

**JOINT REGIONAL PLANNING PANEL
HUNTER AND CENTRAL COAST**

Panel Reference	2017HCC017
DA Number	2017/00700
Local Government Area	NEWCASTLE CITY COUNCIL
Approved Development	Development Application for a Mixed Use Development incorporating Retail Premises, Shop Top Housing, Car Parking and Associated Works
Street Address	163 and 169-185 Hunter Street, Newcastle (Lot 1 DP 610140 and Lot 1 DP 749729)
Applicant/Owner	Iris Land Pty Ltd
Number of Submissions	11
Recommendation	Approval
Regional Development Criteria (Schedule 4A of the Act)	The proposal is listed within Schedule 4A of the <i>Environmental Planning and Assessment Act 1979</i> , being general development over \$20 million.
List of All Relevant s79C(1)(a) Matters	<p>Environmental planning instruments: s79C(1)(a)(i)</p> <ul style="list-style-type: none"> • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy (State and Regional Development) 2011 • 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 Flat Development • State Environmental Planning Policy No 64—Advertising and Signage • Newcastle Local Environmental Plan 2012 <p>Development Control Plan: s79C(1)(a)(iii)</p> <ul style="list-style-type: none"> • Newcastle Development Control Plan 2012 • Section 94A Development Contributions Plan 2009
List all documents submitted with this report for the panel's consideration	<p>Appendix A: Recommended conditions of consent</p> <p>Appendix B: List of current/final submitted plans and documentation.</p> <p>Appendix C: Architectural Drawing Package for the Precinct (Block 1)</p> <p>Appendix D: Clause 4.6 Report - Height of Buildings</p>
Report by	TCG Planning on behalf of Newcastle City Council
Report date	7 December 2018

Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes / ~~No~~**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report? **~~Yes~~ / No / ~~Not Applicable~~**
(Has been addressed in the body of the assessment report)

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes / ~~No~~**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **~~Yes~~ / No / ~~Not Applicable~~**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **~~Yes~~ / No**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

Assessment Report and Recommendation

Executive Summary

Proposed Development

This development application is the first stage of proposed works within 'Block 1' of a Concept Development for the redevelopment of four city blocks located at the eastern end of the Newcastle City Centre. Block 1 comprises two properties: 163 and 169-185 Hunter Street, Newcastle (Lot 1 DP 610140 and Lot 1 DP 749729) and generally comprises the city block surrounded by Hunter Street (northern frontage), Perkins Street (western frontage), King Street (southern frontage) and Wolfe Street (eastern frontage).

A Concept approval exists for the four city blocks (Development Consent DA-2015/10182, issued in April 2016), which approved building envelopes and height, indicative land use mix and floor space allocation, however this does not grant consent for any works. A new revised Concept Development Application (DA-2017/00701) has been submitted by the applicant (Iris Land Pty Ltd) and, if approved, the existing Concept Development Consent will be surrendered. The new revised Concept Plan has been assessed concurrent to this Stage 1 Development Application and is the subject of a separate report to the JRPP. The development that is the subject of this Development Application for the Stage 1 works reflects the new revised Concept Development Application.

The Development Application proposes the following works (in summary):

- A mixed use development comprising of retail premises and shop top housing;
- Construction of three (3) multi storey buildings ranging from 10 to 11 storeys in height, with retail uses at ground level and residential apartments above;
- Retention and adaptive reuse of the heritage former David Jones Building (corner of Hunter and Perkins Street) for ground level retail uses and residential apartments above;
- Retention of heritage facades on Hunter and Wolfe Streets;
- 228 apartments and some 3,650m² of retail floor area;
- Two (2) basement levels accommodating 273 car parking spaces, motorcycle parking, and bicycle parking, storage areas for apartments, waste facilities and service and plant;
- A publicly-accessible (privately owned) mid-block pedestrian connection linking Perkins Street and Wolfe Street;
- Site preparation works, including demolition of all structures (except heritage buildings and/or facades proposed to be retained), excavation and remediation; and
- Public Domain Works: making good areas of public domain and additional street tree planting along Hunter Street, upgrades of paving, lighting and street furniture on King, Perkins and Wolfe Streets.

Referral to Joint Regional Planning Panel

The proposal is referred to the Joint Regional Planning Panel for determination pursuant to Part 4 'regional development' of *State Environmental Planning Policy (State and Regional Development) 2011* as the proposal is listed within Schedule 4A of the *Environmental Planning and Assessment Act 1979*, being general development over \$20 million.

Permissibility

The applicable planning instrument is *Newcastle Local Environmental Plan 2012* (NLEP 2012) under which the subject site is zoned B4 Mixed Use. The proposed uses, which are defined as shop top housing, residential flat buildings and commercial premises, are permissible with consent within the B4 zone. The proposal is integrated development pursuant to the *Mine Subsidence Compensation Act 1961* and the *Water Management Act 2000*.

Consultation

The development application was publicly exhibited in a newspaper notice on 8 July 2017, placed online on Council's webpage, and notified by letter (dated 10 July 2017) to adjoining and nearby properties, with the exhibition period extending from 8 July to 10 August 2017. The development application was exhibited concurrently with the new revised Concept DA-2017/00701 for the four block of the Newcastle East End Precinct which is the subject of a separate assessment report to the JRPP. A total of 11 submissions were received. The main issues raised in the submissions were the inconsistency with the required building envelope (specifically street wall heights and upper level setbacks required by conditions within the approved concept development consent DA-2015/10182 and NDCP 2012), and resultant impacts to view corridors and the heritage qualities of the City Centre. Other impacts including parking, traffic and potential construction impacts were raised in the submissions.

The application was also referred to the following external authorities: Subsidence Advisory NSW and Water NSW (as Integrated Development referral authorities), Roads and Maritime Services, Heritage Council of NSW, Office of Environment and Heritage, NSW Police, Transgrid, Licensed Premises Reference Group, Hunter Water Corporation and the Local Aboriginal Land Council.

Key Issues

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

- Heritage conservation;
- Built Form including building height and street wall heights;
- Carparking provision;
- Construction impacts.

Recommendation

That the Joint Regional Planning Panel grant consent to DA-2017/00700, subject to the conditions contained in **Appendix A**.

1. Background

Staged Concept Proposal: Approval DA-2015/10182

A staged concept development application (No. 2015/10182) was lodged by UrbanGrowth NSW land holdings over four city blocks at the eastern end of the Newcastle City Centre between the Hunter Street Mall and the Christ Church Cathedral, Newcastle. The Concept Proposal was approved by the Hunter Joint Regional Planning Panel (JRPP) subject to conditions on 28 April 2017.

The Staged Concept application granted consent for building envelopes and height, indicative land use mix and floor space allocation, however this did not comprise any physical works. The Staged Concept approval requires separate development applications within the approved seven (7) stages of the development and in summary comprised:

- A mixed use development comprising retail, commercial and residential uses;
- An indicative GFA of 55,400m² and allocation of FSR;
- Car parking with a capacity for approximately 491 vehicles;
- Vehicular access for car parking from King Street, Perkins Street, Wolfe Street, Thorn Street, Laing Street, Morgan Street and Newcomen Street;
- Service vehicular access from Perkins Street, Thorn Street, Laing Street and Morgan Street;
- Building envelopes and heights varying between 2 and 12 storeys;
- Staging of the development;
- Public access, building retention and conservation, infrastructure and construction management strategies.

Current DA-2017/00700: New/Revised Staged DA Concept Proposal

The applicant has concurrently lodged a Development Application (DA-2017/00700) to replace the above approved Staged Concept Approval. In summary, the key changes from the approved Staged Concept proposal and the new lodged Staged Concept DA are as follows:

- Alterations to the setbacks to the building envelopes;
- Redistribution of the floor space ratios (FSRs) on the blocks across the site and increase in the gross FSR on the site from 3.33:1 to 3.67:1;
- Relocation of above ground car parking to basement levels;
- Alterations to staging plan from seven (7) to four (4) stages to align with the street blocks; and
- Reconfiguration of through-site link.

The applicant proposes to surrender the existing approval subject to approval of the current revised Staged Concept DA. A separate report addressing this application has been prepared for simultaneous consideration by the Hunter JPPP.

The Stage 1 Works DA that is the subject of this report is inconsistent with aspects of the approved Staged Concept Approval (DA-2015/10182) but is consistent with the lodged revised Staged Concept DA (DA-2017/00701). Hence, the Stage 1 Works DA that is this subject of this report has direct application to the revised Staged Concept DA and both have been considered concurrently where relevant.

Pre-lodgement Meeting(s)

A preliminary design of the development was presented to Newcastle City Council staff on 20 April 2017 at an informal pre-application meeting. The Stage 1 DA has been the subject of an alternative design excellence process (refer later section of this report).

2. Site and Locality Description

The subject site comprises two properties: 163 and 169-185 Hunter Street, Newcastle (Lot 1 DP 610140 and Lot 1 DP 749729) and generally comprises the city block surrounded by Hunter Street (northern frontage of 66m), Perkins Street (western frontage of 91), King Street (southern frontage 58m) and Wolfe Street (eastern frontage of 55m).

The properties within the block that do not comprise the subject site are 159 Hunter Street (north-eastern corner of site) and the Telstra Exchange at 114 King Street (south-eastern corner of site).

The subject site forms the western-most block ('Block 1') of the four-block 'Newcastle East End' project area located in the City Centre between the Hunter Street Mall and the Christ Church Cathedral (refer **Figure 1**).

The site has a total area of 6,556m² and has a fall of approximately 2.3m from RL 5.0m AHD at the south-eastern corner at Wolfe and King Streets (being near the lower slope north of Cathedral Park) to RL2.7m at the north-western corner at Hunter and Perkins Streets.

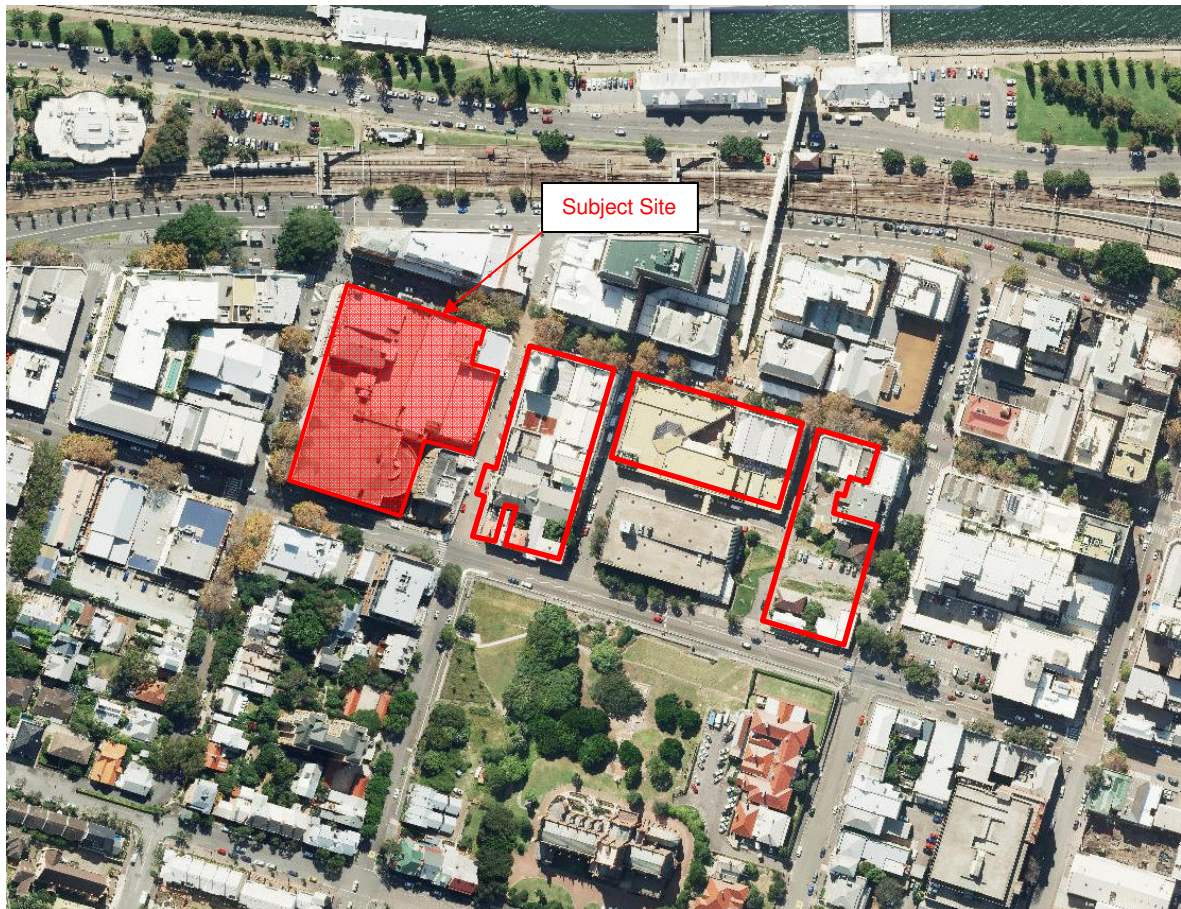
Existing buildings and uses on the site: Below is a summary list of the existing buildings on the site, all abutting adjacent structures and mainly associated with the former David Jones department store (vacated in 2011). Most buildings remain unoccupied, with the exception of the former David Jones building which is being used as a display suite, (part of building at corner of Hunter and Perkins Streets) and the 404-vehicle car park on the south-western corner of the site (Perkins and King Streets), which is used as a commercial car park managed by Wilson. There are no trees or vegetation on the site.

- Former David Jones building (corner Hunter and Perkins Streets): 'Scotts Ltd Corner Building constructed 1914, 5-6 storeys;
- Former David Jones Building Perkins Street (former D Mitchell and Co Warehouse Building): 6 storeys;
- Former David Jones Building Hunter Street (Original Scott's Ltd Building c1908), 3 storeys;
- Former David Jones Building, Hunter Street (c1970), 3 storeys;
- Former David Jones Building, Hunter Street (Washington House Buildings), 3 storey building;
- Former David Jones Building, Wolfe Street Annexe Building (1962), 2 storey;
- Perkins Street Car Park, accessed King Street, 5 storeys.

The *surrounding land* is described as:

- North - development along the northern side of the Hunter Street Mall is a mix of two (2), three (3) and four (4) storey buildings with retail at ground and typically commercial office space above, and includes two (2) heritage buildings at 160 and 170 Hunter Street;
- West - Perkins Street forms the eastern boundary of the site. On the western side of Perkins Street is a mix of commercial development of various scales and building forms. Uses comprise the Crown and Anchor Hotel, retail shops and offices and the former Victoria Theatre. The streetscape presents a mixture of scale and form.
- South - The southern boundary of the site is King Street. On the opposite side of King Street, between Wolfe and Perkins Streets, is development of 2-6 storey commercial and residential development. Further to the south-east is Cathedral Park, the Christ Church Cathedral and the Newcastle Club above large sandstone retaining walls and steeply rising topography.
- East - Wolfe Street forms the eastern boundary of the site and falls steeply from King Street toward the Harbour. The eastern side of Wolfe Street is occupied by 2-3 storey retail and commercial buildings and the Masonic Hall/Lyrique Theatre building.

Figure 1: Aerial photo showing the location of the subject site. Other Newcastle East sites that are subject to the Concept DA-2017/00701 is shown hatched (Source: Six Maps)



3. Project Description

Development Application (No. 2017/00700) seeks consent for Stage 1 of the four (4)-block 'Newcastle East End' Staged Concept Plan comprising the western city block 'Block 1' for the following works (summary list below):

- A mixed use development comprising of retail premises and shop top housing;
- Construction of three (3) multistorey buildings ranging from 10 to 11 storeys in height, with retail uses at ground level and residential apartments above;
- Retention and adaptive reuse of the heritage former David Jones Building (corner of Hunter and Perkins Street) for ground level retail uses and residential apartments above;
- Retention of heritage facades on Hunter and Wolfe Streets;
- 228 apartments and some 3,650m² of retail floor area;
- Two (2) basement levels accommodating 273 car parking space (comprising 198 resident, 45 residential visitor and 30 retail spaces), motorcycle parking, and bicycle parking, storage areas for apartments, waste facilities and service and plant;
- A publicly-accessible (privately owned) mid-block pedestrian connection linking Perkins Street and Wolfe Street;
- Site preparations works, including demolition of all structures (except heritage buildings and/or facades proposed to be retained), excavation and remediation;
- Public Domain Works: making good areas of public domain and additional street tree planting along Hunter Street, upgrades of paving, lighting and street furniture on King, Perkins and Wolfe Streets.

Note: The Stage 1 Works DA that is the subject of this assessment report is *inconsistent* with aspects of the approved Staged Concept Approval (DA-2015/10182), as detailed in the separate report for the revised Stage Concept DA 207/00701. However, the Stage 1 DA *does* conform with the lodged revised Staged Concept DA which has been considered simultaneously.

The key differences between the Stage Concept as approved and the current revised Staged Concept DA is listed below, and in particular how it relates to the subject Stage 1 DA:

- **Land Use:** Alter approved mix of uses to provide a greater proportion of retail and residential floor area and slightly reduce commercial component.
- **Building envelopes:** In respect of Block 1 (this Stage 1 DA), a key change is an increased street wall heights and zero upper level setbacks of Building A at the corner of Perkins and King Streets. Refer to detailed discussion at Section 79C(b)(iv) of this report.
- **GFA & FSRs Redistribution** on the blocks across the site and increase in the gross FSR on the site from 3:33:1 to 3.67:1. In respect of Block 1 the approved GFA was 21,294m² (FSR 3.2:1) and the proposed GFA is 26,200m² (FSR 4:1).
- **Staging Plan:** Alteration from seven (7) to four (4) stages to align with the street blocks;
- **Through site link** (Block 1): Reconfiguration to provide a larger central court.
- **Block 1 vehicle access and servicing:** The approved Staged Concept DA provided for vehicle access off King Street and service access off Perkins Street. Now proposes consolidation of service and vehicle access to King Street.
- **Car Parking:** Increase from around 491 spaces to 549 spaces (largely attributed to additional basement parking in Blocks 1 and 4). Block 1 car parking spaces increased from 233 to 273).

Other Aspects of the Proposed Development





Table 1: Elements of Block 1 Proposed Buildings <i>Adapted from Table 5 of SEE (SJB Planning, June 2017)</i>				
Element	Building A (Perkins & King)	Building B (Former DJs)	Building C (Hunter Street)	Building D (Wolfe Street)
				
Dwellings	108	16	57	47
GFA Residential	10,092	3,172	4,502.2	4,778 Total Res: 22,550
GFA Retail	1,582	580	905.54	581 Total Retail: 3650
GFA Total	11,676	3,752	5,407.74	5359 Total: 26,200
Building height above existing ground	11 storeys RL 40 to parapet RL 41 (roof feature) RL 42 to lift overrun/plant	Five (5) storeys (existing) RL28.5 to parapet RL 33.97 to dome spire	Ten (10) storeys RL 39.84 to parapet/roof RL41 to lift overrun/plant	11 Storeys RL40 to parapet RL42 to lift overrun
Ceiling height	Residential: 2.7m (Habitable) Retail 3.1m	Residential: 2.7m-4.3m (habitable) Retail: 3.6m-4.4m	Residential: 2.7m-4.2m (habitable) Retail: 3m-4.3m	Residential: 2.7m-4.2m (habitable) Retail: 3m-4.3m
Building Separation	Building B: • 7.7m (up to level 5) Building C: • 9.4m-34.4m (up to	Building B: • 7.7m (up to level 5) Building C: 0m- (existing)	Building A: • 9.4m (up to level 6) • 22.8m (level 7+) Building B	Building C: • 11.7m-12.3m Building A: • 39m

Table 1: Elements of Block 1 Proposed Buildings <i>Adapted from Table 5 of SEE (SJB Planning, June 2017)</i>				
	level 6) • 22.8m-34.m (level 7+) Building D: • 36m		• 0m- (existing) Building D: • 11.7m-12.3m	
Building setbacks	King Street: 0m Perkins Street: 0m Telstra Site: • 2.5m up to level 7 • 21.4m level 8+	Hunter Street: 0m Perkins Street: 0m	Hunter Street: • 0m up to levels 4 & 5 (existing facades) • 6m level 6+	Wolfe Street: 0m Telstra Site: • 6.1m (existing façade up to level 4) Hunter Street: • 0m up to level 3 (existing façade) • 3.9m to level 4+
Heritage Retention and Conservation	All buildings demolished. New building constructed	Facade retention and adaptive reuse of interiors. Existing unsympathetic awning to be replaced.	Facade only retained. Existing unsympathetic awning to be replaced to match Building B	Facade retained. Existing awning retained.
Communal Open Space	On podium 585m ² Level 7: 380m ²	N/A	Level 2: 185m ² Level 3: 310m ²	N/A

The key documents and plans of the proposed concept development are provided at **Appendix C to D**, listed below:

Appendix C: Architectural Drawing Package for the Precinct (Block 1) (SJB Architects)

Appendix D: Clause 4.6 Report - Height of Buildings (SJB)

Design Excellence Process

Under Clause 7.5(4)(c) of Newcastle Local Environmental Plan (NLEP) 2012 the proposal would require a design competition as it is located on an identified key sites and exceeds \$5 million. However subclause (5) enables an exemption from a design competition if the Director General confirms one is not required.

On 7 March 2017, the NSW Government Architect (as a delegate of the Director General) granted an exemption to the requirement for a design competition subject to the implementation of alternative design excellence process in accordance with the Director General's Design Excellence Strategy. A copy of the exemption issued by GAO is provided with the application and will be applicable to each future stage of the four blocks of the precinct/Concept DA Area, with Stage 1/Block 1 being the first.

The alternative design excellence process is based on the Design Excellence Strategy. Part of this Strategy included the establishment of a Design Review Panel (DRP) to assess each individual stage. The nominated DRP is Council's Urban Design Consultative Group (UDCG). As part of their role, the UDCG are to advise the Government Architect if there is concern that the process is not delivering design excellence, or is deviating from the terms outlined. In this case the process may be reset.

The Design Excellence Strategy involves different architectural firms, with individual firms responsible for the design of a particular building as follows:

- SJB Architects Lead Architect and design of adaptive reuse of the former David Jones building on the corner of Perkins and Hunter Streets (Building B);
- SJB Architects design of new 11 storey building on the corner of Perkins and Kings Streets (Building A);
- TZG - design of Building C involving retention of shopfront facades on Hunter Street and construction of new 10 story building from behind the facades; and

- DBJ - design of Building D involving retention of facade of Wolfe Street building and construction of a new 11 storey building from.

The Statement of Environmental Effects (SJB Planning, June 2017 p24-25) provides the following summary of the design excellence process:

"While the architectural firms were responsible for specific building design, the overall approach to the design of the street block has been a collaborative process that has sought to provide cohesive development, that is focussed around an enhanced and connected ground plan and public domain. The architectural team was supported by Aspect Studios (landscape designers) and City Plan Heritage.

Four (4) Design meetings were held with Newcastle Council's UDCG on:

- 1 March 2017;
- 15 March 2017;
- 27 March 2017;
- 19 April 2017.

The first and third meetings were attended by the Chair and another representative of the UDCG. The meetings on 15 March and 19 April were with the full UDCG.

Detailed presentation of design development and response to issues were provided to the UDCG at each meeting. The presentation provided at the initial meeting set out the site design principles that had been established for the proposal and the site testing that was undertaken by the group to inform the building forms, heritage response, landscape concept and the ground plan, including site access and through site linkages. At each meeting the designs were refined in response to the comments from the UDCG. Further details of the alternative design excellence process, including the feedback from the UDCG following each workshop, is provided in the SEPP 65 Design Statement (submitted as part of the DA documentation)."

