A landscaping plan has been submitted with the application and aims to increase the area of deep soil planting compared to the existing site, with 1100m² of deep soil landscape space being made available. The removal of the existing street trees is also required to facilitate the construction of the development. Replacement planting is proposed to offset the loss of trees on site and such planting has been designed to take into account water sensitive urban design elements through treating stormwater runoff from King St before the water enters Cottage Creek.

The proposed development is acceptable in relation to the DCP guidelines on tree management and the proposed landscaping will assist in creating an improved public domain along King Street and the Cottage Creek frontage.

Section 5.04 and Section 5.06 Aboriginal Heritage and Archaeological Management

A search of the Aboriginal Heritage Information Management System (AHIMS) - NSW Department of Environment and Heritage, was carried out and no Aboriginal sites or places were identified. There was no physical evidence on site, such as rocky outcrops or the like, to suggest Aboriginal relics.

However, a condition has been included in the draft schedule of conditions to ensure compliance with the *National Parks and Wildlife Act 1974 (NSW)*.

Section 5.05 Heritage Items and Section 5.05 Heritage Conservation Area

The subject site is located within the Newcastle City Centre Heritage Conservation Area. The site does not contain any heritage items, although, it is located with the vicinity of heritage items including the Theatre Royal, the former Gasworks Office, the former Bellevue Hotel and the Bank Corner.

A Heritage Impact Statement was submitted with the application and it concluded that the proposal has no impact on the state heritage value or significance of the Newcastle City Centre Heritage Conservation Area. The reduction in bulk through separating the floor plate into two towers and setting the building back from King St was considered to be sympathetic to its context and respectful of the historical element of the West End, through highlighting the location of Cottage Creek. The opening up of the Cottage Creek frontage is considered to be highly sympathetic to the heritage context of the site and will provide relief to the King St streetscape. In addition, this will allow alternate views of nearby heritage items which are not detrimentally impacted upon by the development due to their separation distance.

The Heritage Impact Statement is supported by Council's Heritage Officer and demonstrates there will be no significant impacts on the Newcastle City Centre Heritage Conservation Area or on nearby Heritage Items.

Section 6.01.02 Newcastle City Centre - Character Area

The subject site is located within the West End which is identified as an area of *'unrealised potential as it has fewer environmental and heritage constraints. The area has fewer public domain assets and improvements to open space areas are needed to ensure the precinct is well served as it evolves into a commercial precinct. Public domain opportunities include improvements to Cottage Creek.*

The key principles for this site include:

- *existing public spaces area are improved such as Cottage Creek*
- *development along Cottage Creek provides a building address to encourage activity, pedestrian and cycleway movement and improve safety*
- *building entries activate frontages and allow visual permeability to the street from within the building*
- *heritage items and their setting area are protected.'*

The proposal has been designed to facilitate activation along King Street and along Cottage Creek frontage with a 6 metre wide pedestrian path linking King Street and Hunter Street.

The location of the retail uses will encourage pedestrian activity and movements within this space, which is consistent with the DCP. As previously discussed, the heritage items and their settings have been protected by the development and the historical use of the Creek has been emphasised through the design of the development highlighting the location of the Creek.

Section 6.01.03 Newcastle City Centre - General Controls

A1 Street Wall Heights

Control - The maximum street wall height to the site is 16m and development above the street wall height is to be setback a minimum of 6m.

The proposal includes a street wall height of 18.5m. This variation was considered by the DEP and is supported on the basis that this section of King St is very wide, the proposed height is not out of proportion with the street, and there will be only minor overshadowing impacts.

A2 Building setbacks

Control - front setback of 6m between street and wall height and 45m, and setback of 12m from the building above 45m

The proposed development does not meet the setback requirements as it has a 4m setback for the podium building and a zero setback for the smaller southern tower. However the design has been assessed on its merits and is deemed acceptable.

A3 Building Separation

Control - buildings should achieve minimum building separation distance of 0m up to 16m, 9m up to 45m and 21m above 45m. The issue of building separation has been discussed in detail under Clause 7.4 Building Separation. The separation is considered acceptable under the above provisions.

A4 Building depth and bulk

The proposal includes the use of natural ventilation and good separation to reduce the reliance on artificial sources, which complies with the requirements.

A5 Building exteriors

The proposed development responds well to the existing streetscape and is acceptable with the final schedule of finishes to be endorsed by the DEP.

A6 Heritage buildings

The proposed development will not have an adverse impact on heritage items and integrates the new building into the existing heritage conservation area.

A7 Awnings

The proposal includes a full awning along King Street and will provide adequate shelter for pedestrians.

A8 Design of parking structures

Car parking is provided on four levels and is accessed via King Street. The location of the car park is consistent with the requirements of this section.

B1 Access network

The proposed development will not impact on the city access network.

B2 Views and vistas

The proposed development will not significantly impact on existing views or vistas.

B3 Active street frontages

This clause seeks to promote active street frontages in the B3 Commercial Core Zone. The plans have addressed the above clause with the inclusion of the retail space at ground level and articulated windows facing King Street.