The above submitted documentation has been assessed and it is considered that the alternative design process has been followed, and is a sound approach to the overall site planning of Block 1. This is confirmed by the comments/notes of the UDCG meeting held on 27 September to consider the development application:

- *"Stage 1 Newcastle East End development proposal has been the subject of a Design Excellence Panel overseeing design development. The current application represents the outcome of that design process submitted as a Development Application.*
- *The Panel considers the application to have maintained the outcomes identified and detailed in the Design Excellence Review Process.*
- *This Panel supports the overall treatment of building aesthetics, previously supported by the Design Excellence Panel."*

4. Consultation

The application was publicly exhibited in a newspaper notice on 8 July 2017, placed online on Council's webpage, and notified by letter (dated 10 July 2017) to adjoining and nearby properties, with the exhibition period extending from 8 July to 10 August 2017. The development application was exhibited concurrently with the Concept DA for the East Newcastle Precinct (Blocks 1 to 4) (DA-2017/00701). A total of 11 submissions were received and it is apparent that there was some confusion from some who made a submission on the scope and role of each DA. The matters relevant to this revised Concept DA are addressed in this report. Submissions were received from:

- Port Authority of New South Wales (1 submission);
- Port of Newcastle (1 submission);
- Newcastle Inner City Residents Alliance (NICRA) (1 submission);

- Individual residents and/or property owners of nearby properties (mostly apartment buildings) located at Church Street, Wolfe Street, Corlette Street, King Street, Carlton Street, Perkins Street, Brown Street, Hunter Street) (total 10 submissions).

It is noted that some of the submissions received also referenced the Staged Concept Plan DA (DA-2017/00701) in addition to the Stage 1 Works DA (DA-2017/00700) noting these were exhibited concurrently and most of the issues are inextricably linked and relate to this DA, even if DA-2017/00701 was referenced on the correspondence.

The key objections raised in the submissions are summarised as follows. Each matter is addressed later in the report under the relevant heading:

J & F Bailey: Seek a meeting with Council and briefing by developers to understand the extent of the proposed development and implications on property. Two applications difficult to understand.

Port Issues:

The main navigation aid in the Newcastle CBD is the Main Rear Lead, located off Church Street (51m high). The proposal does not appear to obstruct the use of this navigation aid. However due to proximity, recommend consultation with the port operator (Port of Newcastle) and the Harbour Master for Newcastle Harbour to determine and eliminate extent of impacts, if any on the safe navigation of vessels (eg. impact of construction including cranes/lighting on view corridors and sight lines to navigation aids (Main Rear Lead and Front and Shoulder leads and main channel); and impact of height, reflectivity, glazing, finishes etc of future buildings. No consideration has been given to acoustic impacts of port activities (24/7, 365 days per year) including helicopter movement. Acoustic treatments are required so the development meets the internal noise criteria of AS2107-2016 for Port activities to ensure acceptable levels of environmental noise within the residential spaces.

Important Undertakings Given to Community Proposed to be Ignored

The former Program Director of UrbanGrowth NSW confirmed to NICRA in writing in 2016 that the future owners of the Newcastle East End site (then for sale) must adhere to the 2016 JRPP rulings, as also documented in Expression of Interest documentation. The building envelope and upper level setbacks required by the approval are being ignored in the revised Staged Concept DA and Staged DA.

Building A (Cnr Perkins & King Street) should conform to JRPP's building envelope controls

Condition 13 of the Development Consent for the Staged Concept DA (imposed by the JRPP) required "*where the building envelope exceeds the maximum street wall height identified in the NDCP 2012, then the section of the building above that height shall be set back in accordance with the DCP being 6 metres.*" The NDCP 2012 street wall height is 22m and the proposed Building A exceeds this and has no setback. The controls are designed to reduce overshadowing of King Street apartments and have/respect a similar street wall height to heritage buildings opposite. Without the podium setbacks the tower will:

- have a cliff-like facade;
- contribute significantly to the visual bulk of the building;
- will be adverse to the traditional character and visual appearance of the area, especially King Street;
- restrict or impede views of existing residents of the Hill;
- the human scale of the surrounding architecture will be dwarfed.

The applicant's stated reasons for this (including opening up of laneway and providing more light and circulation to future tower residents), insufficient weight has been given to important heritage considerations.

Building D (Wolfe Street) should conform to upper level setback required by JRPP

Condition 14 of the Development Consent for the Staged Concept DA (imposed by the JRPP) required *"where the building envelope is above a retained heritage facade, then it shall be set back in accordance with Newcastle DCP 2012 being 6 metres."* This was to avoid the worst aspects of "facadism". This should occur for this building (as it has been with Building C fronting Hunter Street and successful treatments such as the Westin Hotel/GPO Sydney) so that the elegant art deco facade can be respected and enhanced.

Laneway and Public Domain

No activation plan for high-amenity and high-access Hunter Street mall footpath and shops. Proposed through-link "Victoria Way" is not supported by suitable analysis of solar access (especially southern-side commercial premises that is likely to be continually shaded) or pedestrian desire lines.

Buildings surrounding laneway are too tall. It could work if buildings were lower scale.

Perkins Street footpath offers limited amenity and should be sheltered by a continuous solid awning for pedestrian comfort.

View Corridors Impacted

The JRPP-imposed upper level setback to Wolfe Street was also designed to retain significant public vistas of Christ Church Cathedral and significant vistas down Wolfe Street to Newcastle Harbour. The proposed built-to-street alignment of Building D will narrow these vistas. However, it will open up vistas to the some future residents of proposed Building A which is considered to put self-interest above public interest.

Parking Deficiency of 30 Spaces

The Justification/assessment:

- Requires the current well-utilised Council all day car park to be restricted and "discouraged". The applicant has no certainty with regard to ongoing access to parking spaces within the King Street car park.
- Makes no account for the dramatic impact of the planned light rail route along Hunter Street which will result in a loss of 280 car parking spaces.
- Makes no account for several residential developments in surrounding areas with potential on-street parking demands.

The inevitable and significant parking overflow will impact on parking amenity for surrounding residents and businesses.

Range of Amenity Impacts

Heritage impact statement does not address amenity, social or wellbeing impacts of overdevelopment. Lack of consideration of increased overshadowing, wind impacts from taller buildings, lack of view of horizon, shading (No. 34 Perkins St) increased pollution from increased traffic, air-conditioning units etc, security, odour, privacy. Unique nature of city will change to cold and overbearing.

Overshadowing, loss of light, and Privacy impacts of Building A on 209 Hunter Street (Acculon Apartments pool) and overlooking. Should be 7 storeys like the Acculon.

Negative Impact on Property Values

Impact on harbour views, will be an eye-sore, intrusive height.

Inconsistent with Scale, Aesthetics and Character of Area

The development is not aesthetically compatible with surrounds and is in stark contrast to existing charm and appeal of the area with historical buildings.

Will be an ugly monstrosity and Council should be looking to develop this area in an aesthetically pleasing way.

Buildings 5-8 storeys are more acceptable for a human scale.

Building Height: Block 1 should have a Height Limit of RL 30m

The height limitations for Block 1 should be the same as the other Newcastle East End blocks as views are impeded. Given the recent property value increases in Newcastle, the developer should review the financial feasibility model since Newcastle East process commenced. This increase could enable reduction in building height of Block 1 buildings without jeopardising the feasibility of the development.

Building height is excessive when compared to intent of NLEP 2012 (Objectives of Clause 7.9 Height of Buildings).

No demonstrated need for height limits to be exceeded.

The development will dominate the skyline and there will be a domino effect with developers seeking increased heights elsewhere.

Clause 4.6 Variation is not adequately justified and is not clear why a complying development would result in a 'poorer urban design to the overall site and the area generally'.

Traffic Impacts

Building A alone (108 apartments) will create traffic jams in already congested roads, including King Street and will force traffic to heritage areas and up hills.

The Traffic Impact Statement provides insufficient detail, relies on previous studies, does not provide current traffic volumes and the suitability of King Street to be able to provide adequate traffic speeds to avoid traffic jams.

Social Impacts

SIS does not adequately address negative social impacts form amenity loss from over development and there has been limited (if any) community consultation prior to submission.

Acoustic Impacts During Construction

The recommendations within the Acoustic Assessment (Acoustic Logic) are ambiguous and do not provide surrounding residents with certainty about construction impacts (eg. pneumatic hammering, excavator and vehicle noise).

Object to proposed hours of work which propose to exceed EPA's NSW Interim Construction Noise Guideline Section 2.2 (reproduced below):

"Work type recommended standard hours of work:

Normal construction: Monday to Friday: 7am to 6pm; Saturday 8am to 1pm; No work on Sundays or public holidays.

Blasting: Monday to Friday: 9am to 5pm; Saturday 9am to 1pm; No blasting on Sundays or public holidays."

Parking During Construction:

Parking in the area is already in demand and Building A should be developed last within Block 1 and the existing Perkins Street carpark (which has capacity for 389 cars) should be retained for construction workers. If construction is stalled (as has occurred on other sites in the City), then there would be parking retained and less long term holes in the ground.

Structural Engineers Building Report Should be Prepared

NCC should insist on the proponent undertaking structural engineering reports on heritage buildings within a radius of 500 metres from the construction zone (including Segenhoe at 50 Wolfe Street). This will assist in ensuring resultant damage from long term hammering etc can be rectified without protracted and expensive legal battles.

Construction Phase and Footing of Corner of King and Perkins Streets

Site of former mine workings and it is not known if these have been back filled. Should be addressed, including footing of proposed Building A.

Housing Type Inconsistent with 'Draft Plan for Growing Hunter City'

Action 2.2.2 'Support small-scale housing growth within Inner Newcastle neighbourhoods'

Environmental Features Lacking

There is little evidence that the design embraces ESD principles.

Number of parking spaces exceeds apartment numbers which is contrary to the transport strategy which is trying to increase public transport into the city, Additional cars than required will clog up King and Hunter Streets. The developers need to be more adventurous and restrict the number of parking spaces to a ratio less than the number of apartments. Electric car charging station should be included in addition to a bike cage.

Sustainable innovations that are possible could be incorporated:

Will there be a community garden on the roof, solar panels for common energy utilities or water tanks?

5. Referrals

Approval Authorities- Integrated Development

The staged development is identified as 'Integrated Development' pursuant to Section 91 of the EPA Act 1979 on the following basis;

Mine Subsidence Compensation Act 1961: The site is located within a Mine Subsidence District and specifically within a Category B area where geotechnical investigation are required and where there is a high likelihood of coal seam grouting being required for high rise buildings and large footprint structures. Section 91A of the EPA Act 1979 identifies development as 'integrated' where approval is required under section 15 of the Mine Subsidence Compensation Act 1961 to alter or erect improvements within a mine subsidence district or to subdivide therein. The integrated development application was referred to the Subsidence Advisory NSW who issued General Terms of Approval. Refer also to Section 6(b) later in this report with heading 'Mine Subsidence'.

Water Management Act, 2000: Development is 'integrated' where it requires approval under Section 91 of the *Water Management Act, 2000*. The proposed excavations on the site will extend below the water table and dewatering will be required during construction (ie. which require an Activity Approval pursuant to Section 91 of the Water Management Act 2000). The development application was referred to the Department of Primary Industries (Office of Water) who issued General Terms of Approval.

Heritage Act: The whole site is located within the Newcastle City Centre Heritage Conservation Area and is also listed as locally-significant Item 407 'Former David Jones (commercial building) under Schedule 5 of Newcastle LEP 2012. The development involves works to heritage buildings within the site and several heritage items are located in the vicinity of the site. However, such items are not listed on the State Heritage register and accordingly approval is not required under section 58 of the Heritage Act, 1977. Therefore the Concept Proposal is not 'integrated development'. Whilst not being 'approval' bodies, the application was however referred to the Heritage Office and the Office of Environment and Heritage, with their responses summarised in **Table 2**.

Roads Act, 1993: Development is integrated where approval is required under Section 138 of the *Roads Act, 1993* to erect a structure/carry out work over a public road or to connect a road (whether public or private) to a classified road. The subject site does not have frontage to a classified road. Further, Section 91(3) of the EPA Act excludes from the integrated development regime, developments requiring consent under Section 138 of the Roads Act if both development consent of Council and approval of the same Council is required. On this basis the Stage 1 Proposal is not 'integrated development' pursuant to the *Roads Act*. Whilst not being an 'approval' body the application was however required to be referred to Roads and Maritime Services under State Environmental Planning Policy (Infrastructure) 2007, with the response summarised in **Table 2**.

The following provides a summary of the external referrals which were provided for the staged development application.

Table 2 - Summary of External Referrals	
Agency/Reason/Date	Response
Water NSW 20/22/17 s91 EP&A Act, 1979 Integrated Development	General Terms of Approval Issued (<i>Water Management Act 2000</i>)
Subsidence Advisory NSW 13/9/2017 and 3/10/2017 s91 EP&A Act, 1979 Integrated Development	General Terms of Approval Issued (13/9/2017) (<i>Mine Subsidence Compensation Act 1961</i>) A subsequent letter was forwarded following consideration of a supplementary report (Douglas partners) stating: <i>"SA NSW considers condition 5 in our letter dated 13 September 2017 to have been met, noting a Grout Verification Output Report will be required following the completion of grouting. Conditions 3, 4 and 6 to 11 are yet to be met."</i>
NSW Office of Environment and Heritage (Heritage Branch) 11 October 2017 No Statutory approval role	<p>The content of this letter are reproduced below:</p> <p><i>None of the properties within the development site are listed on the State Heritage Register (SHR). However, the development site is close to Christ Church Cathedral and the former Victoria Theatre, both listed on the SHR. While Christ Church Cathedral is not physically affected by the proposal, its landmark qualities, which part of its significance, will be adversely impacted. The State Heritage Register listing states that the Cathedral's aesthetic significance is demonstrated by: its landmark qualities, having dominated and defined the Newcastle skyline for many years. The form, scale, colour, texture and materials of the fabric combine to present a piece of extraordinary architecture in a most dramatic setting. (Source: State Heritage Register listing.)</i></p> <p><i>D2017/00700 forms part of the Staged Concept DA D2015/10182 which was approved by the Joint Regional Planning Panel on 28 April 2016. The Heritage Council Approvals Committee (the Approvals Committee) considered a presentation for the Staged Concept DA at its meeting on 3 February 2016. The Approvals Committee's resolution was provided to Newcastle City Council on 18 February 2016. The resolution included recommending height reductions to preserve historic views to and from Christ Church Cathedral and the river foreshore and that Council secure these reduced heights in a revised LEP.</i></p> <p><i>The drawings and relevant reports for D2017/00700 East End redevelopment, Stage 1 DA have been reviewed by the Heritage Division of OEH on behalf of the Approvals Committee. As a result, there is concern that despite the Approval Committee's comments, the proposed building heights have not been lowered and there are still potential adverse impacts on views to and from Christ Church Cathedral and the river foreshore, refer Figure 1.</i></p> <p><i>Accordingly, the Committee's comments provided to Newcastle City Council on 18 February 2016...(are reproduced below)...and we particularly draw your attention to resolution C. The heights of the proposed buildings should be lowered so that they comply with the height controls in Newcastle Local Environmental Plan 2012.</i></p> <p><i>Drawings and reports for D2017/00700 East End redevelopment, Stage 1 DA do not consider the impact of the proposal on views to and from the river foreshore. Accurate photomontages of longer views to and from the Cathedral should be provided so that assessment and determination can properly consider all environmental impacts.</i></p> <p>Summary/Key Matters of Attachment A to letter: Built Heritage: a) <i>Retaining some of more important buildings, such as the 19th century three-storey building at the corner of Hunter and Morgan Streets should be considered.</i> b) <i>Adaptive reuse of buildings instead of mere façade retention, for the more important or more intact buildings should be considered.</i> c) <i>Reduction in heights in the proposed master plan to preserve the historic views to and from the state heritage listed cathedral site and foreshore is supported. It is</i></p>

Table 2 - Summary of External Referrals	
Agency/Reason/Date	Response
	<p><i>strongly recommended that the reduced heights be secured by a revised LEP.</i></p> <p><i>Archaeology:</i></p> <p><i>d) A single detailed Historical Archaeological Assessment should be prepared.</i></p> <p><i>e) A detailed intra and extra site comparative analysis of the potential archaeological resource present within the development area should be prepared;</i></p> <p><i>f) Mitigation measures that consider archaeological features and deposits should be prepared in hierarchical order;</i></p> <p><i>g) In the event the Archaeological Assessment identifies the potential for State significant archaeological relics within the Project Area, the Applicant must consider how to appropriately manage these remains. Retention may be required and options such as redesign and avoidance must be considered.</i></p>
<p>NSW Heritage Council</p> <p>(Archaeology)</p> <p>21 August 2017</p> <p>No Statutory approval role.</p>	<p>Provides comments on a review of the application document '<i>Historical Archaeological Assessment Newcastle East End Project – Stage 1 Final Report prepared by Umwelt Pty Ltd dated June 2017.</i>' Throughout the correspondence OEH refers to the application as a 'concept' application however this is erroneous as it applies to the Stage 1/Block 1 works.</p> <p>The correspondence indicates that the application document reviewed has addressed some, but not all of the Heritage Council's earlier advice. The following comments are provided in light of this earlier advice and the document considered above:</p> <p><i>The historical archaeological assessment:</i></p> <ul style="list-style-type: none"> <i>has considered the potential of the subject land through a detailed analysis of primary and secondary historical sources;</i> <i>has considered specific site formation processes relevant to this site, its development over time and how this may have affected the archaeological resource.</i> <i>considered relevant evidence indicating there is a high likelihood for Aboriginal archaeological evidence to be present within the site which will also require management.</i> <i>concluded the site is unlikely to retain archaeological evidence associated with the convict settlement of Newcastle which is likely to be of state heritage significance. The physical evidence anticipated within the site includes evidence which post dates the mid-1840s...assessed as being of local heritage significance. However the assessment has noted if undocumented resources which predate the 1840s are identified, such evidence is likely to be of state heritage significance.</i> <i>The site's archaeological potential ranges from low to moderate across the site. In two areas an existing basement and carpark are likely to have already impacted much of the archaeological resources in those select areas.</i> <i>not included physical testing of the archaeological assessment (noting this approach is contrary to the earlier advice of the Heritage Council of NSW).</i> <i>considered the impacts of the concept approval currently sought as discussed earlier in this letter.</i> <i>Provides no specific detail on the bulk excavation of most of the site to construct a two level basement car-park for the new development, and the impact will be the complete removal of any remaining archaeological evidence across the site with the exception of any evidence which may be retained underneath the Former David Jones Building.</i> <i>includes a research design and excavation methodology which is necessary to support an application under s.140 of the Heritage Act 1977 (to be lodged in future with a suitably qualified and experienced historical archaeologist to act as Excavation Director for these works.</i> <i>recommends it would be appropriate to apply a suitable sampling strategy where the level of preservation of the archaeological resources which extends across the project area proves to be extensively intact.</i> <i>recommends a public information/dissemination program which should run concurrently with the archaeological investigation.</i> <i>recommends an Interpretation Plan be prepared for the site which includes the results of the detailed archaeological salvage program.</i> <i>Given the scale of the redevelopment of this site, the local community interest in the history of the development of Newcastle and the rarity of such events, it is</i>

Table 2 - Summary of External Referrals	
Agency/Reason/Date	Response
	<p><i>likely conditions of the approved s.140 application would include these requirements as conditions of consent.</i></p> <p>The correspondence provides recommended conditions for inclusion in the DA.</p>
<p>Roads and Maritime Services</p> <p>20 November 2017</p> <p>No statutory approval role</p> <p>Referral under <i>SEPP (Infrastructure) 2007</i>, Clause 104, Schedule 3 is <u>not</u> required as the development is not of a size/scale that triggers referral.</p> <p>Therefore comments provided are advisory.</p>	<p>The key content of this letter are reproduced below:</p> <p><u>Roads and Maritime response:</u> <i>Roads and Maritime has reviewed the information provided and raises no objection to or requirements for the proposed (development).</i></p> <p><u>Advice to Council:</u> <i>Roads and Maritime recommends that the following matters should be considered by Council in determining this development:</i></p> <ul style="list-style-type: none"> • <i>Roads and Maritime has no proposal that requires any part of the property.</i> • <i>Council should ensure that appropriate traffic measures are in place during the construction phase of the project to minimise the impacts of construction vehicles on traffic efficiency and road safety within the vicinity.</i> • <i>Council should have consideration for appropriate sight line distances in accordance with the relevant Australian Standards (i.e. AS2890:1:2004) and should be satisfied that the location of the proposed driveway promotes safe vehicle movements.</i> • <i>Council should ensure that the applicant is aware of the potential for road traffic noise to impact on development on the site. In this regard, the developer, not Roads and Maritime, is responsible for providing noise attenuation measures in accordance with the NSW Road Noise Policy 2011, prepared by the department previously known as the Department of Environment, Climate Change and Water. If the external noise criteria cannot feasibly or reasonably be met, Roads and Maritime recommends that Council apply internal noise objectives for all habitable rooms with windows that comply with the Building Code of Australia.</i>
<p>Police and Licensed Premises Reference Group (LPRG)</p> <p>No statutory approval role</p>	<p>No response from Police. However a Police representative was in attendance at the LPRG who recommended:</p> <ul style="list-style-type: none"> • Some of the retail will have a food and beverage focus. Notes that consent for fitout and future uses will be subject to future DA's as required. • Police condition for this DA - approve with 7pm closing for commercial elements. If future DAs require liquor licences, can add conditions then. • Discussion noted need for better quality acoustic treatments within buildings. Police keen to see 'window approvals' to reduce noise complaints. New residents at Market town development are already making complaints about nearby noise eg King St Hotel.
<p>Ausgrid</p> <p>20/7/2017</p> <p>SEPP (Infrastructure) 2007 Clause 45(2)</p> <p>No statutory approval role</p>	<p>The content of this letter are reproduced below:</p> <p><i>Ausgrid requires that due consideration be given to the compatibility of proposed development with existing Ausgrid's infrastructure, particularly in relation to risks of electrocution, fire risks, Electric & Magnetic Fields (EMFs), noise, visual amenity and other matters that may impact on Ausgrid or the development.</i></p> <p><u>Supply of Electricity:</u> <i>A preliminary application to Ausgrid has been submitted to initiate the substation design process. ADP are liaising with Ausgrid to coordinate the anticipated power infrastructure requirements of the development. In addition to electrical infrastructure required to supply proposed development it is anticipated there will be significant works required to maintain supply to existing external customers.</i></p> <p><u>Conduit Installation:</u> <i>The need for additional electricity conduits in the footway adjacent to the development will be assessed and documented in Ausgrid's Design Information, used to prepare the connection project design.</i></p> <p><u>Underground Mains:</u> <i>The works described in your notification are also in the vicinity of underground electricity assets. In addition to DBYD searches I recommend that you to conduct a ground search to locate electricity assets immediately prior to commencing work to check for updates of installed utilities.</i></p> <p><i>Any alterations to Ausgrid's underground electricity mains will be Contestable Works and funded by Developer.</i></p> <p>To be included as appropriate conditions of development consent.</p>

Table 2 - Summary of External Referrals	
Agency/Reason/Date	Response
Transgrid - No statutory approval role	No response received.
Hunter Water - No statutory approval role	No official response received, however email received advising that HW have issued a Notice of Requirements to the applicant (copy provided) and requested that Council impose a standard condition on the consent requiring a section 50 certificate.
Local Aboriginal Land Council - No statutory approval role	No response received.

Internal Referrals – Newcastle City Council Officers

The application documents were referred to the list of specialist officers below, who responded as follows.

Senior Development Officer (Engineering) dated 23.11.2017 and 5.12.2017

Flood Management and Stormwater Management

Conditional approval recommended. Refer to Section 79C(b)(xvi) of this assessment report for comments.