B4 Addressing the street

The proposal provides good presentation to the street with a mixture of active street frontages at ground level through the inclusion of retail areas and one level of commercial office space on the first floor. In addition, three levels of residential apartments face King Street and address the street.

B5 Public artworks

The development is required to contribute 1% of the capital cost of the development towards public artwork for the development, as the development is over 45m in height. A condition will be placed on the consent for the inclusion of public art to be included in the development and approved by Council prior to the issue of the Construction Certificate.

B6 sun access to public spaces

The overshadowing diagrams indicate that the proposed development would have minimal impacts on public spaces.

Section 7.01 Building Design Criteria

The proposed development is considered acceptable in relation to the NDCP guidelines on building form. The development is of a scale and form appropriate for the inner city precinct. The proposal achieves appropriate building depth and bulk and also provides for quality landscaping.

Section 7.02 Landscape Open Space and Visual Amenity

As required under this section, the application has been supported by a comprehensive Landscape Concept Plan and a design report prepared by a landscape architect.

The landscape concept plan demonstrates that the site will be suitably landscaped to compensate for the loss of tree canopy cover. The planting schedule provides for additional planting on site.

A copy of the Landscape Concept Plan has been included in **APPENDIX B**.

Section 7.03 Traffic, Parking and Access and Section 7.04 Movement Networks

The proposed development complies with Section 7.03 - Parking, Traffic & Access in terms of parking as follows:

- 234 resident spaces
- 10 visitor spaces
- 2 parking spaces for people with a disability.

Council's Senior Development Officer (Engineering) has considered the proposal to be acceptable and provided the following comments:

'Under Council's DCP 2012 a minimum total of 234 spaces are required for this development comprising 166 resident spaces (inclusive 11 resident motorbike spaces), 18 commercial /retail spaces and 39 dedicated visitor spaces. A further 2 spaces are to be dedicated as light vehicle service/maintenance bays in addition to the formal loading dock.

The applicant proposes a total of 262 spaces (inclusive 5 resident motorbike spaces) comprising additional resident parking spaces and a reduction in the number of visitor parking spaces from 39 to 5 spaces, adding a further 34 spaces

to resident parking. While it is accepted that some visitor parking can be accommodated on- street in existing time restricted parking bays it is considered appropriate that a minimum of 25% (10 spaces) be provided on-site in designated visitor spaces. Even with the provision of the 10 dedicated visitor parking spaces and aforementioned 2 service / maintenance bays a resident parking surplus of 61 spaces remains for this development.

Parking for the commercial /retail space complies with Council's DCP 2012 with the provision of 18 spaces. The proposal to utilise these spaces for additional visitor parking outside of business hours is supported but not considered appropriate for stacked spaces. This visitor parking would be in addition to the 25 % (10 spaces) visitor parking spaces referenced above.

The shortfall of 6 motorbike spaces can be accommodated by the additional resident vehicle spaces

Accordingly an appropriate condition has been recommended for this application in relation to the minimum parking requirements for this development and the allocation of spaces'.

In summary, the access and parking areas are well integrated into the development and streetscape and are considered acceptable in relation to the NDCP guidelines.

Section 7.06 Stormwater

Council's Senior Stormwater Engineer has provided the following comments in terms of water management:

'Roof water and runoff from the podium hardstand areas will be drained to an underground storage tank with proposed reuse of the roof runoff and treatment and controlled discharge of the podium runoff. The total storage capacity of the tank is 107kL sized using Council's DCP guidelines. Overflow from the tank will be discharged to the concrete lined section of Cottage Creek located on the eastern property boundary'.

Conditions are recommended to ensure that the submitted Concept Drainage Plan is implemented as part of the site development works.

Section 7.08 Waste Management

A Waste Management Plan has been provided with the application. The proposal provides for individual bulk storage bins. The applicant has demonstrated that a heavy rigid vehicle (HRV) can access the site and leave in a forward direction.

As required under this element, a Waste Management Plan has been provided with the application. Residential waste will be stored in a waste storage room located on basement level of the development. Bins will be transferred to the King Street frontage of the site for regular collection by a private waste collector. A condition has been included in the Draft Schedule of Conditions (refer to Attachment D) requiring

construction and operational phase waste minimisation and management measures to be implemented.

Based on the submitted information, the proposal is acceptable.

Section 8.00 Public Participation

The application was publicly notified in accordance with Council's Public Notification Policy for a period of 14 days and no submissions were received in response.

Newcastle Section 94A Development Contribution Plan

The application attracts Section 94A Contributions pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979 and the Newcastle Section 94A Development Contributions Plan. A contribution of 2% of the cost of development would be payable to as determined in accordance with clause 25(j) of the Environmental Planning and Assessment Regulation 2000.

The applicant has had a number of meetings with Council's Officers to discuss the creation of the 6 metre wide pedestrian link between the King Street and Hunter Street, Newcastle West. As discussed previously, the creation of the pedestrian link is viewed as a significant project for Newcastle West and is supported by Council's long term plan for the area.