Contract Development Officer (Engineering) 17.10.2017

Development Officer (Engineering) 28.11.2017

Vehicular Access, Traffic and Parking Issues - refer to Sections 79C(b)(ix) of this report for assessment and comments. Acceptable subject to conditions of consent.

Senior Environment Protection Officer (Planning and Regulatory), dated 3.7.2017

Contamination and Noise - refer to Sections 79C(a)(i) SEPP 55 and 79C(b)(x) of this report for assessment and comments. Acceptable subject to conditions of consent.

Manager Development and Building (Heritage), dated 25.02.2016

No objection provided recommended conditions of consent are imposed. Refer to Section 79C(b)(iii) of this report for comments.

Building Assessment Team Coordinator email 16.11.2017

Advised the proposal is capable of complying with the Building Code of Australia, with recommended conditions of consent.

Waste and Commercial Collections Manager email 7.11.2017

No objection, comments provided (refer Section 79C9B)(xv) of this report) that can be incorporated into conditions of development consent.

Senior Urban Planner (Section 94 Contributions) email 11.10.2017

"No objection to the information included in the SEE and note the applicant is not seeking to negotiate a Planning Agreement with Council. The Section 94A Contribution Plan contains savings and transitional arrangements, applications are to be determined in accordance with the provisions of the plan that applied at the date of lodgement of the application. Therefore contributions will be applied at 2% of the estimated cost of development."

Senior Public Domain Planner emails 23.6.2017 and 24.11.2017

Comments provided and additional information requested that was addressed and/or can be confirmed by recommended conditions of consent (eg. tree species).

Advised that Council's *Draft East End Stage One - Public Domain Plan* was presented to traffic committee in September seeking in principle support but has not yet been publicly exhibited. It is intended that this Plan will be taken to the Traffic Committee again in February 2018 and then placed on public exhibition. The Plan proposes alterations of the configuration of angle parking to parallel parking in Perkins and Wolfe Street, parking configuration in Hunter, Thorne and Market Street, installation of a bi-directional cycleway and the formalisation of Hunter Street with kerb and gutter.

Council's Senior Urban Design advised contact will be made with ASPECT Studio who completed the original design to request updating of the plans to reflect the new road layout. While this depends on the timing of the completion/finalisation of the East End Stage One - Public Domain Plan, it is considered there is an opportunity to incorporate aspects of the Public Domain Plan via a condition requiring the final Landscape Plans to be prepared prior to issue of the Construction Certificate for the development.

Environmental Health Officer memo dated 27.6.2017

While not specified in the plans and documents, the redevelopment is likely to include retail premises such as restaurants, bars and coffee shops, which involve the preparation, storage and sale of food. These types of food premises will require appropriate food storage areas, food processing areas including ventilation, cleaning and waste disposal facilities. Individual food tenancies will be subject to further consideration prior to their construction/fit out and will be assessed for compliance with the Australian Standards 4674-2004 Design, Construction & Fit-out of Food Premises and Chapter 3 Food Standards Code, Food Safety Standards. Conditions of consent recommended.

Urban Design Consultative Group

The Concept Proposal was referred to the Urban Design Consultative Group (UDCG) on 27 September 2017. Comments made by the UDCG are included in the relevant parts of this report. The UDCG was also involved in the alternative design process discussed in Section 3 of this report.

6. Section 79C Considerations

(a)(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority

- Draft NLEP 2012 Amendment 26 - discussed later in report (NLEP 2012 Clause 4.3 Height of Buildings)
- Draft SEPPs: A number of draft State Environmental Planning Policies have recently been exhibited and are under consideration by the Department of Planning and Environment however are not relevant to the application, with the exception of the draft Coastal Management SEPP (refer over).

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

State Environmental Planning Policy (State and Regional Development) 2011

The development is not defined as 'state significant development' pursuant to clause 8 of this SEPP. The application was accompanied by a Capital Investment Value Report prepared by Altus Group dated 14 June 2017 which estimates the total project costs to be \$79,940,960. The application is therefore referred to the Joint Regional Planning Panel for determination pursuant to Part 4 'regional development' of SEPP (State and Regional Development) 2011, as the proposal is listed within Schedule 4A of the *Environmental Planning and Assessment Act 1979*, being general development over \$20 million.

In addition, the application is reported to the Panel in accordance with Clause 22 of the SEPP, as the proposal is a staged development that relates to a concept approval. The

concept approval is the subject of a separate report to the JRPP (JRPP Ref No.2012HCC018) and the value of works is \$220,860,139.

State Environmental Planning Policy (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 (NURS) 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 Hunter Street 'East End' is identified as being appropriate for 'boutique retail, entertainment, leisure and residential' development.

An update of the NURS was undertaken in 2014 to reflect actions which were complete or underway and also to update the implementation plan. The Urban Renewal Initiatives of particular relevance to the revitalisation of the Hunter Street Mall seek to upgrade the public domain and street furniture in the mall; encourage mixed use developments with more residents to support local business; and support redevelopment of key sites, laneways and spaces, with the aim of re-establishing Hunter Street as Newcastle's main street.

The original approved Concept Proposal (and revised Concept proposal DA-2017/00701 concurrently under assessment) incorporates a mix of retail and residential development which meets the desired outcomes of the strategy, with ground level retail spaces allowing for boutique retail and activation at street level and upper level residential increasing the population base to support local business. It is considered that both the Concept Proposal and this development application for Stage 1 (Block 1) accords with the framework of the strategy, subject to implementation of a process to ensure provision of public domain improvement, as recommended by the strategy. The following sections of this report also address compliance of the proposal with the more detailed planning provisions which reflect the strategy recommendations and which are now contained in Newcastle LEP 2012 and Newcastle DCP 2012.

State Environmental Planning Policy (Infrastructure) 2007

The provisions of the Infrastructure SEPP are not applicable as:

- Division 17 'Roads and Traffic' Subdivision 2 (Development in or adjacent to road corridors and road reservations): Clause 101 relates to 'Development with frontage to classified road' and subclause (2)(a) requires vehicular access to a road other than the classified road. However, the roads surrounding the subject site are not classified roads, with the RMS confirming that the nearest classified roads are Darby Street and King Street (west of Darby Street).
- Clause 102 does not apply as the traffic volumes along the roads adjacent to the subject site do not have an annual average daily traffic volume of more than 40,000 vehicles.
- Clause 104 requires development specified in Column 1 of the Table to Schedule 3 (Traffic generating development to be referred to the RMS). The proposed development for stage 1 will contain 228 apartments and shops and commercial premises of 3650m² which does not trigger the referral criteria of 300 parking spaces and 4000m² respectively for development with access to any road.

Therefore referral to the RMS is not required. Notwithstanding this, the application was referred to the RMS who raised no objection to the development and provided advisory comments (refer Table 2 of this report).

State Environmental Planning Policy 55 - Remediation of Land

A 'Report on Additional Contamination Assessment' was prepared by Douglas Partners in May 2017 to assess potential soil and groundwater conditions in accessible parts of the

Stage 1 site and to make recommendations on further testing once existing buildings are demolished. This followed a 'Preliminary Site Investigation (Contamination)' which was prepared for the previous Concept application in October 2015 and an 'Addendum to Preliminary Site Investigation' which was prepared in May 2017 in response to the current Concept development application.

The current assessment included the drilling of boreholes to assess the potential sources of contamination, noting that the subsurface investigations were limited to accessible areas of the site, which were mainly roads, prior to demolition of buildings. The investigation identified a number of current or former potentially contaminating landuses including a former auto garage/petrol station, plumbers workshop, dyers, dry cleaners and other activities such as underground wells/cisterns/cesspits.

Douglas Partners conclude that, based on the pre demolition subsurface investigations which were undertaken, *"there were generally no observations of gross contamination within the soil or groundwater at test locations, with the exceptions of inclusions such as slag, ash and bricks/concrete/porcelain/fibro fragments (potential asbestos containing materials) in filling"*. The report confirms that the current and former investigation indicate that coal tar was not detected in the asphalt samples, however the presence of a range of contaminants were detected including elevated hydrocarbon; elevated B(a)P within deeper fill materials beneath roadways; elevated lead in deeper fill materials; bonded asbestos in fibro sheet fragments in filling; elevated metal levels within groundwater; elevated cyanide in groundwater; elevated PAHs in groundwater; TRH levels identified as diesel within groundwater; and demolition waste. Three possible UST locations were identified within/adjacent to the site within Block 1 (two associated with former David Jones, and one within the adjacent Telstra substation), with the possibility of additional tanks being located within the site.

Douglas Partners conclude that as the majority of the site is to be re-developed with basement carpark excavations it is likely that a significant portion of materials with contaminant levels will be removed during construction. Areas with elevated contaminants concentrations where deep excavation is not proposed will need to be remediated/managed.

Douglas Partners conclude that the site *"is considered to be suitable for the proposed residential with minimal soil access/commercial development, provided the following is undertaken:*

- *All materials exceeding land use criteria are suitably remediated or managed on-site; and*
- *Appropriate remediation is conducted to address bonded asbestos fragments and asbestos impacted fill materials with reference to NEPM 2013 guidelines"*.

In order to address site remediation the applicant has also submitted to Council a Remediation Action Plan (RAP) prepared by Douglas Partners dated May 2017. Section 7 of this RAP recommends that additional investigations be undertaken to fully characterise the site, as access to all sampling points was restricted due to the presence of the existing buildings. The additional investigation is to include:

- *A passive soil vapour survey to assess the presence and remediation requirements (if any) of soil vapour from the former dry cleaning activities (i.e. UST). This should be conducted prior to the removal of concrete slabs within the north-west portion of the site (i.e. area not proposed for bulk excavation). Possible soil vapour should also be assessed during bulk excavations associated with UST locations;*
- *Inspection of the exposed site surface following removal of concrete slabs;*
- *Excavation of a minimum of 13 additional test pits / bores across the site (minimum sampling density based on site area in accordance with NSW EPA Sampling Design Guidelines) to at least 0.25 m into bedrock (approximately 4 m depth). Bores would be drilled within the remaining building footprint to confirm contaminant concentrations and requirements for remediation (if any);*

- *Logging of the soil profile to confirm the variability of filling across the site, depth to natural soils and observations of potential contamination (including demolition waste, staining or odours);*
- *Collection of regular soil samples for laboratory testing purposes;*
- *Laboratory analysis for asbestos identification, chemical contaminant concentrations, leachability characteristics (contaminants of concern plus ENM suite (where considered feasible) and ASS);*
- *Interpretation of the results and confirmation of remediation requirements for the site, waste classification of materials, re-use options where feasible and requirements for treatment / management of ASS (if identified).*

The submitted RAP proposes to address the petroleum infrastructure, hydrocarbon and asbestos contaminated soils on site by excavating the contaminated affected areas and disposing the material to a licenced facility that can lawfully accept this waste. Following the completion of remediation works, the site will be validated and a Validation Report submitted to Council and the Principal Certifying Authority. The referral from Council's RSU dated 3.7.17 confirms that the RSU supports this method of remediation, together with the undertaking of further sampling which can be incorporated in the updated RAP. Such requirements will be addressed by appropriate conditions of consent.

Provisions of SEPP 55 and Conclusion

Clause 7 (Contamination and remediation to be considered in determining development application) requires that a consent authority must not consent to the carrying out of any development unless:

- a) it has considered whether the land is contaminated, and*
- b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The 'Report on Additional Contamination Assessment' prepared in Douglas Partners confirms that "...the investigations conducted were limited to accessible areas of the site prior to demolition" and accordingly the report recommends that further investigation be conducted "...following demolition to better assess site conditions and implications to the proposed development". However, the level of investigation was sufficient to enable Douglas Partners to conclude that "the site is considered to be suitable for the proposed residential/commercial development from a contamination perspective subject to additional confirmation investigation and appropriate remediation and validation once buildings have been demolished. It is noted that the subject development will generally comprise concrete slabs/pavements which will effectively cap the site and minimise the risk of exposure to underlying soils".

On the basis of this advice it is considered that the provisions of Clause 7(a) and (b) of SEPP 55 have been met. Further, the submitted Remediation Action Plan confirms that the site can be remediated, with this to be reflected in appropriate conditions of consent requiring further investigations, remediation and validation. The provisions of SEPP 55 are therefore satisfied.

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

The proposal includes the development of a mixed use development which comprises ground level (Level 1) retail and commercial uses, with residential levels above, to which the provisions of SEPP 65 apply. The application is accompanied by a 'Design and SEPP 65 Report' prepared by SJB Architects Dated May 2017. This report contains a site and context analysis, identifies the design principles of the Stage 1 development, provides a scheme analysis, addresses the Design Quality principles of SEPP 65 and confirms the manner in which detailed design for each stage will comply with the Design Criteria and Design

Guidance of the Apartment Design Guide (ADG). A Design Verification Statement is also provided by Adam Hadow of SJB Architects, Tim Greer of Tonkin Zulaikha Greer and David Jagers of Durbach Block Jagers.

Clause 28 of SEPP 65 requires that a consent authority take into consideration the 'Apartment Design Guide', prepared by the Department of Planning and Environment in 2015. The following discussion confirms whether the proposed development will comply with the key Design Criteria and Guidance contained in Part 3 (Siting the Development - Visual Privacy) and Part 4 (Amenity) of the Apartment Design Guide (ADG).

Visual Privacy:

Buildings A and D are to contain 11 levels, Building C is to contain 10 levels and Building B (retained heritage building) contains 5 levels. Design Criteria 3F-1 of the ADG requires that for buildings of up to 12m (4 storeys) a minimum of 12m separation is required between habitable rooms and balconies; 18m for buildings of up to 25m (5-8 storeys); and 24m for buildings of over 25m (9+ storeys). The required separation distances are generally met between Buildings A and C and between buildings A and D. However, variation is sought to allow for reduced separation distances between buildings in the locations on the site as identified in **Table 3** and shown in **Figure 2**.

Figure 2: Proposed Variations to Separation Distances as referenced in Table 3

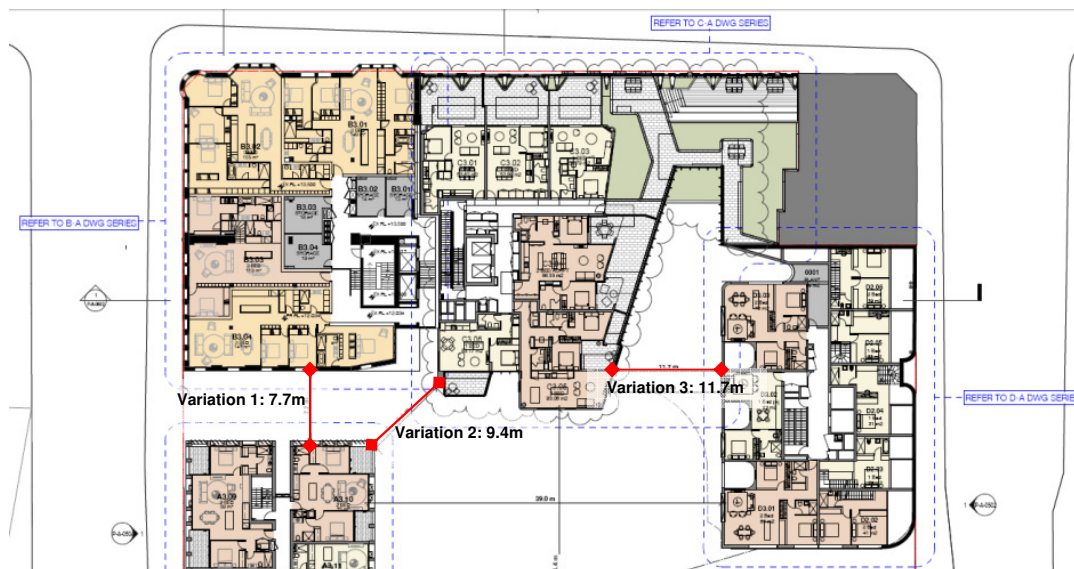


Table 3: Variation to Separation Distances specified by Design Criteria 3F-1 of Apartment Design Guide

Building Interface	Separation Proposed	Separation Required by Design Criteria 3F-1	Discussion
<u>Variation 1:</u> Northern section of Building A and Building B (retained heritage building).	7.7m for Levels 2-5.	12m required up to Level 4; 18m required for Level 5.	The applicant seeks variation from the required 12-18m separation based on the placement of buildings around the perimeter of the site, the provisions of the through site link and the retention of the Heritage building which have dictated the built form outcome. It is agreed that this has allowed for improved separation distances in the centre of the site, and a more desirable streetscape outcome. Louvres on the northern wall of Building A up to Level 5 will mitigate against any privacy impacts. There is no interface above 5 levels due to the 5 storey height of Building B.

Table 3: Variation to Separation Distances specified by Design Criteria 3F-1 of Apartment Design Guide

Building Interface	Separation Proposed	Separation Required by Design Criteria 3F-1	Discussion
Variation 2: Northern section of Building A and Building C.	9.4m Levels 2-6; 22.8m at Levels 7-10.	12m required up to Level 4; 18m required for Levels 5 to 8; 24m required for Levels 9-10.	Compliance is achieved at Levels 7-10, with variation sought for separation at Level 1-6, where the required 12-18m separation is not achieved at the corners of Buildings A and C. The variation pertains to separation between a southern facing balcony in Building C and an eastern facing balcony in Building A over 5 levels of the buildings. Such balconies do not directly face each other due to their orientation, with louvres on the northern side of the Building A balconies assisting in reducing overlooking impacts. The variation is considered to be reasonable.
Variation 3: Building C and D	Min 11.7m at Levels 2-10 (between windows/balconies).	12m required up to Level 4; 18m required for Levels 5 to 8; 24m required for Levels 9-10.	<p>The applicant has submitted further information to justify this variation on the basis of:</p> <ul style="list-style-type: none"> • Solid balustrading to the balconies of both buildings; • The mainly northern orientation of balconies and apartments in Building C; • Landscape screening between the buildings at level 2. <p>Whilst the level of separation provided is not ideal it is agreed that there are a number of competing factors which have influenced the building form outcome on the site. This includes the need to reflect the existing architectural form of Building D which has influenced balcony positions and the retention of the David Jones building which has impacted on the orientation of units in Building C. The level of separation provided (at 11.7m) is only marginally below the required 12m which is ordinarily required at the lower levels of a building and on balance, is considered to be acceptable in this instance.</p>

The subject site comprises the majority of a street block bounded by roads on four frontages, with the exception of the south-western corner of the site where the Telstra Exchange is located and the site located at No. 159 Hunter Street. The following discussion is provided in relation to the separation/setbacks provided to such buildings:

Telstra Exchange:

- *Separation to Building D:* A setback of 6.1m is provided from Building D to the southern boundary of the site adjacent to the Telstra exchange, which is considered to be adequate given the limited height and commercial use of the Telstra Exchange building.
- *Separation to Building A:* A setback of 2.5m is provided from Building A to the eastern boundary of the site, also adjacent to the exchange. This setback is also considered to be acceptable as the loading dock, carpark access ramp and void to the loading dock are located at the lower levels of Building A, where this building has a direct interface with the Telstra exchange.

No. 159 Hunter Street:

- *Separation to Building C:* The existing eastern wall of Building C directly abuts No. 159 Hunter Street at Levels 1 to 3, which provides the desired continuous street wall. At the upper levels a setback of in excess of 18m is provided from the boundary to the eastern wall of Building C, which is compliant with the ADG separation criteria.
- *Separation to Building D:* Nil separation is also provided between the northern existing facade of Building D (which is to be retained) and No. 159 Hunter Street. At the upper levels of Building D a setback of approximately 4m is provided from the northern facade to the boundary. This setback is considered to provide adequate separation to the

existing building at No. 159 Hunter Street, noting that this adjacent building is only 3 storeys in height and there is no direct interface between this building and Building B above this height. Further, the setbacks of this building are largely governed by the positioning of the lower level facade which is to be retained. The exception to the 4m setback is one balcony at Level 4, which is a trafficable area on the roof below, providing a zero setback. This balcony directly abuts a blank wall of the existing building at No. 159 Hunter Street and its positioning is considered to be acceptable.

Communal Open Space:

The ADG requires that communal open space have a minimum area equal to 25% of the site and should achieve 2 hours of sunlight between 9am and 3pm on June 21. Based on a site area of 6,556m², a total of 1639m² of communal open space is required for Buildings A to D. The development provides a total of 1460m² of communal open space distributed as follows:

- Building A: 585m² located at Level 2 and 380m² located at level 7;
- Building B: Nil - variation sought as this building is heritage listed;
- Building C: 185m² located at level 2 and 310m² located at level 3;
- Building D: No communal open space provided, with this building reliant on communal open space located adjacent to Building C. Access is provided from Level 4 of Building D to the Level 3 communal open space in Building C which are both located at RL 14.2.

The proposed development is deficient in the amount of communal open space provided by 179m². Further, it is noted that the area designated as communal open space at Level 2 of Building C is no longer accessible following removal of the stair access to this space to address privacy concerns. However, this space still meets the requirements of the ADG as it provides a landscaped space between apartments, to supplement the core useable area of communal open space. Whilst the minimum 25% target is not met for this development, the ADG does acknowledge that in dense urban areas or business zones variation may be acceptable where a site had good access to public open space. The subject site is located in close proximity to extensive public spaces located along the foreshore to the north and the shortfall is considered to be justified on this basis.

It is noted that the UDCG at its meeting of 27.9.17 requested that consideration be given to a number of changes to improve the functioning of the communal open space including:

Court Between Buildings C&D: *The panel considers the treatment of the central landscaped court between buildings C and D to need amendment, due to the interface with adjoining windows:* In response to this advice the court/podium landscaped space between Buildings C and D has been amended to create a visual landscaped courtyard, which will no longer be accessible for residents, but will only be accessible for maintenance purposes.

Children's Facilities: The absence of children's areas and childcare facilities in the overall complex is identified as an area for further consideration. In response to this advice, the applicant has now included a children's sandpit play space at Level 2 of Building A, which is considered to be satisfactory, subject to access to this space being available by residents of all buildings.

David Jones Building Communal Open Space: The panel suggested that consideration be given to providing a moderately sized communal room and terrace roof area for residents of the former David Jones building at the north-west corner of the site. In response to this request the applicant has advised that a communal area has not been provided as it would require additional intervention into the heritage building, including the provision of an increased lift core to provide access to the space. This matter was informally considered by the chair of the UDCG who advised that although it is still considered that there are various reasonable options to include COS on Building B, the applicant's overall design response has been excellent and therefore this "one shortcoming" is accepted.

Therefore, on balance, the level of communal open space provided is considered to be adequate subject to residents of all buildings having an equitable ability to access communal

open space within all buildings in Stage 1. This is considered to be reasonable as the level of open space has been provided and assessed when considering Stage 1 as a combined development, rather than on the basis of individual buildings. A condition will be attached to any consent requiring such.

Deep Soil Zones:

Design Criteria 3E of the ADG specifies that for sites in excess of 1500m² in area a minimum of 7% of the site should be provided as a deep soil zone, with this area to have a minimum depth of 6m. The subject site does not contain a deep soil zone as the ground level comprises commercial/retail functions, which is an appropriate outcome in a CBD location.

Solar and Daylight Access:

Design Criteria 4A of the ADG requires that living rooms and private open spaces of at least 70% of apartments must receive a minimum of 2 hours direct sunlight between 9 am and 3 pm on June 21. The application is accompanied by A 'View from the Sun Study' prepared by SJB which visually demonstrates those windows of residential apartments which receive sunlight between 9am and 3pm in June 21 and an 'Apartment Matrix' for each building which indicates that 66.2% of apartments (ie. 149 of the 225 apartments) will achieve this standard. The following level of compliance achieved for each proposed building on the site:

- Building A: 69 of 108 apartments (63.8%)
- Building B: 16 of 16 apartments (100%)
- Building C: 25 of 44 apartments (56.8%)
- Building D: 39 of 57 apartments (68.42%)

The applicant has advised that a further seven (7) apartments in Building C or 3.1% of units achieve 1.75 hours of sunlight access on June 21.

The following assessment has been made with respect to reason for the non compliance and whether variation is considered to be justified for each building:

- Building A: Those apartments which do not achieve the required 2 hours of sunlight access are either located on the southern side of the building fronting King Street or are located in the central section of the site, where they are overshadowed by the proposed northern buildings. The shortfall in the number of units receiving the required level of solar access has therefore principally occurred due to the placement of buildings around the perimeter of the site to create a strong street address. The ADG recognises that achievement of the design criteria may not be possible on all sites, where site conditions or aspect warrants an alternate design. In the case of the current proposal the siting of the buildings around the perimeter of the site is a desirable outcome in this inner city location. Whilst there is a resultant loss of sunlight access for the central units, the orientation of the central apartments of Building A towards the Level 2 communal open space will provide a desirable outlook for such units, consistent with the design guidance provided by the ADG. The applicant has also submitted additional information which confirms that the height exceedance of Building C will also not impact on the number of units achieving solar access within Building A.
- Building B: This building is fully compliant with the solar access design criteria.
- Building C: Only 56.8% of units in this building achieve the required 2 hours of sunlight access, which is a significant reduction from the 70% recommended by the ADG. This building will be sited to the immediate east, and will share a common wall with the heritage listed building. Apartments are therefore predominantly provided with a northern to north/eastern orientation, to take advantage of northerly views. The apartments which do not achieve the specified 2 hours of sunlight access are located on the southern side or centrally within this building. Whilst this shortfall is certainly not ideal, it is considered that having regard to the rigorous design process which has been undertaken, the overall positive streetscape outcomes and the support provided by the UDGC, that this variation is acceptable.

- Building D is only marginally below the required 70% with this shortfall due to the retention of the existing building and the resultant shortfall in the level of solar access achieved for all units at the ground floor level, due to the inseting of the balconies or shadow cast by the proposed Building C. This shortfall is considered to be numerically minor and is supported due to the streetscape benefits achieved by retention of the facade at the lower levels of the building and the limitations this places on the upper level design.

The ADG also requires that a maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm on June 21. In this regard a total of 11% of apartments will receive no direct sunlight in mid winter, which is compliant with the design criteria.

Cross Ventilation: The ADG requires that at least 60% of apartments be naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. The submitted cross flow diagrams confirm that a total of 62.2% or 140 of the 225 apartments will be provided with cross flow ventilation. The breakdown of apartments which are cross ventilated within each building is as follows:

- Building A: 68 of 108 apartments (62.9%)
- Building B: 8 of 16 apartments (50%)
- Building C: 27 of 44 apartments (61.4%)
- Building D: 37 of 57 apartments (64.9%)

Building B contains 8 of 16 apartments which are cross ventilated (ie. 50%), which is less than the recommended 60%. However this variation is supported as the adaptive reuse of the former David Jones heritage listed building, has significantly influenced the apartment layout. Further, it is noted that all apartments in this building achieve the required level of solar access.

Whilst Buildings A, C and D are also technically compliant, the UDCG noted that cross ventilation of apartments in Building D is reliant on ventilation through the recessed deck areas. The Panel expressed concern regarding the effectiveness of this approach given the fixed nature of key external glazing to living areas of apartments. The applicant has now submitted additional cross ventilation diagrams for Building D, which shows the location of ventilation through operable windows, which confirms that, an acceptable level of cross ventilation can be achieved.

Ceiling Heights: The proposed development provides for minimum 3.3m ceiling heights for ground and first floor; minimum 2.7m ceiling heights for habitable rooms; and 2.4m ceiling heights for second floor of 2 storey apartments in compliance with Design Criteria 4C of the ADG. The applicant's SEPP 65 Assessment confirms that this is achieved. The development generally appears compliant however as the plans only indicate floor to floor levels it is recommended that any consent which is issued be conditioned to ensure compliance for any new construction works.

Apartment Size and Layout: Design Criteria 4D of the ADG specifies a minimum internal size of 35m² for studio apartments, 50m² for 1 bedroom apartments, 70m² for 2 bedroom apartments and 90m² for 3 bedroom apartments, with an increase of 5m² for a second bathroom. The following minimum internal floor areas are proposed, which are compliant with the design criteria:

- Studio (1 bathroom): Minimum 49m²
- 1 Bedroom units (1 bathroom): Min 50m²
- 2 bedroom units (2 bathrooms): Min 75m²
- 3 bedroom units (2 bathrooms): Min 110m²

The Apartment Matrix provided by the applicant indicates that room dimensions will be compliant with the Design Criteria 4B of the ADG with the exception of the width of the bedrooms in 5 apartments (A7.01, A8.01, A9.01, A10.01, A11.01) within Building A, which are 2.85m in width, thereby not meeting the required 3m width. The applicant, upon request, has now submitted amended plans which are compliant.

The apartments also generally comply with the maximum habitable room depths, with the exception of the David Jones building where increased depths are acceptable due to the adaptive reuse of this building and the increased ceiling heights.

Private Open Space and Balconies: The minimum balcony areas specified in Design Criteria 4E of the Apartment Design Guide (ie. 8m² for 1 bed, 10m² for 2 bed and 12m² for 3 bed) are generally met for Buildings A, C and D with the exception of 4 x 1 bed apartments in Building A which have balcony areas of 7.5-7.6m²; 2 x 2 bed apartments in Building A which have balcony areas of 9.6m²; and 1 x 2 bed apartment in Building C which has a balcony area of 8.8m². Five apartments at Level 2 of Building D have balcony width of 1.9m, marginally below the required 2m for 1-2 bedroom apartments. The number of non-compliant balconies is minor, and the 7.6m² for 1 bed apartments and 8.8m² for 2 bedroom apartments is considered to be adequate to meet the needs for future occupants.

Building B does not contain private balconies for residents as the apartments are located within the former David Jones building where alteration to the facade is not appropriate due to the heritage status of this building.

Common Circulation: The maximum number of units serviced off a circulation core is 8 per level (with allowance for up to 12 per level) as recommended by Design Criteria 4F of the ADG.

- Building A: 2 to 14 apartments off a core at Levels 2-6 and 7 apartments off a core at Levels 7-11.
- Building B: 4 apartments per level off a core.
- Building C: 1-7 apartments per level off a core
- Building D: 3-8 apartments per level off a core.

The ADG also specifies that for buildings of 10 storeys and over the maximum number of apartments sharing a single lift should be 40. Building A which is 11 storeys contains 108 apartments and 3 lifts (ie. 36 apartments per lift); Building C is 10 storeys and contains 44 apartments and 2 lifts (ie 22 apartments per lift); and Building D is 11 storeys and contains 57 apartments and 2 lifts (ie 29 apartments per lift). Compliance with the total number of apartments serviced off each lift is therefore achieved however Building A exceeds the maximum number of units serviced off a core. The Design Guidance indicates that common circulation areas should provide for comfortable movement and daylight access. In this regard the central core of Building A contains a communal lounge area adjacent to the lift core, with adjacent glazing, which therefore meets the Design Guidance.

Storage: Design Criteria 4G of the ADG recommends a minimum required storage area of 6m³ for 1 bedroom apartments, 8m³ for 2 bedroom apartments and 10m³ for 3 bedroom apartments, with 50% of the required storage is to be located within the apartment. The Apartment Matrix confirms that apartments generally provide the required 50% of storage within the apartment with the exception 11 apartments in Building A which provide between 0.9m³ and 1.3m³ for 1-2 bedroom apartments. This variation, which equates to 4.9% of apartments, is minor and acceptable, noting that each apartment is also provided with approximately 4.1m³ - 5m³ of storage in the basement.

State Environmental Planning Policy 71 - Coastal Protection

Clause 1.9 (2A) of Newcastle LEP 2012 confirms that SEPP 71 – Coastal Protection does not apply to land to within the Newcastle City Centre, in which the subject site is located. However, the subject lands are wholly affected by the Draft Coastal Management SEPP. The

Draft SEPP is intended to replace the current SEPP 71 and has been publicly exhibited. The draft SEPP proposes to divide the NSW Coastal Zone under the Coastal Management Act 2016 into four (4) coastal management areas. The subject lands are proposed to be located within the 'Coastal Use Area' and the 'Coastal Environmental Area' as illustrated on the Draft SEPP maps. Clauses 14 and 15 considerations apply to the development, however as the subject development is located within a well-established densely urban setting, there are no likely impacts to this environment, especially with regards to maintaining public access, views and amenity. It is therefore considered that the proposal is not inconsistent with the Draft NSW Coastal Management SEPP.

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

The residential component of the development is a 'BASIX affected development' and the development application is accompanied by a BASIX Certificate (No. 818302M_02 issued 20 June 2017) confirming the proposal meets the required water and energy targets to achieve appropriate building sustainability.

Newcastle Local Environmental Plan 2012

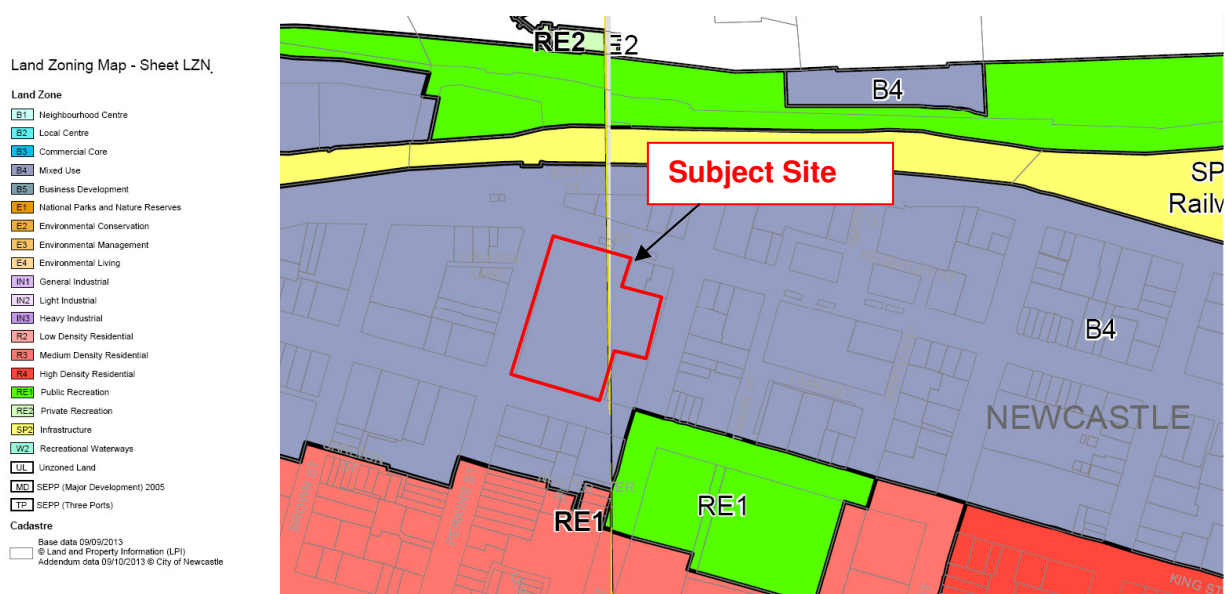
Clauses 2.1 to 2.3: Zoning and Land Use Table

The subject property is included within the B4 Mixed Use zone under the provisions of the *Newcastle Local Environmental Plan (NLEP) 2012*, as shown in **Figure 5**. The objectives of the B4 zone are:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.*

The proposal comprises a mixed use development that accords with the zone objectives as it will provide a range of compatible commercial and residential landuses in a highly accessible location, which will support the revitalisation of the Newcastle City Centre. The development is defined as "retail premises" and "shop top housing" which are permissible within the B4 Mixed Use zone of NLEP 2012.

Figure 5: Extract of Zone Map showing location of site in B4 Mixed Use Zone - NLEP 2012



Clause 2.7: Demolition

Development consent for demolition of all structures is sought under this clause (except for heritage buildings and facades proposed to be retained).

Clause 4.3: Height of Buildings

This clause limits building heights to that shown on the 'Height of Buildings' Map. The 'Height of Buildings' Map specifies a range of maximum permissible building heights ranging from 27m (south-eastern portion being part of the existing car park site) and 35m at north-eastern corner (Former DJ's building). A maximum building height (measured by RL) applies to the south-western part of the site (at RL58.9m) and RL54.5 for the eastern part (fronting Wolfe Street) (refer **Figure 6**).

Within the development site (Block 1), all proposed buildings comply with the Height of Buildings Map of NLEP 2012, with the exception of Building C. **Table 4** confirms the heights and extent of variation when measured against the Height of Buildings Map contained in NLEP 2012.

With respect to the variation for Building C: The Height of Buildings Map specifies a height limit of 35 metres where the building is sited. The proposed building is a height of 36.96m to the parapet and 38.16m to the top of the plant. The extent of variation which is proposed is shown in the **Figures 7 and 8** (as extracted from the applicant's Clause 4.6 Statement, discussed below).

Figure 6: Extract of Height of Buildings Map showing permissible heights applying to the subject site

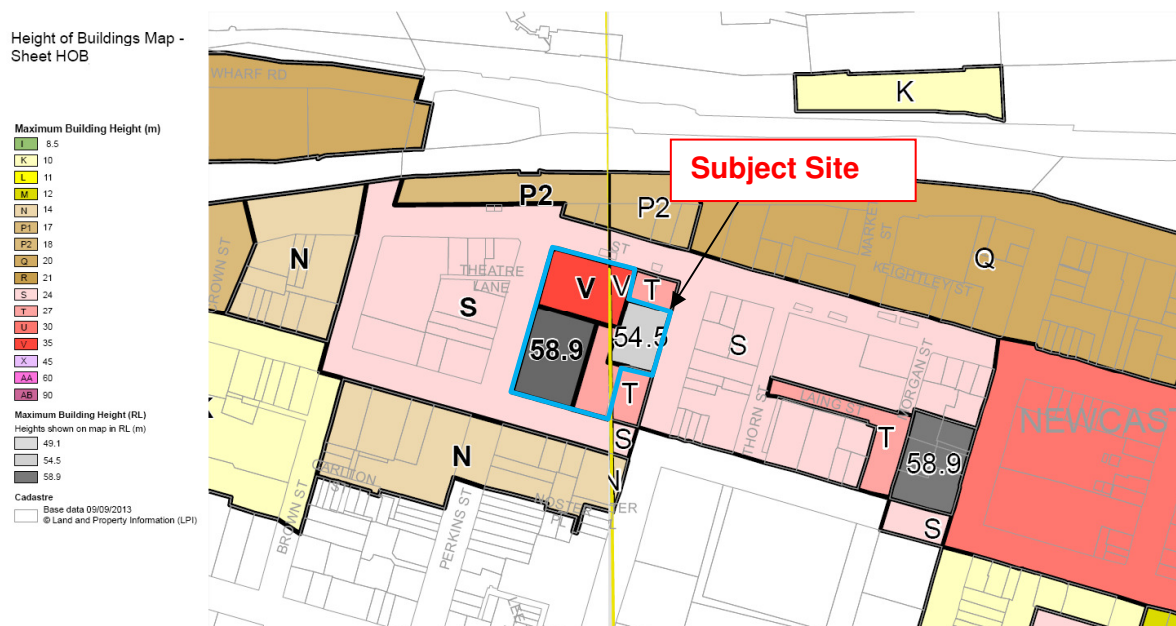


Table 4: Comparison of Permitted and Proposed Heights (Source: Extract from the Statement of Environmental Effects, SJB Planning)

Table 4: Comparison of Permitted and Proposed Heights <i>(Source: Extract from the Statement of Environmental Effects, SJB Planning)</i>						
Bldg	Proposed Building	Control	Proposed Height	Compliance	Variation	% Varied
A	King and Perkins Street Building	Part RL58.9m	RL40(parapet) RL41 (roof features) RL42 (plant)	Yes	N/A	N/A
		Part 27m	19.82m	Yes	N/A	N/A
B	Former DJ's Building (west)	35m	31.3m Existing dome spire) 25.8m (existing ridge)	Yes	N/A	N/A
C	Former DJ's Building (east)	35m	36.96m (parapet) 38.16m (plant)	No	1.96m to 3.16m	5.6-9%
		27m	13.8m	Yes	N/A	N/A
D	Wolfe Street	RL54.5	RL40(parapet) RL42 (plant)	Yes	N/A	0

Figure 7: Variation to Height of Building Standard (Building C, Block 1), view from Hunter Street (Source: SJB Architects)

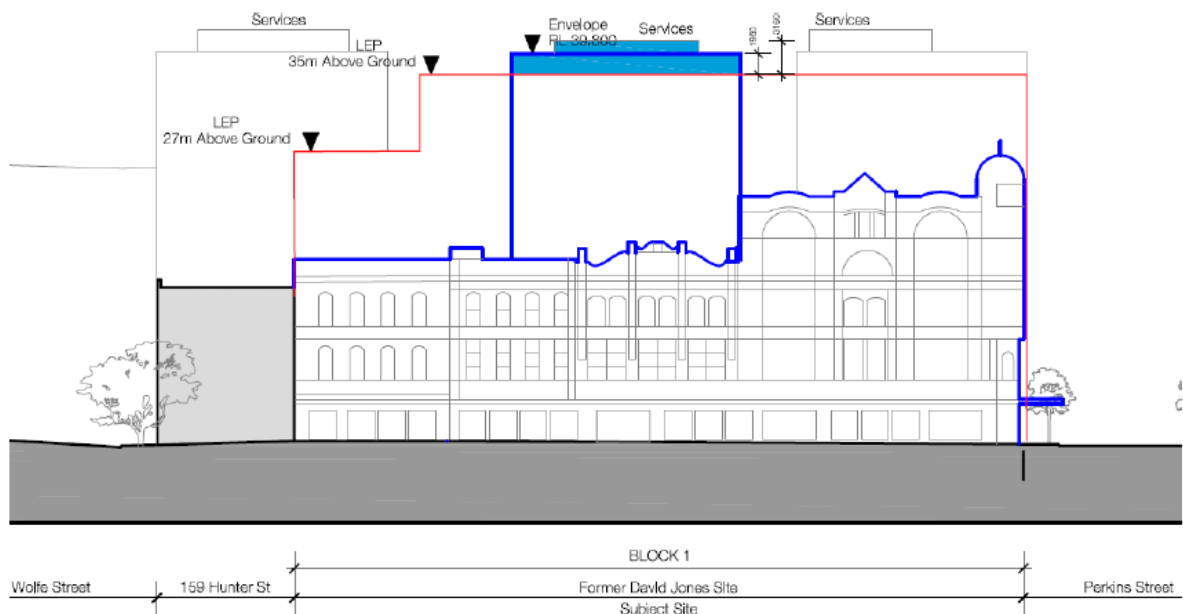
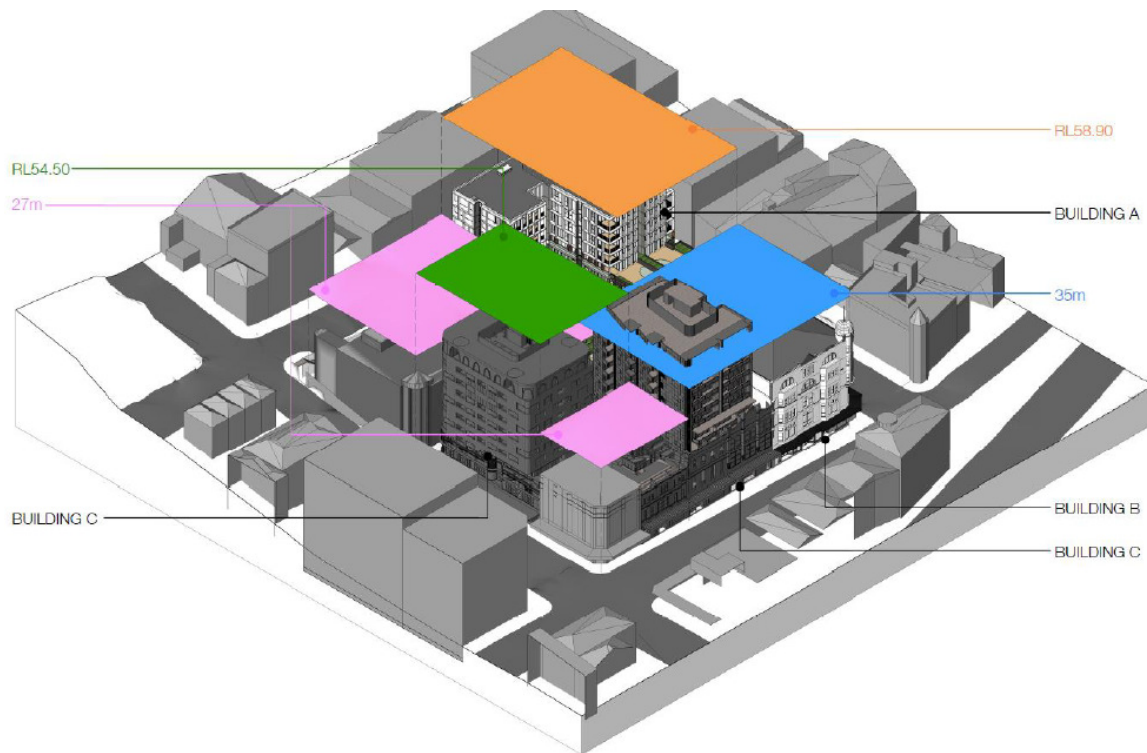


Figure 8: Height Plane diagram showing Variation to Height of Building Standard (Building C, Block 1)
(Source: SJB Architects)



Clause 4.6 'Exemption to Development Standards'

A 'Clause 4.6 Exceptions to Development Standards Report' has been prepared by SJB Planning, seeking a variation to the provisions of clause 4.3 (Height of Buildings) in relation to Building C where it exceeds the portion of the site mapped with a maximum building height of 35m. The key discussion and justifications provided in the Statement of Environmental Effects (p65) and Clause 4.6 statement is summarised below:

"Strict compliance with the control would be unreasonable and unnecessary as the proposal:

- *Does not exceed the overall maximum height applying across the site; and the other three (3) buildings are substantially lower than the allowable height controls;*
- *Provides for the redistribution of the existing height to deliver a better architectural and urban design outcome across the site;*
- *Exhibits design excellence and satisfies the design excellence criteria contained within Clause 7.5 of the NLEP;*
- *Is commensurate with the overall building heights approved for Block 1 under Staged DA Concept Proposal (D/2015/10182)*
- *Maintains key view corridors to and from the Cathedral and harbour and does not dominate the views available from public places;*
- *Does not have unreasonable amenity impacts on adjoining properties by way of overshadowing, view loss or privacy, as a result of the height non-compliance; and*
- *Does not adversely impact on the heritage significance of the heritage facades of Building C, the heritage Former David Jones building on the corner of King and Hunter Street, the heritage facades of the Wolf Street building, or the heritage conservation area. This is supported by the HIS prepared by CPH.*
- *The extent of height non-compliance attributed to the roof top plant is also due to the plant for the heritage Building B being accommodated within Building C. The breaches in height have arisen as part of the evolution of the design through a design excellence framework that has carefully placed the new building form in such a way as to*

complement and be sympathetic to the streetscape and heritage fabric of the retained and former David Jones building and retained street facades. It has arisen in response to the principle of minimising intervention to the important heritage fabric of the former David Jones building, by accommodating plant for this building in Building C.