These discussions are on-going and the developers intend to dedicate the pedestrian link to Council at a future date. The developer has discussed the option of constructing the pedestrian link including planting, seating and public art and off-setting the cost of these works against the Section 94 contributions. This option has been discussed with Council's Section 94 Contribution Officer and Senior Management who support the idea in principle with further negotiation to occur prior to any final decision being made by Council. Accordingly, a section 96 application will need to be submitted to amend the contribution amount to reflect any 'works in kind' or other planning agreement made with Council.

3.1.4 Section 79C(1)(a)(ia) Planning agreements

No planning agreements are relevant to the proposal.

3.1.5 Section 79C(1)(a)(iv) the regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000*. A BCA Capability Statement has been submitted with the application, which concludes that Stage 1 of the development can achieve compliance with the provisions of the Building Code of Australia 2015. In addition, compliance with AS 2601 – Demolition of Structures will be included in the conditions of consent for any demolition works.

Lower Hunter Regional Strategy

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

3.1.6 Section 79C(1)(a)(v) Coastal management plan

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

3.1.7 Section 79C(1)(b) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

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

- Noise - The application was supported by an Acoustic Assessment Report (theoretical acoustic assessment) carried out by Renzo Tonin & Associated (dated 17 March 2016) to support the proposed development. The noise assessment demonstrates that if the glazing recommendations are applied, compliance with internal noise level requirements will be achieved. This will be addressed by an appropriate condition of consent.
- The Acoustic Assessment identifies that the mechanical plant associated with the development has not been selected and thus no external noise emissions have been assessed as part of this assessment. The acoustic consultant however has recommended that a detailed assessment be carried out once the plant has been selected so that any potential acoustic treatments can be incorporated into the design of the building to ensure compliance with the relevant noise criteria. This will be addressed by an appropriate condition of consent.
- Bulk and Scale - The siting, scale, height and appearance of the proposed development is generally suitable as discussed under SEPP 65 considerations and would not unreasonably impact upon the surrounding built environment.
- Traffic and parking – This was discussed in detail under DCP 2012. The traffic, access and parking impacts are considered acceptable.
- Traffic Generation - The traffic modelling estimates that during peak periods the increase in traffic generated by this development will equate to an increase in intersection delays of less than 5 seconds and an increase of back of queues lengths of less than 5 vehicles. On this basis the additional traffic generated by this development is considered minor in terms of the operation of an intersection.

The traffic consultant has reviewed the traffic generation associated with this development pre and post development as well as the 10 year projection factoring in a yearly 1.5% growth rate. This review concludes that the development is

adequately catered for by the existing road network with intersection performance being maintained within acceptable limits based on RMS Guidelines.

- Overshadowing - The overshadowing of adjoining buildings and the surrounding area is considered to be acceptable.
- Privacy - The privacy separation distances under the RFDC have been and the privacy impacts are minimal.

3.1.8 Section 79C(1)(c) the suitability of the site for the development

The site is suitable for the proposed development as it is located in the inner city area of Newcastle which is well serviced by shops, transport and recreational facilities. A higher density residential use of the site is appropriate as it would assist with the revitalisation of the western precinct and allow people to live within walking distance of local employment.

The site is not subject to known risk or hazards that would render it unsuitable for the proposed development. However, the site is subject to mine subsidence and the appropriate approval to develop the site has been granted.

3.1.9 Section 79C(1)(d) any submissions made in accordance with this act or the regulations

The application was notified and advertised in accordance to the Regulations and no submissions were received.

3.1.10 Section 79C(1)(e) the public interest

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

4. CONCLUSION

Subject to a number of relevant conditions recommended in the attached draft condition schedule, the proposal is considered to be acceptable against the relevant heads of considerations under section 79C of the Environmental Planning and Assessment Act 1979.

5. RECOMMENDATION

THAT the Hunter and Central Coast JRPP, as the consent authority, approve development consent to DA2016/00346 (2016HCC018) for the demolition of the existing buildings, construction of a 20 storey shop top housing development (in two towers) including 197 residential apartments, commercial and retail space, four floors of parking (257 spaces), associated site works and a 202 lot strata

subdivision, at Lot 3 DP 593753, 470 King Street, Newcastle West, pursuant to Section 80 of the EP&A Act subject to the conditions in Appendix C.

APPENDIX A - Proposed Plans and Elevations

APPENDIX B - Landscape Plan and Proposed Public Walkway along Cottage Creek

APPENDIX C - Draft conditions of consent

APPENDIX D - Streetscape Perspective

Appendix E - Internal and External Referrals

Department	Comments
Council's Environmental Officer	Refer to attached memo dated 23 August 2016
Council's Traffic Engineer	Refer to attached memo
Council's Stormwater and Flooding Engineer	Refer to attached memo dated 24 August 2016
Council's Urban Design Consultative Group	Refer to attached memo dated 22 July 2015
Office of the Government Architect	Refer to attached letter regarding Design Competition Waiver Request dated 12 August 2015 and Supplementary Design Reports
Office of the Government Architect	Refer to attached letter dated 12 May 2016
Transport and Roads and Maritime Services (RMS)	Refer to attached letter dated 1 June 2016

Appendix F - Design Verification Statement and SEPP 65 Design Quality Statement