- The proposed variation to the controls does not raise any matters of State or regional planning significance and there is no benefit in maintaining the development standard. Overall, the height of the proposal is considered reasonable and appropriate, despite the variation, given it:
 - Respects the heritage buildings and the heritage elements that need to be protected;
 - Maintains key view corridors to and from the Cathedral and harbour and does not dominate the views available from public places;
 - Delivers a built form compatible with the desired future character; and
 - Protects the amenity of adjoining developments.

The applicant has submitted additional information confirming that the part of the building that exceeds 35 metres does not adversely impact on solar access outcomes to the proposed apartments. Accordingly, the above reasons provided within the Clause 4.6 Statement are supported.

In addition, it is agreed that the proposal is consistent with the objectives of the building height standard and the B4 Mixed Use zone as justified by the applicant, summarised in **Table 5** below:

Table 5: Comparison of Permitted and Proposed Heights	
NLEP Objective	Applicant's response
Objectives of the Height of Building standard (Clause 4.3)	
a) <i>To ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,</i>	The site is within the Newcastle City Centre and is an appropriate location for increased height. The heights proposed remain consistent with the desired built form and are compatible with the scale and form of development in the Newcastle East End. The overall development will result in a positive contribution towards the built form as it provides a mechanism to reuse important heritage buildings and introduce appropriate scaled buildings to the centre.
a) <i>+To allow reasonable daylight access to all developments and to the public domain.</i>	<p>The proposed variation in height does not result in unreasonable shadow impact to the important public domain in the vicinity. The built form location has been carefully considered to maximise daylight access. When considering daylight access to adjoining properties the impact is generally not significant with the exception of the change in impact on No. 123 King Street. However, when considering solar access to future development on this site it has been demonstrated as being close to compliant to the requirements of the ADG.</p> <p>With respect to the impact of Building C on other proposed buildings in Block A, additional solar access diagrams (submitted on 6 Dec 17) confirm that the part of the building that exceeds 35 metres does not adversely impact on solar access outcomes to the proposed apartments. Further, SJB confirm that <i>"a compliant Building C not alter Building A's performance against the ADG solar criteria. The proposed siting of Building C has provided potential for improved separation between building forms."</i></p>
Objectives of the B4 Mixed Use zone	
<ul style="list-style-type: none"> • <i>To provide a mixture of compatible land uses.</i> • <i>To integrate suitable business, office, residential, retail and other development in accessible locations</i> 	<p>The proposed development provides a mix and range of compatible land uses.</p> <p>The proposal provides for retail and residential uses in an integrated way in a highly accessible location. The proximity of</p>

Table 5: Comparison of Permitted and Proposed Heights	
NLEP Objective	Applicant's response
<p><i>so as to maximise public transport patronage and encourage walking and cycling.</i></p> <ul style="list-style-type: none"> <i>To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres</i> 	<p>residential uses to employment will assist in maximising walking and cycling opportunities.</p> <p>The mix of land use will support the vitality of the centre by providing opportunities for the centre to grow. The scale of offering is not of a magnitude that would impact upon the viability of other centres.</p>

The applicant's Clause 4.6 Variation Statement concludes:

"In the circumstances of the case, the land:

- i. Includes a number of heritage items and is in the vicinity of many more;*
- ii. Is located within important view corridors to and from the Cathedral; and*
- iii. Is steeply sloping.*

The resultant built form configurations are a result of a design excellence process that has carefully considered the buildings' height and scale and the space between buildings, and the need to retain significant heritage buildings and building facades.

The development will not result in unacceptable impacts with regard to the amenity of adjoining properties. A development strictly complying with the numerical standard would not significantly improve the amenity of surrounding land uses and would not result in a better urban design response to the site. In the context of the locality it would be unreasonable for strict compliance to be enforced.

The non-compliance is not considered to result in any precedents for future development within the LGA given the particular site circumstances, heritage context and surrounding pattern of development.

As demonstrated in this submission, it would be unreasonable for strict compliance with the height control to be enforced. It is concluded that the variation to the height of building development standard is well founded as compliance with the standard is both unnecessary and unreasonable in the circumstances of this case."

Comment and Conclusion:

Following the submission of further information confirming that the part of the building that exceeds 35 metres does not adversely impact on solar access outcomes to the proposed apartments, it is considered that the applicant has addressed the required criteria within Clause 4.6 and it is determined to be well-founded. The variation sought is supported on the following basis: The overall variation to Block 1 increases its height from the allowable 35m contained in NLEP 2012 to 36.96m (+1.96m) to the parapet and 38.16m (+3.16m) to the top of the plant. The parapet height extends for the width of the upper level of the building, which is narrower than the previously approved Concept DA and thereby allows comparatively more solar access to the southern portion of the site. The slightly higher plant structures comprise a much smaller footprint and is considered a minor additional structure set in to the central part of the building. The plant structure will have limited visibility and does not contribute to additional bulk of built form and is likely to only overshadow the rooftop of Building C itself. The portion of the building that exceeds the building height of 35m is not anticipated to have significant adverse impact on views towards the Cathedral nor overshadowing, particularly having regard to the positioning of Building A to the south, which is 11 storeys in height and is sited on land where height of up to RL 54.5 and RL 58.9 are permitted. This variation is also considered to be acceptable.

Amendment to Newcastle Local Environmental Plan 2012: Newcastle East End Building Heights

The separate report on the concurrent Concept DA-2017/00701 provides a discussion on the complex background and current status of the current Planning Proposal which aims to amend the Height of Buildings Map applicable to the site.

The current version of planning proposal (Height of Buildings Map) is consistent with the building heights approved in the Concept Proposal by the Joint Regional Planning Panel (JRPP) (refer Figure 9) and generally lowers the height controls on the south-western corner of Block 1 where proposed Building A is located.

Status of Planning Proposal: The planning proposal has been exhibited, reported to Council and is awaiting determination by the Department of Planning and Environment. Therefore it is recognised as a draft environmental planning instrument for the purpose of Section 79C(1)(a)(ii) of the EPA Act, 1979 in that it requires a consent authority to take into consideration the following when determining a development application:

"(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)..."

Building Height and Concept Plans:

It is noted that regardless of the existing or proposed Height of Buildings Map, should the revised Concept Proposal be approved, section 83D of the EPA Act (Status of staged development applications) confirms that the *"while any consent granted on the determination of a staged development application for a site remains in force, the determination of any further development application in respect of that site cannot be inconsistent with that consent."* Effectively, this will ensure that future development applications for each stage of the development remain consistent with the approved Concept Proposal (including height and FSR). Should a future stage seek to vary from the Concept Proposal then modification to the Concept Proposal would be required. This would provide the consent authority with further opportunity to assess the suitability of a revised proposal at that time.

How does the proposal relate to the Proposed Height of Buildings Map (Planning Proposal)?

The proposed Height of Buildings Map reflects the approved Staged Concept Plan, so there are discrepancies with the current revised Concept DA. The applicant has indicated that the proposed building heights are *"generally consistent with the proposed Height of Buildings Map"* but has not detailed on an overlay map of the proposed heights. An assessment has been undertaken of the building locations as indicated on the submitted detailed architectural Plans which have been extrapolated into **Table 5**. This table demonstrates that the proposed concept building heights comply with the proposed/draft Height of Buildings Map, with the exception of elements of Building B (former DJ's building which generally conforms to the existing heritage building height) and Building C, which exceeds by 1 metre (plant structures). An assessment of the appropriateness of the proposed building heights (including the Clause 4.6 variation for the exceedence of height for Building C) is provided earlier in this report.

Figure 9: Proposed Height of Buildings Map Planning Proposal PP2015/10004 (Figure 4 of NCC Planning Proposal Report)

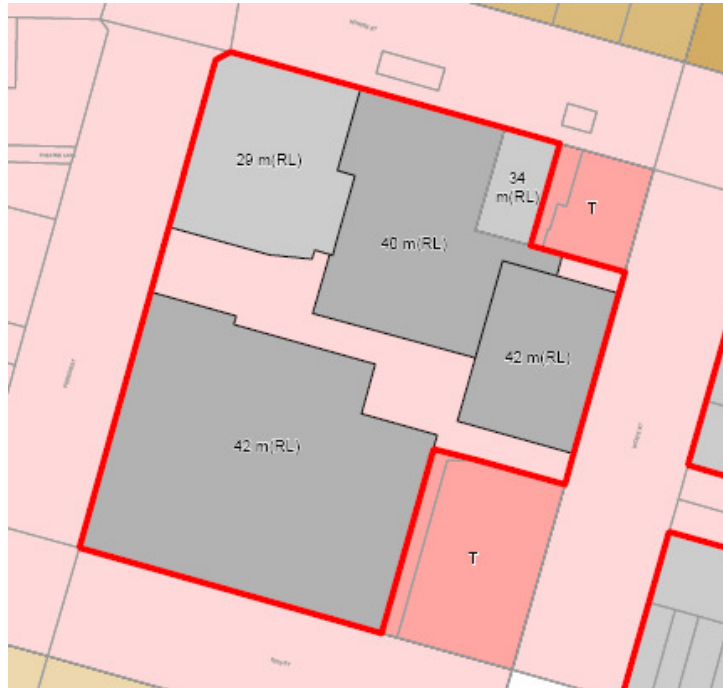
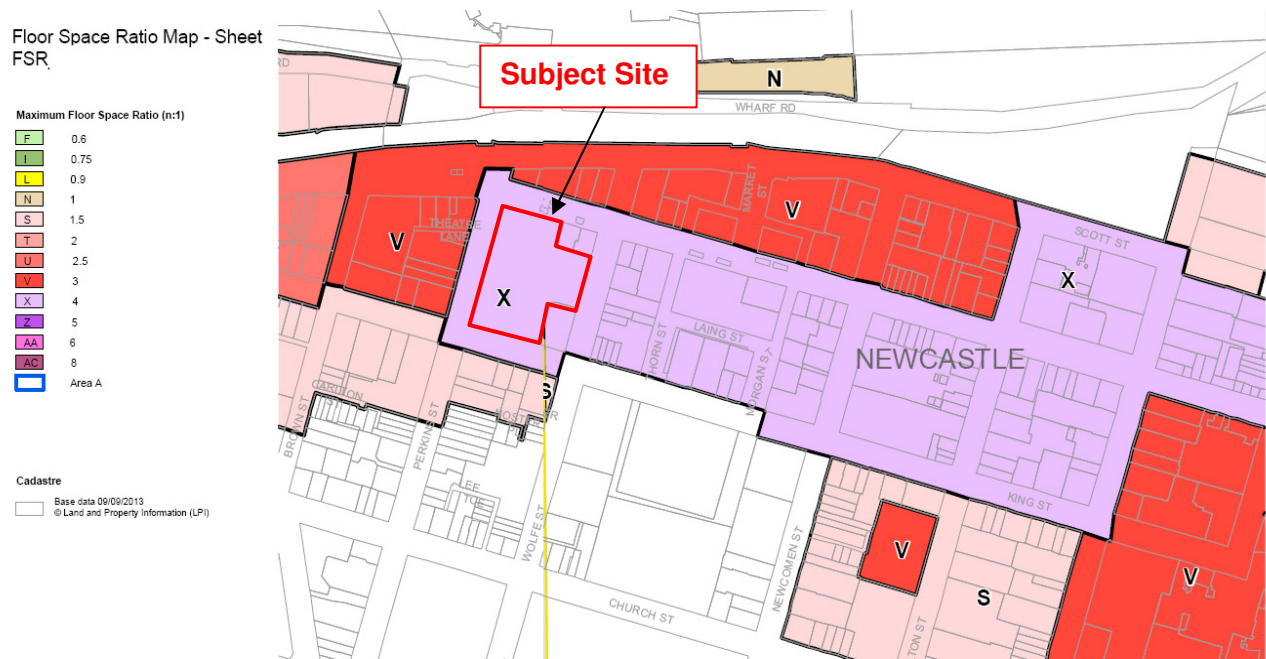


Table 6: Comparison of Permitted and Proposed Heights <i>(Source: Extract from the Statement of Environmental Effects, SJB Planning)</i>				
Block	Proposed Building	Draft LEP Height Map	Proposed Height	Compliance
Block 1	A: King and Perkins Street Building	RL42	RL40(plant at RL42)	Yes
	B: Former DJ's Building (west)	RL 29	Existing Building (RL33.5)	No/Existing
	C: Former DJ's Building (east)	RL 40 (west)	RL39.8 (parapet) RL41plant)	Yes No
		RL34 (east)	17.4m	Yes
	D: Wolfe Street	RL42	RL40 (Allowance for plant to RL42)	Yes

Clause 4.4: 'Floor Space Ratio (FSR)' & Clause 4.5 'Calculation of FSR and site area'

Clause 4.4 limits the FSR of a development to that shown on the 'Floor Space Ratio' (FSR) Map. The FSR Map confirms that a maximum FSR of 4:1 is permissible on the site, as shown in **Figure 10**. The development application proposed a total gross floor area of 26,200m² across the four proposed buildings. The site area is 6,556m² resulting in a FSR of 4:1 on the site. Refer to Table 1 earlier in this assessment report for a breakdown of GFA within buildings, and for each of the four buildings within the site.

Figure 10: Extract of Floor Space Ratio Map - NLEP 2012



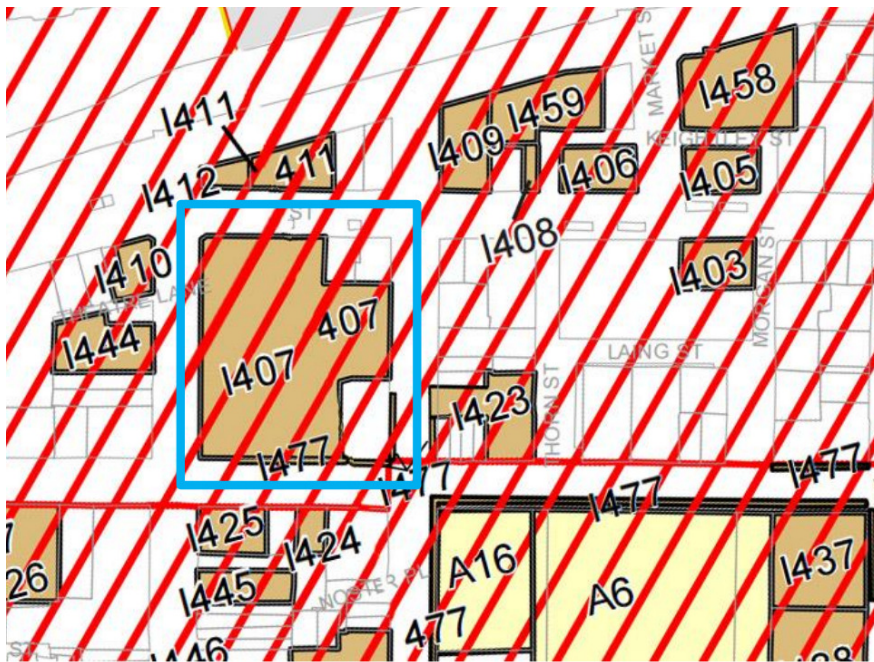
Clause 5.5: Development within the Coastal Zone

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 meets the majority of provisions of this clause as it maintains and improves the existing public access from the site (King Street to Hunter Street along an improved public domain, providing opportunity to access Scott Street and the foreshore. The development is a suitable land use activity; will not impact on the amenity with respect to overshadowing of the foreshore, or loss of views from a public place to the coastal foreshore; and will not have adverse cumulative aspects on the coastal catchment.

Clause 5.10 Heritage Conservation

The whole site is located within the Newcastle City Centre Heritage Conservation Area and is also listed as locally-significant Item 407 'Former David Jones (commercial building)'. The development involves works to heritage buildings within the site and several heritage items are located in the vicinity of the site. A Heritage Impact Assessment, prepared by City Plan, Rev 02, dated 13.06.2017 and a Conservation Management Plan (City Plan Rev 02 dated 16.6.2017) accompanies the development application. Further discussion of the manner in which Clause 5.10 of NLEP 2012 and relevant provisions of NDCP 2012 are met is contained in the Section 79C(1)(b) assessment of this report.

Figure 11: Extract of Heritage Map - NLEP 2012. Indicating the subject site within the blue boundary and showing the location of other locally listed heritage items in close vicinity.



Clause 6.1 Acid Sulphate Soils

The north-western corner of the site is located within a Class 4 mapped area of acid sulphate soils (ASS), whilst the balance of the site is within a Class 5 mapped area. The 'Summary of Potential Ground Issues' prepared by Douglas Partners in June 2017 confirms that acid sulphate soils were detected in the south-western corner of the site below approximately RL 16 AHD. With respect to the Class 4 soils, consent is required for works more than two metres below the natural ground surface and/or works where the water table is likely to be lowered beyond two metres below natural ground surface. Consent is also required for works on Class 5 lands, where criteria is met, as specified in clause 6.1. Subclause (3) specifies that development consent must not be granted for the carrying out of works unless an Acid Sulphate Soils Management Plan has been prepared.

Accordingly, the Stage 1 development application is accompanied by an Acid Sulphate Soils Management Statement prepared by Douglas Partners in May 2017 which provides methods and strategies to minimise the potential for adverse impacts associated with disturbance of ASS during construction works. A condition can be attached to the development consent for the Stage 1 Development Application requiring compliance with the recommendations of this Acid Sulphate Soils Management Plan during excavation and dewatering.

Part 7: Additional Local Provisions - Newcastle City Centre

Clause 7.5 Design Excellence (Newcastle City Centre) is the only relevant Clause within this Part. Clause 7.5 applies to the erection of a new building or to significant alterations to an existing building and states that a consent authority must not grant consent to development within the Newcastle City Centre unless the development exhibits design excellence. Table 6 below addresses how this Clause is satisfied. It is considered that the development exhibits design excellence. Three architectural firms and a landscape architecture firm have collaborated to arrive at the submitted design through an alternative design excellence process agreed to by the Government Architect's Office, which included several meetings with Newcastle Council's Urban Design Consultative Group. Refer to Section 3 of this report.

Table 7: Compliance with NLEP 2012 Clause 7.5 Design Excellence	
Clause 7.5 Provisions	Comment
(3) In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters:	
(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,	Satisfied. Refer Section 79(b)(iv) of this report
(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,	Satisfied. Refer Section 79(b)(vi) of this report
(c) whether the development detrimentally impacts on view corridors identified in the Newcastle City Development Control Plan 2012,	Satisfied. Refer Section 79(b)(i) of this report
(d) how the development addresses the following matters:	
(i) heritage issues and streetscape constraints,	Satisfied. Refer Section 79(b)(iii) of this report
(ii) the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,	Satisfied. Refer SEPP 65 section of this report
(iii) bulk, massing and modulation of buildings,	Satisfied. Refer Section 79(b)(iv) of this report
(iv) street frontage heights,	Satisfied. Refer Section 79(b)(iv) of this report
(v) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,	Satisfied. Refer Section 79(b)(v) of this report
(vi) the achievement of the principles of ecologically sustainable development,	Satisfied. Refer Section 79(b)(xvi) of this report
(vii) pedestrian, cycle, vehicular and service access, circulation and requirements,	Satisfied. Refer Section 79(b)(ix) of this report
viii) the impact on, and any proposed improvements to, the public domain.	Satisfied. Refer Section 79(b)(vi) of this report
(4) Development consent must not be granted to the following development to which this Plan applies unless an architectural design competition has been held in relation to the proposed development:	
(a) development for which an architectural design competition is required as part of a concept plan approved by the Minister for a transitional Part 3A project,	N/A
(b) development in respect of a building that is, or will be, higher than 48 metres in height,	N/A - No building exceeds 48m in height
(c) development having a capital value of more than \$5,000,000 on a site identified as a "Key Site" and shown edged heavy black and distinctively coloured on the Key Sites Map,	Applies. Refer (5) below
(d) development for which the applicant has chosen to have such a competition.	N/A
(5) Subclause (4) does not apply if the Director-General certifies in writing that the development is one for which an architectural design competition is not required.	The application is accompanied by correspondence from the Office of Government Architect, as a delegate of the D-G which grants exemption to the requirement for a design competition for the Stage 1 DA subject to the implementation of a design excellence process.
(6) The consent authority may grant consent to the erection or alteration of a building to which this clause applies that has a floor space ratio of not more than 10% greater than that allowed by clause 7.10 or a height of not more than 10% greater than that allowed by clause 4.3, but only if the design of the building or alteration has been reviewed by a design review panel.	Satisfied. The DA seeks an increase to the maximum allowable building height by Clause 4.3 (Building C only) by up to 9%. Refer discussion under Clause 4.6. The design has been reviewed by the design review panel (UDCG).

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

Refer to discussion on the Planning Proposal under the heading 'Clause 4.3' 'Height of Building' under the NLEP 2012 which discusses the status the proposed amendment to the 'Height of Building Map' for the Newcastle East Precinct and the relationship to the proposed development.

(a)(iii) any development control plans
Newcastle Development Control Plan 2012

Newcastle Development Control Plan (NDCP) 2012 is the applicable Development Control Plan and the Sections listed below are relevant to this Stage 1 Development Application.

6.01 Newcastle City Centre
4.04 Safety and Security
7.02 Landscaping, Open Space and Visual Amenity
7.03 Traffic, Parking and Access
7.05 Energy Efficiency
7.06 Stormwater
7.07 Water Efficiency
7.08 Waste Management
4.01 Flood Management
4.03 Mine Subsidence
4.04 Safety and Security
4.05 Social Impact
5.01 Soil Management
5.02 Land Contamination
5.03 Tree Management
5.04 Aboriginal Heritage
5.05 Heritage Items
5.06 Archaeological Management
5.07 Heritage Conservation Areas
7.04 Movement Networks
7.09 Outdoor Advertising and Signage
7.10 Street Awnings and Balconies

NDCP 2012 - Section 6.01 'Newcastle City Centre'

A brief response to each of the relevant elements/chapters contained within Section 6.01 (Newcastle City Centre - Locality Specific Provisions) is provided below, with the other sections of the DCP discussed within the relevant heading under 'the likely impacts of the development' section later in this report.

Part 6.01.02 Character Areas - East End

This section of the DCP contains the character statements and supporting principles for development within various precincts of the Newcastle City Centre. The subject site is within 'East End'. The objectives for this precinct are to:

- a) *"Strengthen the sense of place and urban character of the east end as a boutique retail, entertainment and residential destination.*
- b) *Diversify the role of Hunter Street Mall precinct as a destination for many activities including retail, dining, entertainment, nightlife and events, additions to regular day-to-day services for local residents.*
- c) *Promote active street frontages.*
- d) *Protect heritage items and contributory buildings.*
- e) *Protect views to and from Christ Church Cathedral.*
- f) *Promote a permeable street network in Hunter Street Mall precinct with well connected easily accessible streets and lanes.*
- g) *To create a space that is safe, comfortable and welcoming for pedestrians."*

Discussion of the ability to meet the objectives and desired future character for this precinct is contained in the following sections of this report which address landuse, views, heritage and circulations spaces.

Section 6.01.04 Key Precincts - Hunter Street Mall

This section of the DCP contains objectives and performance criteria specific to key precincts, one of which is the Hunter Street Mall. This section of the DCP prevails over Section 6.01.03.

B.01 - Pedestrian Amenity

The Stage 1 development includes a through site connection, extending from Perkins Street in the west to Wolfe Street in the east. This link extends between building A and B in the west (with a width of 7.7m) and between Building D and the existing Telstra building in the east (at a width of 6.1m). The laneways converge into an open court which is to be activated by adjacent retail outlets at ground level. The location of this link is consistent with the location of the through site link identified in Figure 6.01-29 of this chapter (reproduced in Figure 12 below) and will allow for a continuous pedestrian link to be provided through to Newcommen street in the east, as intended by the DCP.



Figure 12 (at left): Extract of Figure 6.01-29 of NDCP 2012 'Hunter Street Precinct Plan' showing planned through link site (in green hatching).

Figure 13: (at right) Extract of submitted Landscape Concept Plan for 'Victoria Way' Link through the subject site (Dwg 17008_DA-2 by Aspect Studio)

B.02 - Significant Views

This section of the Chapter 6.01.04 requires an opening in development in the Market Street alignment between Thorn and Morgan Street to preserve views of Christ Church Cathedral. The Stage 1 development does not extend east to such streets and therefore this control is not relevant to the Stage 1 development (but has been considered within the Concept Development Application). The overall impact of the Stage 1 development on views of Christ Church Cathedral are discussed within the Section 79C(1)(b) assessment of this report.

B.03 - Building Form

This clause requires that street wall heights be selected to ensure that a minimum of 2 hours of sunlight is provided between 9am and 3pm in mid winter on the southern side of the Hunter Street Mall. The Stage 1 development is located on the southern side of the mall and therefore will not further impact on overshadowing of this public space.

This clause also requires that development be articulated to reflect the fine grain of the precinct and that existing contributory character buildings be retained and re-used. The Stage 1 application has been the subject of a Design Excellence Panel overseeing the

design development. The Urban Design Consultative Group during its most recent consideration of the Stage 1 application on 27 September 2017 noted that *"the Panel considers the application to have maintained the outcomes identified and detailed in the Design Excellence Review Process"*. Further, *"the Panel considers the proposed adapted interior to the retained northwest corner section of the former David Jones Department Store to provide a high standard of residential interiors, enhancing and responding to the existing floor to ceiling heights and window openings. The proposed shop fronts replacing existing travertine clad window surrounds with fine metal framed shop windows set below metal framed awnings are referenced to historic images of the street and considered a sympathetic response to the setting and listed buildings"*.

A further discussion of compliance with clause B.03 with respect to heritage issues is contained in the section 79C(1)(b) assessment.

B.04 - Hunter Street Mall

This clause contains specific requirements for the Hunter Street Mall. Whilst not directly applicable to the proposed development it is considered that the development application will not hinder the achievement of the desired outcomes for the mall as contained in this clause.

B.05 - Servicing

This clause seeks to minimise conflict between pedestrian movement and servicing and to ensure that loading docks and their access points are not located on Hunter Street Mall. The Stage 1 development does not seek to utilise Hunter Street Mall for servicing, with access for servicing and carparking purposes located off King Street in Building A. The placement of this service access will not lead to conflict with pedestrians utilising either Hunter Mall or Victoria Way.

Section 6.01.03 - General Controls

A1 - Street Wall Heights

The required street wall heights range from 16m to 22m within this street block, with development above the street wall height required to be set back by a minimum of 6m. Corner sites may be emphasised by design elements that incorporate some additional height above the nominated street wall height. A number of variations have been identified within the Stage 1 development application, with such variations discussed in detail within the Section 79C(1)(b) assessment of this report.

A2- Building Setbacks

This control specifies zero front setbacks, with zero setbacks also required to side and rear boundaries below street wall heights. The Stage 1 site comprises the majority of a street block, which is bounded by road frontage, except in the south eastern corner of the site where it is located adjacent to the Telstra building. The southern wall of Building D and the eastern wall of Building A are sited on the common boundaries with the Telstra site, which complies with the requirements of the DCP up to the 16m street frontage height. Above the permitted 16m wall height a 6m setback is not provided and the Stage 1 development is not compliant with this control. This issue is discussed within the SEPP 65 (Visual Privacy) section of this report.

Street wall heights and front setbacks to Hunter, King, Perkins and Wolfe Streets are discussed within the Section 79C(1)(b) assessment of this report.

A3 - Building Separation

Building separation is addressed within the SEPP 65 section of this report.

A4 - Building Depth and Bulk

This clause specifies that residential floor plates above street wall heights are required to have a maximum GFA of 900m² per floor and a maximum building depth of 18m. The

Statement of Environmental Effects (SJB Architects) indicates that the following floor plates and building depths are proposed:

- Building A: Floor plate of 1043m² and depth of 19.7m;
- Building B: Floor plate of 880m² and depth of 25m;
- Building C: Floor plate of 600m² and depth of 17-19.5m;
- Building D: Floor plate of 628m² and depth of 14-21.5m.

All buildings meet the required 900m² maximum floor plate, with the exception of Building A, for which a floor plate of 1043m² is proposed. This is considered reasonable as the building is an 'L' shaped perimeter building in design, with compliant cross ventilation. The 18m building depth is exceeded, which appears to be partly due to the adaptive reuse of a heritage building (Building B) or retention of a heritage facade (Building D) which has impacted on the overall footprint. A lesser exceedance is evident for Building A and C, which is acceptable as habitable room depths of SEPP 65 are met for such buildings, thereby addressing amenity concerns.

A5 - Building Exteriors

This clause specifies requirements with respect to exterior finishes and detailing. Details of the colours and materials to be used are contained within the submitted architectural plans for each building. The UDCG at its meeting of 27 September 2017 confirmed that *"the Panel supports the overall treatment of building aesthetics, previously supported by the Design Excellence Panel"*. However, the Panel did request *"clarification of panel colours and expression of panel jointing to side elevations of Building C, noting the importance of the panel articulation as a means of enhancing otherwise blank side elevations"*. Additional information has now been provided by TZG Architects which details the colour finish and joint details of the expressed panels on Building C, which is considered to be satisfactory.

A6 - Heritage Buildings

This clause provides requirements relating to heritage buildings and sight lines, which are discussed in detail in the following Section 79C(1)(b) assessment.

A7 - Awnings

This clause specifies that continuous street awnings are to be provided to address pedestrian amenity. Building A will be provided with an awning extending along the Perkins Street frontage which will wrap around part of the King Street frontage; the existing awning for Building B which extends along both the Perkins Street and Hunter Street Mall frontages will be replaced; Building C will be provided with a new awning extending along its frontage to Hunter Street Mall; and the existing awning on Building D which extends along the Wolfe Street frontage will be retained. The provisions of this clause are addressed.

A8 - Design of Carparking Structures

This clause requires that carparking must be effectively integrated within building design, have access which is not located on the primary frontage and provide design solutions to screen from public spaces. The Stage 1 application includes two levels of basement parking, accessed from King Street, which meets the requirements of this clause.

A9 - Access Network

This clause requires the provision of improved and new pedestrian connections which has been appropriately addressed by the Stage 1 application with the east-west link, which complies with the required 5m width.

B2- Views and Vistas

This clause provides requirements relating to views and vistas, which are discussed in detail in the following sections of the Section 79C(1)(b) assessment.

B3- Active Street Frontages

This clause specifies that active street frontages are to be a minimum of 70% of the primary street frontage. The Stage 1 application provides an active street address to all major frontages in compliance with this requirement. Minimum 4m floor to ceiling heights are required at ground level. It is noted that ground level ceiling heights have been determined through a detailed design process which has allowed for effective integration between heritage buildings and new buildings, and on this basis the floor to ceiling heights as proposed are acceptable.

B4 - Addressing the Street

This clause provides detailed requirements regarding the siting and height of building entries, for which appears to be generally achieved.

B5- Public Artwork

This clause requires that development on key sites or over 45m in height are to allocate 1% of the capital cost of development towards public artwork. As the subject site is identified as a 'key site' this clause will apply and a condition to this to this effect will be attached to the consent of the Stage 1 development and future stages, if approved. The applicant acknowledges that the development will provide opportunity for the identification of public art spaces. This is also discussed in the following Section 79C(1)(b) assessment.

B6 - Sun Access to Public Spaces

The 'Shadow Analysis' prepared by SJB Architects confirms that the proposed development will not impact Cathedral Park.

Section 94A Development Contributions Plan 2009

A levy of 2% of the cost of development will apply to the development. Further discussion of public domain improvements and the implications of or the Section 94A Development Contributions Plan 2009 is contained in the section 79C(1)(b) assessment of this report.

(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.

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

The proposal was reviewed with respect to the relevant EP&A Regulations and are considered satisfactory and/or are addressed elsewhere in this report.

(a) (v) any coastal zone management plan (within the meaning of the *Coastal Management Plan Act 1979*).

Not applicable.

(b) the likely impacts of the development

The key likely impacts of the development are summarised below, and includes relevant comments from Council's specialist officers, including a response to issues raised in submissions.

i. View Analysis and Impacts:

Background: View Impacts of Original Concept DA

As it was a key issue of the assessment of the original Concept DA-2015/10185 comprising the four East Newcastle blocks, a very detailed discussion on view impacts of the Newcastle City East development was provided in the previous report to the JRPP meeting of 28 April 2016. Refer **Appendix A** of the separate report on the current Concept Plan DA-2017/701 for this detailed background.

Impacts to Public Views including to and from Christ Church Cathedral: This assessment considered existing key views and view corridors, in addition to analysis of the impact of the proposed built form of the staged concept proposal on these views. The impact of the proposal on existing views of some private properties was also provided. A major issue of consideration was the impact to and from the Christ Church Cathedral. Consideration to previous and existing planning controls and guidelines was included in the report to provide context to the issue. In relation to the Christ Church Cathedral, it was identified that the important views to this building are *"the DCP's required vistas of the Cathedral being of the tower, roofscape and pinnacles of the buttresses of the building"* (ie. not the entire building). It is noted that the ridge of the Cathedral is at RL58.6m and the highest building proposed by both the revised Concept DA and Stage 1 DA is RL42m.

In relation to the views from Cathedral Park, the assessment confirmed that the proposed built form of the concept DA will negatively impact on the views from Cathedral Park northward to the harbour and on the outcomes sought by the Cathedral Park Masterplan. However it was noted that the height controls within the LEP (former, existing, and proposed reduced heights within the current Planning Proposal) all enable this built form. It is therefore assumed that Council's higher order LEP height control take precedence over the views achieved from the Cathedral Park and on balance, this outcome was considered acceptable. Other view impacts were considered to be satisfactory.

Impacts to Private Views: With respect to the impact on views from privately owned properties the assessment of the original Concept DA acknowledged *"that with any increase in height, the proposed development has the potential to impact upon the private views enjoyed by residential properties to the south-west around Church, Wolfe and Perkins Streets, and to a lesser extent, the south-east of the site stepping up to and along the ridge line at Church Street"*. Views which will be impacted include views across the East End of Newcastle toward the Harbour and in some cases Nobby's and the ocean. View impacts were considered to be reasonable given the inner city context of the development site, the significant reduction in building heights proposed to be reflected within the proposed amendment of NLEP 2012 (Planning Proposal).

It was concluded that the proposed concept development will indeed alter the Newcastle East City skyline as viewed from afar and will be visible from many locations. Closer to the site, the development will alter the character of the surrounding streets, being prominent in some street views, but overall, the proposal will generally respect important views. In summary, the impacts on views and view corridors are considered to meet the objectives, performance criteria and acceptable solutions of the DCP.

Stage 1 DA (Buildings A-D): Assessment of Impacts to Views

In relation to specific view impacts of the proposed four buildings within the subject site (Block 1), the 'Visual Impact and Street View Analysis' (SJB Architects) provide visual representations ("before" and "after") of impacts of the proposed built form from public areas including along streets and of key views (ie. generally those identified in NDCP 2012 Figure 6.01-24), and at various points at and near the Cathedral (including Cathedral Park). Most of these accord with the previous approved Concept DA (refer comments above).

In terms of Block 1, the impacts of changes from the approved Concept DA to that of the proposed Stage 1 DA buildings are limited to:

- Minor increase in building height of Building C.
- Building A: increased street wall heights (from 3 storeys to 6 storeys) and removal of 6m setback to upper levels (above Level 3) to Perkins and King Street frontages.
- Building D: 6m setback above street wall (in compliance with NDCP control) is not provided.

It is considered that the minor increase to Building C will be imperceptible, and will improve views from that of the approved concept plan envelopes, as the east-west floor plate/building width is reduced and a separation corridor is provided to the east of that building. With respect to Buildings A and D, the reduced (zero) street wall setbacks will lessen (by a 6m width) the north-south view corridor along Perkins and Wolfe Street frontages to the north (harbour) than that of the built form of the as-approved concept plan. This will consequently reduce the corridor available from some properties to the south of the subject site (south of King Street on The Hill). The commercial and residential properties fronting King Street are likely to experience view reduction along that corridor, however, in the case of Building A, the (allowable) street wall height is generally higher than these existing buildings and the view would have been impacted anyway. Overall, it is considered that the comparative change will be minor, including from residences on The Hill which are located further away and the perceptible difference in any view corridor loss is lessened. In the context of the city centre location, design excellence process and other planning considerations, on balance the proposed building envelopes and resultant impact to views is considered to be acceptable.

Figure 14: Addendum View Analysis (SJB Urban, Nov 2017) showing view looking north along Wolfe Street and comparison between approved envelope (in white envelope) and proposed (in red line). Proposed Building C on left.



Figure 15: Addendum View Analysis (SJB Urban, Nov 2017) showing view looking north along Perkins Street (between Church and King Streets) and comparison between approved envelope (in white envelope) and proposed (in red line). Proposed Building A in centre.



NSW Heritage Office Concerns with View Impacts to Cathedral

The correspondence received from NSW Office of Heritage raised concern with respect to the impact to the view of the Cathedral by the Stage 1 buildings from the foreshore. It indicated that, *"while Christ Church Cathedral is not physically affected by the proposal, its landmark qualities, which part of its significance, will be adversely impacted."* The drawings and relevant reports for...(the DA)... were reviewed by the Heritage Division of OEH on behalf of the Approvals Committee. The correspondence raises concern that, despite the Approval Committee's previously-provided comments to the previous Concept DA, the proposed building heights have not been lowered and there are still potential adverse impacts on views to and from Christ Church Cathedral and the river foreshore (as indicated in Figure 1 of that correspondence, reproduced in this report as **Figure 16** below). The previously provided comments by the Committee also recommended that Council secure these reduced heights in a revised LEP to preserve the views. The correspondence states *"Drawings and reports for D2017/00700 East End redevelopment, Stage 1 DA do not consider the impact of the proposal on views to and from the river foreshore. Accurate photomontages of longer views to and from the Cathedral should be provided so that assessment and determination can properly consider all environmental impacts"*

Figure 16: Photograph and associated text below, included in correspondence received from NSW Office of Heritage in relation to the Development Application



Figure 1. Looking south east from the Hunter River to Christ Church Cathedral with the former David Jones Building and its dome and clock in the lower right. Building A, right of the former David Jones Building, is proposed to be 11 stories, Building C to the left will be 10 stories and Building D to the left rear will be 11 stories. All buildings will be almost twice as tall as the 5 ½ storey former David Jones Building and will adversely affect views to and from the Cathedral and the foreshore, taking the photographs foreshortening into account. Source buzzfeed.com

Response: It is not stated where this photograph was taken from. However the view corridors to/from locations identified in the NDCP are addressed by the applicant by way of photomontages that accompany the application. These confirm that the NDCP objectives and performance criteria are met. Refer to the previous discussion on the Cathedral.

ii. Aboriginal Cultural Heritage

The 2015 Concept Application was accompanied by an Aboriginal and Historical Archaeology Report (Umwelt, October 2015) which provides advice regarding the likely key Aboriginal and historical archaeological requirements and associated processes which will apply to any proposed future redevelopment of the subject site, in addition to key risks. The proponent has now submitted supplementary correspondence in relation to the Stage 1 application which confirms that the 2015 assessment remains a draft document pending finalisation of consultation with registered Aboriginal parties. The correspondence documents

the process for completion of the assessment and provides a summary of the key outcome, pending final input from registered Aboriginal parties. The report confirms the potential for archaeological deposits *"may have been impacted variably across the Stage 1 DA area by the completion of earthworks to create level surface and the establishment of buildings and associated infrastructure from the 1840s through to the modern period.....However, there remains potential for deposits to be present, either in disturbed context or in less disturbed contexts below the depths of current impacts."*

Consultation was undertaken in accordance with Part 8A, Clause 80C of the National Parks and Wildlife Regulation, with 14 Aboriginal parties registering an interest in ongoing consultation regarding the project. An onsite meeting which was held was attended by two registered Aboriginal parties, being Divine Diggers Aboriginal Cultural Consultants and Lower Hunter Aboriginal Incorporated), with verbal feedback provided by another two parties. The report notes that *"members of these registered Aboriginal parties confirmed that the Hunter River foreshore is culturally significant and that the Stage 1 DA area is situated within a significant and complex cultural landscape....It was identified that the proposed area wide application for an Aboriginal Heritage Impact Permit was the preferred option for the proposed redevelopment works."*

Accordingly, any consent should be conditioned to require the obtaining of an AHIP prior to the commencement of ground disturbance works, with the AHIP to include provision for the completion of Aboriginal archaeological investigations in the form of test excavations and (if required) further salvage activities.

iii. European Heritage (Built and Historical Archaeology)

Schedule 5, Part 1 of Newcastle Local Environmental Plan 2012 lists the entire site is located within the Newcastle City Centre Heritage Conservation Area and is also as locally-significant Item 407 'Former David Jones (commercial building). The subject site is not State listed. Several heritage items are located in the vicinity of the site.

The proposal involves the adaptive reuse of the heritage listed former David Jones building (Building B) and the retention of heritage facades on Wolfe and Hunter Streets with vertical additions. The existing buildings located on the site include:

- The Scott's 'corner' Building at the corner off Hunter and Perkins Street
- The Scott's 'extension' Building facing Hunter Street
- The 1970 David Jones extension facing Hunter Street
- The former Washington House facing Hunter Street
- The former David Jones 'annex' building facing Wolfe Street
- Former D. Mitchell & Co Warehouse facing Perkins Street
- Perkins Street car park at the corner of Perkins and King Street

A Building Conservation and Retention Strategy prepared by TKD (2015) was considered for the original Staged DA with respect to the heritage framework for the Newcastle East Precinct. The same Strategy applies to the revised Concept DA-2017/00701 lodged concurrently with this DA. The Stage 1 DA is consistent with this strategy.

The application is also accompanied by the following documents that are considered to satisfy the provisions of Clause 5.10 of NLEP 2012 'Heritage Conservation':

- Heritage Impact Assessment, prepared by City Plan, rev 02, dated 13.06.2017;
- Conservation Management Plan prepared by City Plan Rev 02 dated 16.6.2017;
- Historical Archaeological Assessment prepared by Umwelt dated June 2017.

As this is an important aspect of this application, the key conclusions and recommendations of each report are reproduced in full below:

Heritage Impact Assessment (City Plan Heritage, June 2017)

Conclusion and Recommendations (p73-74)

"The proposed redevelopment of the former David Jones site, referred to as Block 1 within the Newcastle East End project, will result in a positive outcome for this site, the Hunter Street mall and the city of Newcastle generally. The proposed works aim to reactivate the site while also ensuring the retention of significant heritage fabric and celebrate the history of the site.

The proposed new residential buildings directly respond to the heritage context and use architectural elements and design feature seen in the former David Jones site and the former Washington House building, to facilitate a continuity in design and create a neutral and non-detracting development.

In addition to the proposed building works, the landscaping and public domain works will improve the visual appearance of the site and the surrounding area which requires a much needed upgrade. The central Victoria Walk courtyard will encourage people to directly engage with the site and provide an opportunity for appreciation of the history and heritage of the site.

The proposed redevelopment design for Block 1 carefully considers the heritage context of the site, the overall requirements of the Newcastle East End Precinct, the Hunter Street mall and the Newcastle area generally and is considered a design of landmark quality that will assist in rejuvenating the area. The proposal demonstrates compliance with the existing controls relating to heritage conservation contained in the Newcastle LEP 2012 and the Newcastle DCP.

Having regard to the above, the proposal is therefore recommended to Council for approval."

Conservation Management Plan (City Plan Heritage, June 2017)

The aim of this Conservation Management Plan (CMP) is "to identify the cultural significance of a place by investigation its history, fabric and context. The CMP is intended to be a practical document that will guide future decisions about the place, Block 1 within the Newcastle East End site, in order that the cultural significance is not compromised through inappropriate change. It will provide structure for the management and conservation of the significant values of the place with regard to the relevant legislation and requirements of the stakeholders." (p9)

The CMP contains 91 Conservation Policies (Section 10) which aim to "guide protection and redevelopment of the Newcastle East End Precinct and ensure the long-term conservation of the item's heritage significance. They also give consideration to Newcastle East End Precincts curtilage and views and vistas towards the heritage item from within the streetscape. These policies should be addressed when preparing future plans, making changes or altering the use of the study area and its immediate surrounds. The section has been divided into general policies for heritage management of the property and building specific policies for an easier comprehension and adoption. All policies are numbered sequentially and include procedural matters, significant fabric management and appropriate recommendations."

Historical Archaeological Assessment (Umwelt, 2017)

Conclusions (p110):

"The potential archaeological resource is likely to be dominated by remains associated with the post 1850s commercial, residential and light industrial development and use of the area.

The Project area has been assessed as having a potential archaeological resource of local significance.

The potential archaeological remains would be considered 'relics' under the Heritage Act. As 'relics' are protected under the Heritage Act an excavation permit application to the Heritage

Council under Section 140 of the Heritage Act is required if land that is likely to contain archaeological relics is going to be excavated or disturbed. This report would form the supporting documentation for an application under Section 140 of the Heritage Act to disturb these relics.

Archaeological monitoring of proposed bulk excavation of the Project area and detailed archaeological excavation as required of areas of high archaeological integrity should be undertaken in order to recover information through the excavation and recording of the archaeological remains and thus realise the archaeological research potential of the site."

Recommendations (p110):

"It is recommended that an excavation permit for archaeological monitoring of bulk excavation and detailed archaeological excavation as required be applied for under Section 140 of the Heritage Act. The investigation methodology and research framework outlined in Section 7.0 and 8.0 of this report should be adopted as the recommended strategy for undertaking physical investigation of the site in conjunction with the approve development.

Note that the Project area forms part of a registered Aboriginal site. An Aboriginal Cultural Heritage and Archaeological Assessment is being prepared for the Project which will result in the need for an Aboriginal Heritage Impact Permit for the Project. In the event that any Aboriginal objects are identified within the area of works, work within the immediate vicinity of the Aboriginal object should cease and OEH should be contacted so that appropriate management strategies can be identified.

In the unlikely event that potential burial site or potential human skeletal material is exposed, work in the vicinity of the remains is to halt immediately to allow assessment and management. If the remains are suspected to be human, it will be necessary to contact local police, OEH and the Heritage Division to determine an appropriate course of action."

Assessment Comments: Council's Manager Development and Building assessed the application with respect to the development's response to European Heritage and provided the following comments:

"In examining the proposal it is apparent that the overall design has sought to exercise some creative solutions in response to the prevailing natural and physical constraints of the site. As a consequence, there are some proposed minor variations to LEP and DCP controls. This is evident in the design guidance provisions relating to adaptive reuse and the inability to achieve design criteria relating to deep soil provision, private open space and building separation. Overall though, it is considered that the proposed development encompassing Stage 1 satisfactorily meets the heritage related provisions within these planning instruments and polices, including most importantly the preparation of a comprehensive Conservation Management Plan (CM).

An important element of the proposal is the development of a design that seeks the retention of what has been interpreted as the significant heritage elements based on their assessed values.

The further in-depth assessment of the cultural significance place presented in the Statement of Heritage Impact (SoHI) has involved additional historical research, physical examination of the place, and engagement with people with associations to and knowledge about the place. As a result, the further assessment has revealed a greater understanding of its tangible and intangible values and as such, its cultural heritage significance.

In reviewing the SoHI and its conclusions, it is generally agreed that the redevelopment will have a positive impact upon the setting of the site and the streetscape generally. It will also positively contribute the curtilage of contributory items within the subject site, and other listed places in close proximity.

The retention and conservation of the assessed significant elements of each building within the subject site is also important, particularly their facades, original fabric, parapets and architectural detailing. Similarly, the reinstatement of missing elements such as the clock face on Mitchell Warehouse and parapet on top of Washington House is supported.

In terms of the interiors of the David Jones building which was specifically noted as being of significance in the Suters assessment, whilst it is considered that it is theoretically and technically possible to repair and restore them, the new evidence as presented indicates that even if the interiors were restored to their original condition, then their cultural heritage significance would still be of a minor nature. The structural adequacy of the existing building is not in serious question in this instance, and it is considered that the current physical condition of the interiors has no influence on its significance. The original interpretation was undertaken as part of a much broader city wide process that did not enable a fine grain analysis of each individual place. In this instance, it is considered that the significance of the interiors has been overly stated and the newer evidence presented more accurately reflects its assessed cultural heritage values.

It is also considered that the proposed adaptive reuse of the David Jones building and the contributory Washington House building is sympathetic and respectful. The proposed materials of construction, architectural detailing, palette of colours and new elements (i.e. awning) represent a considered interpretation.

The increased street wall heights are assessed as being an appropriate design response in heritage terms when balancing the benefits of achieving additional public domain area and maintaining the established building typology in the streetscape.

In summary, and based on the further body of work undertaken including analysing evidence gathered through the physical investigation of the place, research and consultation with assessing the aesthetic, historic, scientific, social and spiritual values of the site, it is considered that the proposed adaptive reuse of the buildings encompassing stage 1 (Block 1) will make a positive contribution to the significance of the place, and also nearby contributory items. Similarly, the works associated with the removal of unsympathetic elements including the Perkins Street car park are actively encouraged

Overall, no objections are raised to the proposed works as outlined provided that a condition is imposed requiring a full archival photographic record in undertaken of all existing elements encompassing the areas where the new works are proposed, including the existing interiors of the David Jones building prior to any demolition in accordance with the relevant publications and requirements."

Refer also to the Heritage Office of NSW's response to the application earlier in this report (Table 2) with respect to European Archaeology. Relevant conditions with respect to historical archaeology as recommended by the Heritage Office and in the Archaeological Assessment prepared by Umwelt should also be imposed (ie. the Applicant must obtain an approved s.140 application under the *Heritage Act 1977* to undertake archaeological excavation of this site).

iv. Street Wall Heights, Building Form, Character and Scale

Figure 6.01-28 (Hunter Street Mall Precinct Plan) contained in Section 6.01.04 of NDCP 2012 confirms the maximum street wall heights which are required within the Newcastle East precinct. This plan confirms that street wall heights of between 16m and 22m are required to ensure that a minimum of two hours of sunlight is achieved between 9am and 3pm mid winter. Section 6.01.03 of NDCP 2012 confirms that street wall heights are "*an important element to ensure a consistent building scale in streets that have a mix of uses, heritage items and final development*". They provide an "*appropriate street-width to building height ratio*". Clause A1.01 confirms that any development above street wall heights must have a

minimum setback of 6m. Conditions 13 and 14 of the approved Concept DA Development Consent (2015/10182) also required the development above street wall heights and heritage items must have a minimum setback of 6m.

Figure 17 and Table 8 below indicates the required and proposed street wall heights for the development.

Figure 17: Street Wall Heights (Required and Proposed) (Source: Figure 52 SEE by SJB Planning)

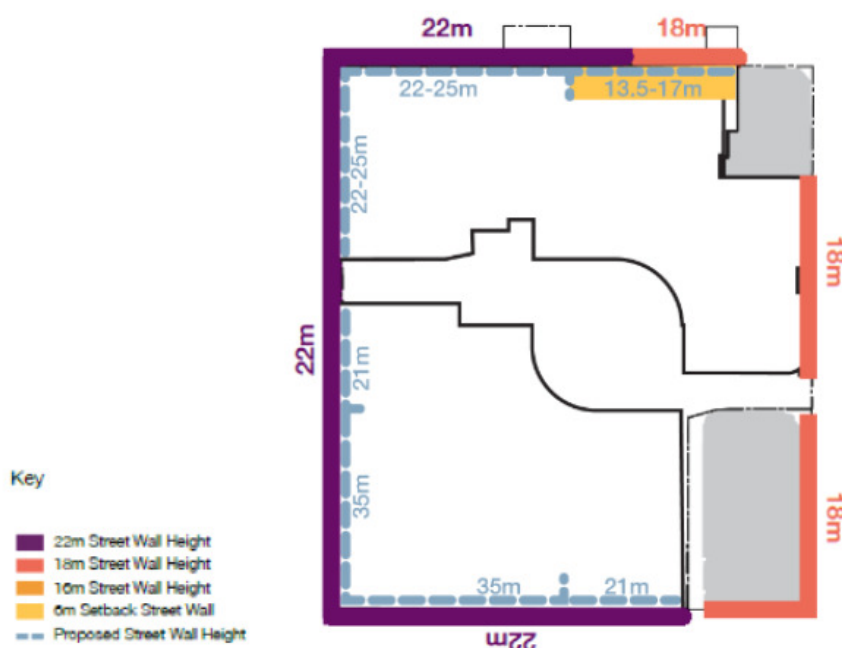


Table 8: Block 1: Site and Proposed Street Wall Height and Setback		
Building	Required/Proposed Street Wall Height and Setback	Compliance
A: <i>cnr King and Perkins St</i>	A variable street wall height of 22m to 35m is proposed (Max 22m permitted with 6m setback above street wall height). No setback proposed	No
B and C: <i>Hunter St.</i>	A 16-18m wall height is proposed to respond to retained built elements (18-22m permitted). 6m setback form street wall proposed to Building C.	Yes
D: <i>Wolfe Street.</i>	24m street wall height proposed (16m permitted). 6m setback form street wall required No setback proposed	No

In this regard, Building A and D depart from the street wall height controls and 6m upper level setback controls of the NDCP and conditions 13 and 14 of the Staged DA approval (2015/10182). It is noted that Building A formerly complied with the required maximum street wall heights.

The SEE accompanying the DA (p104 -105) and Addendum report by SJB Planning (p31-32) justifies the proposed street wall heights of Buildings A and D as follows:

"The street wall heights and building envelopes proposed for Block 1 were the outcome of an alternative design excellence process that was undertaken with Council's Urban Design Consultative Group (UDCG) to inform the design of the Stage 1 DA. As such the UDCG have supported the proposed approach to the street wall heights and upper level setbacks.

The design approach to proposed street walls heights was conveyed to the UDCG during the alternatives design excellence approach and was supported. The design approach and justification for the street wall departures to Buildings A and D is outlined in detail in Section 6.10.3 of the SEE submitted with the Stage 1 DA and is summarised below:

Building A:

- The Perkins Street elevation steps down from the corner to the north to six (6) storeys (22m) to respond to the street wall height of the former David Jones Building).
- The King Street elevations (eastern end) also steps down to six (6) storeys to provide an 18m street wall height. This complies with the 22m street wall height control and provides a transition to the adjoining Telstra site, which has 16m street wall height control.
- The increased street wall height to 35m-36m creates a strong corner landmark building to respond to the opposing corner conditions of the former DJ building and Telstra Exchange. This building acts as a landmark to the precinct when approaching from the West end of King St in the same way as the former David Jones building when approaching the site from the West end of Hunter Street.
- The proposed street wall heights do not adversely impact on the heritage items on site or surrounding items as concluded in Heritage Impact Statement (HIS) prepared by City Plan submitted with the Stage 1 DA. This is clearly conveyed in the following extract of the HIS:

"The existing buildings are built to the street alignment and as such, do not have a setback. This is the case for the majority of the area, due to the size of the allotments. As such, the proposed Building A has retained the existing pattern for developing along the street alignment, to retain the built form rhythm within the streetscape. This has also prevented unnecessary intervention into original and significant fabric located on the northern half of the site. In addition, this building has been designed so as to reference the surrounding heritage context and will serve as a contemporary but complimentary infill building. Therefore, Building A is considered an acceptable outcome that will not adversely impact on the surrounding heritage items"

- The street wall has been reflected in the selection of materials with green concrete and dark brick works used in the base, and lighter concrete above six (6) storeys. The elevation incorporates breaks and recesses to reflect the proportions of the heritage listed former David Jones Building.

Building D:

- The vertical alignment of Building D to Wolfe Street provides greater separation to Building C to the west. The provision of a 6m setback would significantly constrain the opportunity to provide adequate separation and privacy between, both buildings, while maintaining a viable floor plate. It also contributes to the through-site views. A 6m setback would block a primary through site view corridor;
- The nil upper level setback has also allowed solar access into the laneway (Victoria Way) as described in Section 3.6 below.
- The vertical extension from the existing facade is considered to have a positive heritage outcome as detailed in the following extract of the HIS (refer to Attachment 1 of Stage 1 SEE):

'A vertical extension has been proposed and is considered a positive outcome for the building as it highlights the contemporary character of the building and references significant design elements employed in the facade, such as the curved corners and face brickwork.

The proposed design in Building D applies the same principles as the other buildings, which includes respecting the form and detailing of the original building, enhancing the facades of the existing building and facilitate the reactivation of the ground plane and enhanced amenity of the building. The proposed new vertical extension references the curved form of the Wolfe Street annexe and the existing materials used in the building. In addition, the brick proposed for the vertical extension will

reference the original bricks used in the base of the building, while also being contemporary and complimentary. The use of these materials and similar forms and patterns will ensure continuity in the design and a focus on the key features of the original building.'

- *The street wall is reinforced through brickwork and openings of the existing facade and the different brickwork tones and opening used in the new element. The language of the existing facades is used as a springboard for the new addition. The materiality also ensures the building has a defined base, middle and top."*

During the development assessment process, further information was requested from the applicant being a comparison between the impacts of the approved Staged Concept Plans (street wall heights and JRPP imposed conditions 13 and 14 for 6m setbacks above heritage facades and street wall heights) when compared to the "as proposed" design, having regard to:

- Views from likely affected properties, in particular The Hill;
- Overshadowing impacts; and
- Visual impact (bulk/scale) from private properties and public domain.

The applicant provided an 'Updated Staged DA Shadow Analysis' and an 'Addendum View Analysis' which provided a comparison of the overshadowing, visual and view loss impacts of the approved Staged DA with the complying street wall heights and 6m upper level setbacks, and the proposed street wall heights. This information confirmed that the proposed street wall heights and reduced setbacks do not result in unreasonable additional impacts in terms of overshadowing, view and visual impacts (also discussed under those headings of this report).

The design excellence process considered street wall heights in detail, and while too lengthy to provide in this report, it is considered that significant attention to the street wall heights and built form of Buildings A and D in particular were addressed, resulting in a suitable outcome. Further, the Newcastle Urban Design Consultative Group considered the proposed development and made the following comments with respect to Built Form and Scale:

"The proposed development of three new residential apartment buildings combined with adapted existing structures and street facades is considered appropriate to the setting and the related streetscapes. Members of the current panel attending the Design Excellence Panel have previously supported the varied forms of the proposed residential buildings combined with the adaptation of retained fabric.

The Panel noted the street front alignment of Building D with the retained ground and first floor sections of the existing Wolfe Street frontage as a departure from Planning Controls that is supported on the basis of the quality and cohesion of the proposed apartment building above enhanced by the use of a blended brick exterior and treatment of window and balcony openings."

In conclusion, the proposed street wall heights will indeed alter the street character of the precinct. However, the proposal is considered to be an appropriate outcome for the site as the built form and massing have been well considered, in particular having addressed street edges, corner treatments, heritage issues, the pedestrian experience and impacts to adjacent properties.

v. Overshadowing

The Stage 1 DA was accompanied by a 'Shadow Analysis' prepared by SJB Architects which demonstrates the impact of overshadowing mid winter (June 21) and in the equinox (March 20). Following a request for further information the applicant has submitted updated diagrams to provide a comparison between the impacts previously identified for this block in

the approved Concept DA and the impacts which will result from the current Stage 1 DA. This analysis demonstrates that there is an increased impact on properties to the south but there is a reduced impact on land to the south-east and on Victoria Way.

A further 'Elevation Shadow Study' has also been submitted to address the impact of the Stage 1 DA on the possible future development at 123 King Street. This site, which is located to the south of the State 1 DA, currently contains a four (4) storey commercial building. However, Council on 23 June 2017 issued Development Consent 2015/10304 which granted approval for alterations and additions to this building and the construction of two additional levels to accommodate ground floor commercial and 25 residential apartments.

This comparative analysis between the approved Concept DA and the Stage 1 DA on June 21 indicates the following:

Table 9: Comparative Overshadowing Analysis: Approved Concept and Current Stage 1 DA			
Location	Address	Use/Building	Change between Approved Concept and Stage 1 DA
113 King Street	SW corner of Wolfe and King St	3-6 storey residential development	No change - 3 hours of sunlight obtained on June 21.
115-119 King Street	Immediately South of Stage 1	2-4 storey commercial buildings	Additional overshadowing occurs over various parts of the 3 sites throughout the day however the additional impact is not significant nor is the overall impact unreasonable noting that this is a commercial building.
123 King Street	Immediately South of Stage 1	Currently: (4) storey commercial building. Approved (but not constructed): 6 level mixed use development (ground floor commercial and upper level residential with 25 apartments).	Minor and acceptable increase in impact on the existing commercial building. The Elevation Shadow Study demonstrates that 3 hours of sunlight will not be achieved to all residential apartments on June 21, with the majority of apartments shadowed between 9am and 12 midday and shadowing continuing over some apartments (or some windows) through until 2pm. An increased level of overshadowing, which is not considered to be insignificant, will be experienced as a result of the Stage 1 DA (in comparison to the approved Concept) predominantly between 11am and 2pm on June 21. However, SJB has conducted an analysis of sunlight access into the approved apartments at 123 King Street in accordance with Design Criteria 4A-1 of the ADG, which specifies that living rooms of at least 70% of apartments should receive a minimum of 2 hours direct sunlight between 9 am and 3 pm on June 21. The SJB analysis confirms that 17 of the 25 apartments (ie. 68%) receive a minimum of 2 hours of sunlight on June 21. This equates is a minor variation to the 70% specified within Design Criteria 4A-1, which is considered to be a minor variation.
133-135 King Street	SW of King and Perkins Streets	4 storey commercial building	Additional overshadowing occurs at 9am however the additional impact is minor and the overall impact is reasonable noting that this is a commercial building.
27 Perkins Street	Located to the south of No. 123 King Street	2 storey residential development	No change to the impact. The majority of shadow cast on this building is a result of the building immediately to the north at 123 King Street.

The above discussion confirms that the impact of overshadowing, when considered both the change and overall impact, is generally not significant with the exception of the change in impact on No. 123 King Street. When the previous Concept was assessed in 2016 the adjacent building at No. 123 King Street was used as a commercial premises, with consent not yet granted for adaptive reuse of this building for residential purposes. The revised Stage 1 proposal will increase the level of overshadowing cast on this the approved development,

which will result in this building not achieving 3 hours of sunlight access on June 21, which is the standard adopted by Newcastle DCP. However, when considering compliance with the Design Criteria of the Apartment Design Guide, which is considered to be the more relevant document, there is only a minor shortfall, with 68% of apartments achieving the specified level sunlight, as opposed to the recommended 70%. This variation is considered to be minor and acceptable, particularly when considering that there is no certainty that this adjacent development at No. 123 King Street will proceed to construction.

The supplementary documentation provided by the applicant also addresses the impact of overshadowing on the east-west link through the site, to be known as Victoria Way. Whilst a high level of sunlight access into the east-West link is the optimal outcome, the ability to achieve this has been significantly impacted by the perimeter design of the Stage 1 development, which is required to create a strong street address. The Stage 1 development now allows for an area of direct sunlight access into Victoria Way at 10am and 11am on June 21, with this achieved through the separation between Buildings C and D.

On this basis it is considered that the level of sunlight access to be obtained by adjacent developments is acceptable, having regard to the comparative change between the level of overshadowing cast by the approved Concept and the Stage 1 application and the existing/approved functions of adjacent buildings. Further, the level of sunlight access achieved by Victoria Way, whilst not ideal, is improved from that identified in the approved Concept and is also considered to be acceptable.

vi. Public Domain and Publicly Accessible Private Land

Consistent with the original and revised Concept Proposal, the proposed landscape scheme for the site and public domain areas is set out in a Landscape Concept and Landscape Statement (by ASPECT). Further information was provided by clarifying the applicant's commitments.

The key components of this Strategy are listed below:

- Central Laneway/'Victoria Way' (to be renamed as required by a condition) will be retained in private ownership that is accessible to the public. The 'Way' comprises two short east-west laneways entered from either Wolfe Street to the east or Perkins Street to the west which converge with an open court at the centre of the development. The ground plan...will be highly detailed, with a fine grain pattern...The central court is an urban plaza or room that provides access to retail tenancies and the surrounding residential lobbies. The court will be paved in a radial pattern with a raised circular planter as the central focal point for the space. Space for outdoor dining has been allowed for adjacent to the retail tenancies, with additional feature pots containing trees and understorey planting to green the space.
- Streetscape Upgrades: Upgrade works in the public domain across the frontages of the development site include kerb and gutter, drainage, footway paving, tree planting, street lighting, utility adjustments, street furniture (e.g. Garbage bins, bicycle racks etc.) line marking and signposting. The proposed works to Hunter Street undertaken as part of this development will include making good any areas of the public domain that are damaged or required rectification in accordance with Council's City Centre Public Domain Technical Manual. It is noted that wider studies of Hunter Street have been completed by Council, which may impact on the design of this street at a later date.
- On street parking to be rationalised from angle parking to parallel parking on Hunter Street between Perkins Street/ Wolfe St and King Street.
- The selection of street trees will be in accordance with the 'Tree Selection Manual' and subject to further Council approval. Existing mature street trees on Perkins Street will be protected and retained and contained within new tree pits to Council's standard detail.
- Street pavement finishes will be in accordance with the 'City Centre Public Domain Technical Manual ' and future Newcastle Public Domain Guidelines.

- *Line marking on Perkins Street, Wolfe Street, Hunter Street and King Street will be in accordance to future Newcastle public domain guidelines, traffic plans and future cycle connections throughout the Newcastle precinct.*
- *Outdoor dining zones will be in accordance with the 'City Centre Public Domain Technical Manual- Typical street Layout diagrams ' and Newcastle City Council's outdoor trading policy'.*
- *Public Art: will be incorporated into the catenary lighting structure through Victoria Way, and will be visible from the surrounding streetscapes of Perkins and Wolfe Streets. The custom paving treatment also provide opportunity for ground plan interpretation and art. Other opportunities for public art will be explored in consultation with Council and in accordance with the NDCP Part 6.01 City Centre. The NDCP requires that 1% of the capital cost of development be allocated towards public artwork.*
- *Awnings: will be replaced with new complimentary/sympathetic awning structures*

The above proposed works within the public domain are satisfactory and considered to be within the scope of works anticipated as considered by the original approved Concept Plan and associated Consent and the current proposed revised Concept DA. It is recommended that, if approved, a condition(s) be imposed requiring detailed construction plans for upgrade works within the existing public road areas. Such plans should include reconstruction of footpaths and improvements to drainage, kerb and gutter and road pavement as well as provision of street trees and street furniture. Council's Engineer noted that the plans provide details for the proposed Victoria Way pedestrian linkage between Wolfe Street and Perkins Street but does not address the existing public road areas. Concept approval in consultation with Council's Asset section will be required prior to determination of the DA so that the S138 approval process can proceed smoothly should consent be granted.

As indicated earlier in this report, consultation with Council's Senior Public Domain Planner advised that Council's Draft East End Stage One - Public Domain Plan has been prepared but requires further consultation with Council's Traffic Committee (proposed in February 2018) and then will be placed on public exhibition. The Plan proposes alterations of the configuration of angle parking to parallel parking in Perkins and Wolfe Street, parking configuration in Hunter Thorne and Market Street, installation of a bi-directional cycleway and the formalisation of Hunter Street with kerb and gutter. Council's Senior Urban Design advised contact will be made with ASPECT Studio who completed the original design to request updating of the plans to reflect the new road layout. While this depends on the timing of the completion/finalisation of the East End Stage One - Public Domain Plan, it is considered there is an opportunity to incorporate aspects of the Public Domain Plan via a condition requiring the final Landscape Plans to be prepared prior to issue of the Construction Certificate for the development.

vii. Social Impacts

The 2015 Concept application required the submission of a Strategic Social Plan for each stage of the development which addresses potential impacts on residents and businesses; address residential amenity and security; details how social issues will be addressed; details community benefits; details the community consultation process and includes a Community Engagement Plan. In response to this, a Strategic Social Plan has now been prepared by GHD (dated June 2017). This report expands on the findings of the 2015 Social Impact assessment which was prepared in relation to the previous Concept Proposal.

The Strategic Plan recommends a number of key programs, including a Stakeholder Engagement Program, which are summarised below:

Design and Planning

- *Develop a Public Art Plan for implementation during construction;*
- *Develop a wayfinding strategy for staged implementation during construction and for the project at completion;*

- *Ensure commercial/retail spaces support accommodating a small format supermarket and childcare centre;*
- *Public domain provision of inclusive infrastructure (e.g. seating, bubblers, public toilets);*
- *Planning for public domain areas to prioritise inclusive public uses over alfresco dining;*
- *Ensure NBN accessibility for all public and private spaces.*

Consultation

- *Consult with NSW Department of Education to ensure adequate public school capacity with the growing city population (responsibility of Council);*
- *Consult with emergency services with regard to access and capacity (responsibility of Council);*
- *Consult with Transport for NSW with regard to the adequacy/suitability of existing public transport services for the new development.*

Project Implementation

As a staged development with substantial construction periods, implementation of some actions recommended in this SSP should commence with construction. Measures to be undertaken for project implementation are retail planning and management to:

- *Keep existing shopfronts tenanted or otherwise activated during staged construction;*
- *Ensure newly developed shopfronts are tenanted without delay;*
- *See tenancing of small format supermarket;*
- *Encourage inclusion of an see opportunities for Newcastle businesses and creative industries within the new retail or commercial spaces;*
- *Ensure outdoor dining areas do not preclude public uses.*

During consideration of the 2015 Concept Proposal and during prior community consultation a number of key issues were raised including:

Adaptable Housing: A total of 23 apartments, which equates to 10% of the proposed 225 apartments will be provided as affordable housing. Of the 23 apartments, 11 (of a total 108 apartments) will be provided in Building A, nil in Building B (of a total 8 apartments), 7 in Building C (of a total 44 apartments) and 6 in Building D (of a total 57 apartments). Whilst no adaptable units are provided in Building B due to the adaptable reuse of this building, the shortfall is provided within adjacent Building C.

Supermarket: The applicant has indicated that whilst a supermarket is not proposed as part of this DA, the proposed servicing facilities would be adequate to accommodate this use if proposed by a future tenant.

Housing Type: The Stage 1 development includes a mix of 1 bedroom (30.7%), 2 bedroom (58.7%), 3 bedroom (10.2%), and 5 bedroom (0.4%) apartments distributed in an acceptable manner across the four buildings.

Affordable Housing: The 2015 Concept approval suggested that consideration be given to the inclusion of affordable housing within the various stages of the development. The SEE prepared by SJB indicates that affordable housing would potentially rely on increases in height and FSR. This is not considered to be the case as affordable housing could readily be incorporated within the buildings as proposed. However, irrespective of this, it is noted that there is currently no legislative requirement requiring the provision of such housing.

Seniors Housing: The Stage 1 development does not include designated seniors housing but the applicant has advised that the demand for seniors housing can be met through the provision of adaptable housing and Silver Level Liveable Housing rated dwellings.

viii. Safety and Crime Prevention

The 2015 Concept Approval required the submission of a formal Crime Risk Assessment for each stage of the development. Accordingly, the Stage 1 application is accompanied by a Crime Risk Assessment prepared by GHD (dated June 2017)) which considers the type and magnitude of crime likely to be committed and appropriate CPTED strategies for the project.

The overall Crime Risk rating for the project is classed as moderate. The report provides recommendations in relation to lighting and access control which will be implemented in the detailed design of the development, prior to CC stage. The recommendations made with respect to lighting relate to the type of illumination in the carpark and its entrance; lighting adjacent to fire exits; minimisation of light projection to residences; recommended lux levels; the use of vandal resistant lighting; and lighting of signage.

The site opportunity assessment was considered to be 'good' by GHD provided the recommendations of the report with respect to access control are adopted. The key recommendations include:

- *Building A- Level 7 and Building C- Levels 2 and 3:* The courtyards on these levels may act as vantage point for intruders to gain access to other levels of the building. Doors should be electronically access controlled and a video intercom system provided.
- *Lobby/car park and lift access:* At the pedestrian entry and egress points for Building A, B C, and D from both the street level and basement car park provide electronic access control; video intercom system and Close Circuit Television (CCTV) surveillance (recorded to a dedicated digital video recorder).
- *Victoria Way:* Provide adequate lighting of the area, 24 x 7 recorded CCTV surveillance of the area and advisory signage.
- *Access way between Building A and the Telstra building:* GHD considers that this area is too narrow to allow for safe public access particularly at night and recommend that this access way be fenced off to prevent public access. Adequate lighting in CCTV coverage is also recommended to prevent anti-social behaviour and potential crime at this location.
- *Vehicular entry/exit to carpark:* Should be controlled via the use of an aluminium sectional door, with electronic access and possibly a steel roller shutter door for additional strength.
- *Loading dock/car park bridge adjacent pedestrian zone:* Secure with a commercial steel roller shutter door.
- *Proposed bridge to the car park and loading dock:* The area beneath the bridge should be enclosed to prevent pedestrian access and a staircase and associated signage be provided to direct pedestrians back up to the footpath on King Street. Provide adequate lighting and CCTV coverage to the public footpath areas immediately to the east and west of the bridge.

The recommendations of this report will be included as conditions of consent, if approved.

The Police and Licensed Premises Reference Group also noted in its submission that some of the retail will have a food and beverage focus and requested that a 7pm closing be required for the commercial elements of the projects. It is considered that this is a matter which is more appropriately addressed at the licensing/application stage for future use and fitout, although it is recognised that food or drink premises with less than 50 seats may be considered as complying development ('first use of premises' provision of SEPP).

ix. Traffic, Parking & Access

Traffic Impacts, vehicle access locations and parking arrangements were key matters considered during the previous Newcastle East Concept Development Application (approved) and for the concurrent revised Concept DA-2017/00701. Generous concessions were granted with respect to on-site parking for retail staff parking and visitors on the basis of the city centre location, proximity to transport and existing Council-owned carpark located at King Street. The same approach has been taken and assessed for the current revised Concept DA-2017/701 (refer separate report for detail and associated conditions) and for this application for Stage 1 (Block 1).

The key features of the parking, access and servicing are listed below:

- Car Parking: 273 parking spaces over two basement levels, comprising 198 resident spaces, 45 residential visitor spaces, 30 retail spaces (staff).
- Bicycle Parking: 268 spaces
- Motorcycle spaces: 17 spaces
- Loading/Servicing: A dedicated loading bay is located within the south eastern corner of the ground floor of Building A and is accessed from King Street. The loading area has been designed to allow a maximum of two (2) services vehicles to occupy the area at one time. A turntable has been provided to ensure larger vehicles can enter and exit the site in a forward direction. It is understood that the maximum size service vehicle that will require access to the loading bay is Council's waste truck and other service vehicles up to approximately 10m to 11m long.
- Vehicular Access: Vehicle access to the car parking and loading area is provided via two separate driveways from King Street. These driveways will bridge over the existing sandstone wall on King Street and lower footpath level. It is proposed that the area under the ramp will be sealed off to prevent pedestrian access. A stairway is provided to direct pedestrians back up to the footpath and the street level.

The application is accompanied by a Transport Impact Assessment (which also was submitted with the Concept DA-2017/00700) prepared by GTA Consultants (dated 13 June 2017). In response to requested additional information, GTA Consultants provided additional correspondence (dated 15 November 2017) addressing driveway design, service dock crossing and security access, and curved ramp compliance. In summary, the TIA concludes (p21):

- The proposed Stage 1 DA generates a DCP 2012 maximum parking requirement of 303 spaces, including 246 residential space and 57 retail spaces.*
- The proposed supply of 243 spaces for the residential uses generally meets the maximum DCP 2012 requirement, with the 30 on-site retail spaces for use by staff associated with the site and other subsequent future stages.*
- Retail customer parking is to be accommodated by a combination of on-street and partially within Councils multi-deck car park which is consistent with the approved Newcastle East End Staged DA.*
- The proposed parking layout is generally consistent with the dimensional requirements as set out in the Australian/New Zealand Standard for Off Street Car Parking (AS/NZ2890.1:2004 and AS/NZ2890.6:2009). Further assessment will be completed as part of detailed design and prior to issue of a Construction Certificate.*
- The provision of bicycle facilities is to comply with the requirements of DCP 2012, with 251 residential bicycle storage cages. In addition, 17 bicycle parking racks for the retail uses is also required, evenly split between Class 2 and Class 3 facilities.*
- A loading dock is proposed along the southern boundary, with a theoretical capacity for two service vehicles. A turntable will provide for larger services vehicles up to 11m long, with no other service vehicles permitted access when the turntable is in use. All vehicles would enter and exit via King Street in a forward direction.*
- The expected site traffic generation is consistent with the total traffic generation associated with the approval Stage DA.*
- A green travel plan (GTP) is to be prepared prior to occupation.*

Council's Contract Development Officer (Engineering) assessed the development documentation which was deemed satisfactory subject to the conditions of consent. The consultant planner reviewed the on-site parking requirements and identified some discrepancies with the figures provided above (refer discussion below), however confirmed required on-site parking was met (having regard to previously-agreed concessions). The following general comments were also provided:

Vehicular access, driveway design and crossing location.

The proposal replicates the existing access conditions to the site in that a combined entry / exit driveway is provided to King Street. The proposed access to the car park is considered

suitable (subject to amendments to security boom gate on the entry drive to allow for a 2 car space queuing area, and loading dock access, now complied with). The loading dock provides a 14 metre turntable to allow delivery vehicles to enter and exit the site in a forward direction. This will restrict delivery / service vehicles to HRV's which is considered more than an appropriate design vehicle for the size and type of retail likely to occur within the development.

Traffic Generation

The submitted traffic report has not identified traffic generation and impacts based on the fact that this was considered at the Concept Approval stage. The issue of traffic impact in this area is not critical as the site is located in the CBD area, traffic congestion is acknowledged and public transport use is encouraged. A modal shift to public transport for trip making is needed in Newcastle and any strategy including traffic congestion to achieve this is supported.

Parking Demand

The on-site parking rate was recalculated by Council's Planning Consultant based on the agreed approach to parking provision and confirmed by Council's Contract Development Officer (Engineering) in the referral for the Concept DA. This being, with respect to car parking assessment and concessions, which in summary involved the following:

- All resident car spaces must be provided on site (within each associated Block/Stage);
- A large proportion is to be provided in Stage 1 to ensure ongoing parking availability;
- 25% of residential visitor parking is to be provided on-site (for the approved concept DA a condition was imposed requiring 5 spaces to be provided in each of the 6 car parks across the precinct);
- The remaining 75% of residential visitor spaces can be accommodated within the existing council carpark and timed on-street car parking (which equated to 83 spaces in the approved concept);
- All staff parking for the retail and commercial is to be provided on site. Note: the NDCP does not specify what percentage of staff parking is to be provided, and a condition was imposed on the approved Concept DA indicating that "*the Traffic and Parking Impact Assessment for each stage shall detail the number and location of spaces required satisfying the demands of commercial and retail staff.*" Council's Contract Development Officer (Engineering) has indicated in the internal referral that an assumption of 50% should apply.

An assessment of the above for the Stage 1 development, comprising four buildings identified the following on-site parking demand as required by NDCP 2012 without the accepted parking concessions:

Table 10: Car Parking Requirements by NDCP 2012	
Number and Size of Apartments and NDCP rate	No. Spaces Req'd
69 x 1 bed units @ 0.6 spaces/dwlg	41
132 x 2 bed units 0.9 spaces/dwlg	118
24 x 3 bedroom units @ 1.4 spaces/dwlg	34
Total Unit Parking Required (225 Units)	193
Residential Visitor Spaces Req'd (1 for first 3 dwlgs, + 1/5 thereafter)	45
3650m ² retail/commercial GFA (based on Stage 1 plans) (1/60m ² GFA)	61
Total Car Spaces Required	299

In applying the above previously agreed concessions (as also considered in the revised current Concept DA-2017/00701), the Stage 1 DA generates car parking spaces as indicated in Table 11 below. This demonstrates an excess of 38 on-site parking spaces utilising the accepted parking concessions.

Table 11: Council Agreed Concessional Car Parking Requirements and Provision for Stage 1 DA

Land Use	Spaces Required	Spaces Provided
Resident Parking	193	198 (+5)
Residential ON SITE Visitor Spaces (25%)	11	45 (+34)
<i>Remaining 75% to be accommodated by Council car park and on-street</i>	34	<i>Within existing Council car park</i>
Retail/Commercial spaces for staff (50%)	31	30 (-1)
<i>Remaining 50% can be accommodated by Council car park and on-street</i>	30	<i>Within existing Council car park</i>
Total On-site Car Spaces Required	235	273 (+38)
Total Off-site (Council Car Park)	64	

In conclusion, the number of on-site car parking spaces meets (and exceeds) the previously agreed concessions (as also considered in the revised current Concept DA-2017/00701), and a condition will be imposed requiring the minimum ratio/allocation to be provided for each land use within Block 1.

x. Acoustic Impacts

Council's Environment Protection Officer reviewed the application and provided the following comments with respect to noise impacts.

"A theoretical acoustic assessment was carried out by Acoustic Logic dated April 2017 to support the proposed development. The noise assessment calculated the project specific noise goals for the site based on unattended monitoring at the subject site. The dominant noise source in the area was road traffic. The Acoustic Assessment demonstrated that provided the glazing recommendations as set out in Section 4.3 are applied, compliance with internal noise level requirements from the NSW Department of Planning SEPP Infrastructure 2007 and AS 2107:2000 will be achieved. This will be addressed by an appropriate condition of consent.

The Acoustic Assessment identifies in Section 5.3 that the mechanical plant associated with the development has not been selected and thus no external noise emissions have been assessed. 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.

The RSU has reviewed the Construction and Vibration Management Plan (CVMP) prepared by Acoustic Logic dated April 2017 addressing noise generating activities during the demolition and construction of the proposed development. The CVMP has identified that rock breaking and piling activities will occur at the subject site. The RSU notes that bored piling will be used for the majority of onsite activities as this method results in lower noise and vibration impacts. It also noted that sheet piling may also be used on site, as this type of piling has the potential to produce adverse impacts; the acoustic consultant has identified mitigation measures such as the use of hoarding to provide acoustic attenuation to surrounding receivers."

Council's Environment Protection Officer deemed the proposal acceptable subject to application of recommended conditions.

xi. Construction Management

A Construction Management Plan was prepared by Caverstock Group in October 2015 as part of the Concept Proposal documentation which confirmed that:

- "The general intent is for construction work to commence at the western end of the site (bounded by Perkins Street) and work progressively to the east (bounded by Newcomen Street", however the report notes that "the final staging will be a function of market uptake".
- Demolition works will be carried out on a stage by stage basis.
- "Mines remediation works will occur on a stage - by-stage basis, however it may be commercially and logistically viable to carry out remediation works for multiple stages at the same time."
- Construction of all stages is estimated to take 5-10 years.

Many of the submissions received from members of the community at that time raised concern regarding potential construction impacts, particularly given the extended timeframe between commencement and completion. Similar concerns have been raised during the exhibition of the Stage 1 application, as summarised in Section 4 of this report. The concerns raised by residents and businesses are again acknowledged and are considered to be valid given the scale of the development, the extended timeframe during which construction works will be underway and the high density confined setting in which the development is to occur. In response to the issues raised a number of conditions were attached to Development Consent 2015/10182 (which are also recommended to be imposed in the concurrent revised concept Development Application DA-2017/00701) requiring the submission of the following):

- *Condition 38: A **Construction Parking Management Plan (CPMP)** addressing the parking of construction vehicles and the transportation of construction personnel to the site. The CTMP is required to detail a common location for the parking of construction vehicles outside of the Newcastle CBD area and utilise shuttle buses and for the transportation of construction personnel and their equipment to the site. The CTMP for each stage is required to be submitted to Council for approval prior to commencement of site works for each respective stage of development.*
- *Condition 39: A detailed **Construction Management Plan (CMP)** which addresses how disruption to surrounding areas will be mitigated; location of material storage and temporary storage sheds; details of site fencing/hoarding, excavation and shoring; and measures to minimise potential odour associated with the operation of machinery or other potential odour sources. The CMP is required to be submitted in conjunction with the development application for each stage.*
- *Condition 40: A **Traffic Management Plan (TMP)** which is to include details of site personnel parking, including consideration of public transport options to minimise on street parking; Location of construction zones and delivery access; traffic control measures; and construction hours, including hours for deliveries. The TMP is to form part of the CMP which is required to be submitted in conjunction with the development application for each stage.*
- *Condition 41: A **Noise and Vibration Management Program** prepared by a suitably qualified acoustical consultant which details potential construction noise and vibration impacts; measures for minimising the impact of the construction phase on the amenity of the neighbourhood; and measures to mitigate dust impacts arising from demolition and construction activities. The Noise and Vibration Management Plan is to be prepared by a qualified acoustical consultant and is to form part of the CMP which is required to be submitted in conjunction with the development application for each stage.*

In applying such conditions the issue of greatest concern was considered to be the impact of on-street parking by construction workers which will significantly diminish the availability of parking for residents and businesses. Further, there will clearly be a greater impact on residents in King Street due to the increased volume of construction traffic on this road and the need to maintain access to the Mall and businesses in Hunter Street.

The Stage1 application is accompanied by the following documents in response to such conditions:

- A Construction Management Plan (prepared by Parkview dated 8.6.17) which provides information regarding construction operations, materials handling, hoardings, lanes, loading zones and the like.
- A Construction and Noise Vibration Management Plan prepared by Acoustic Logic (dated 24.4.17).
- A Stage 1 Overview Construction Traffic Management Plan (prepared by GTA dated 29.5.17) which details work hours; site access and work zones; heavy vehicle access routes; pedestrian and cyclist access;

With respect to construction staff parking this document indicates that *"no on site parking will be provided for construction workers and that workers would be encouraged to use public transport and will be instructed to park outside of the CBD. Up to 6 parallel parking spaces will be temporarily removed in Wolfe Street and up to 16 angled spaces will be temporarily removed in Perkins Street."*

With respect to heavy vehicle traffic movements the report indicates that *"construction vehicles will generally include rigid vehicles of up to 12.5m, 17.5m truck and dog combinations and 19m articulated vehicles, with up to 40-50 truck per day (or 5 trucks per hour)"*.

Council's Contract Development Officer (Engineering) provided the following comments with respect to this Overview Construction Traffic Management Plan:

"The issue of construction employee parking has not been satisfactorily addressed in the Construction Traffic Management Plan. Council currently has issues with construction employee parking utilising valuable long term CBD parking areas and thus reducing availability for the existing business employees in the area. It is considered unrealistic to expect any significant public transport use by employees unless financial incentives are provided. Therefore the construction traffic management plan needs to identify a suitable nearby satellite parking area that is not currently utilised by CBD parking and arrangements made to shuttle the employees in and out of the site if the site is not within walking distance".

A request for further information was forwarded to the applicant, resulting in supplementary correspondence being provided by GTA. This correspondence confirms the following:

"The preliminary CTMP has been updated, outlining that a satellite car park will be established by the appointed head contractor, in consultation with Council, while also giving appropriate consideration to any other relevant concurrent Newcastle CBD construction projects at the time. Shuttle bus services are proposed to be provided for transport construction workers between the satellite car park and the East End Stage 1 construction site."

Possible locations identified for the satellite car park include:

- McDonald Jones Stadium, Broadmeadow: approximately 6km to the west
- Newcastle Racecourse, Broadmeadow: approximately 4.5km to the west.

Consideration will be given to the potential impacts of any events held at these locations that may impact the availability throughout the construction period."

With respect to the **CPMP** (condition 38) It is clear that further detailed information will be required regarding the use of the satellite carparking area, confirming that an agreement has been entered into regarding the use of the satellite area and detailing the use of shuttle buses, prior to the commencement of any site works as required by Condition 38 of DA2015/10182. On this basis it is considered that sufficient information has been submitted at this time to satisfy the consent authority that an acceptable option is available, and can be further detailed, with respect to construction parking. It is further noted that Council's Traffic Engineer reviewed the submitted CMP and Overview CTMP and provided recommended conditions of consent on 27.11.17.

With respect to the **CMP** (condition 39) and the **CTMP** (condition 40) it is noted that both documents are 'overview' documents only with Parkview noting that detailed plans will need to be prepared (prior to the issue of the Construction Certificate) in consultation with the appointed contractor/builder. Whilst the submission of final documents in conjunction with the Stage 1 application would have provided the community with a greater understanding of potential construction impacts, it is accepted that refinement of such documents will be required once a contractor is appointed and detailed design is undertaken at the Construction Certificate stage. On this basis, and having regard to the issuing of conditions by Council's Traffic Engineer, it is considered appropriate that the Stage 1 consent contain conditions requiring the submission of a final CMP, CTMP and CPMP prior to the commencement of any site works.

In response to condition 41 of DA 2015/10182 a Noise and Vibration Management Plan prepared by Acoustic Logic accompanies the Stage 1 DA.

With respect to potential noise impacts the report concludes that;

- *"There is likely to be exceedances of the construction noise criteria particularly with heavier equipment such as excavators and concrete saws and the like during the detailed excavation phases. Community consultation and scheduling conditions would be recommended to ensure that noise impacts and exposure are minimised.*
- *General construction works will have significantly lower impact on the surrounding receivers due to the quieter items of plan (concrete pumps, etc). Notwithstanding, in all circumstance noise emissions from the site should be minimised as practically possible during the construction period."*

The report provides a range of measures to reduce potential noise impacts including (but not limited to):

- *The use of vibration compactors should not be conducted within 30m of a neighbouring building.*
- *Sheet piling activities are to be managed such that the following are addressed.*
- *Vibration impacts generated from the site construction activities shall not exceed 10mm/s at any neighbouring residence.*
- *Noise impacts should be managed by scheduling of works outside of particularly sensitive activities within surrounding receiver locations*
- *Sheet piling works are not to be conducted outside the specified hours of operation.*
- *Use of concrete sawing which is preferable to using pneumatic hammers, which can last for more extended periods of time.*
- *Hammering will typically produce the loudest noise levels emanating from the site and have the highest potential for noise impacts on surrounding receivers. On this basis, it is recommended that surrounding receivers are consulted on the processes of the demolition phase (particularly rock breaking). Management process will include:*
 - *Loud activities (such as rock breaking) should be typically undertaken within hours which would be mutually agreeable.*
 - *Substituting hammering during excavation for alternative measures such as milling or ripping where possible.*
 - *Sawing and then lifting (where practical). It should be noted that sawing will also produce high noise levels, but will be typically less in duration.*
 - *Hammering works to be scheduled to minimise impacts on surrounding sensitive receivers. It should be noted that the hoarding surrounding the site will generally provide some shielding of construction noise to the general public (ie at lower heights).*
- *Excavators may typically be used for long periods of time during the detailed excavation periods. For the most part, excavators will only be in a slight exceedance of the criteria unless in close proximity to receivers (ie up to boundaries). Were*

prolonged excavator use is necessary, excavators could be moved to another part of the site to offer the receiver closest to the excavator some respite.

- Vehicle noise will be generally low impact in this instance. Notwithstanding, trucks, trailers and concrete trucks should turn off their engines when on site to reduce impacts on adjacent land use (unless truck ignition needs to remain on during concrete pumping).*
- Concrete pumps should be located to the Northwest portion of the site away from the sensitive receiver locations where feasible.*

The report confirms that "*typically, noise from most construction activities will comply with the construction noise objectives within surrounding receiver locations. In the event of complaint, noise management techniques identified in this report should be employed to minimise the level of noise impact. This may include community consultation and scheduling of loud construction process.In order for any construction noise management programme to work effectively, continuous communication is required between all parties which may be potentially impacted upon, the building and the regulatory authority.*"

It is evident that construction impact on the community and businesses will be significant and ongoing and on this basis will need to be well managed by Council and the proponent. The concerns of the community are indeed valid and if construction impacts, particularly carparking, traffic movements and noise are not well handled, they have the potential to significantly impact on residential amenity and business viability. Whilst the complete detail of the management of construction impacts has not yet been provided, it is considered that the level of information which has been provided in conjunction with the Stage 1 application is sufficient to confirm that construction impacts can be adequately managed, and that the high level of detail which is required will, and must, be submitted prior to the commencement of any site works or the release of the Construction Certificate. This will be specified within conditions of consent, together with conditions which:

- Limit hours of construction to 7am to 6pm Monday to Friday and 8am to 1.00pm on Saturdays as per the recommendations of Acoustic Logic.
- Require the establishment of a Community Liaison Committee as an ongoing means of addressing community concerns.
- Require the undertaking of dilapidation reports of adjoining buildings to allow for monitoring of any potential impacts.

xii. Service Infrastructure

The 2015 Concept Application was approved following assessment of an 'Infrastructure Services Masterplan Report' which was prepared by Aurecon Australia Pty Ltd (dated 29 October 2015). This report assessed what existing utilities will be affected by the proposed development and outlined strategies to manage upgrade, move, protect or decommission. The report concluded that the critical utilities are essentially available to service the development, however each subsequent development application would require further liaison with service agencies to determine works required. DA 2015/10182 was therefore conditioned to require the submission of:

- Documentation from service and telecommunications providers;
- Provision of a 'kiosk' type facility, if required, in each stage;
- A gas demand and supply assessment;
- Details of any relocated services including the aerials located on top of the former David Jones building;
- A Condition Assessment of Roads and related Infrastructure and a Condition Assessment of General Street Infrastructure

The report confirms consultation which has occurred with service agencies and identifies a number of key issues:

Power Infrastructure: Chamber/indoor type substation are proposed rather than kiosks to provide an improved streetscape outcome and security. Two chamber substations are proposed on Level 1 of Building A and a preliminary application has been submitted to Ausgrid to initiate the design process. It is noted that Council has also consulted with Ausgrid who advise that a preliminary application has been submitted to initiate the design process. They advise that *"in addition to electrical infrastructure required to supply the proposed development it is anticipated that there will be significant works required to maintain supply to existing external customers."*

Telecommunications and Optical Fibre: The report confirms that a request for new incoming communications services has been submitted to NBNCo. Further, the report notes that *"The signal to and from the roof mounted aerials on the Telstra exchange building may be affected by the proposed buildings to the North, which will require further assessment during design development."* The applicant was requested to provide further information to clarify options which are available to adequately address this issue and has advised:

"Telstra has suggested the following two options:

- 1.) Reorientation of aerial bearings*
- 2.) Relocation of aerials to Stage 1 buildings.*

For Stage 1 of the development Telstra has confirmed the reorientation of the aerial bearings will be sufficient. This can be carried out at no cost to the development."

Emailed advice from Telstra to the applicant confirms that such arrangements are acceptable.

Water and Sewerage Infrastructure: Hunter Water has issued a Formal Notice of Requirements which confirm sewer and water main relocation /protection works and augmentation. A 'Review of Environmental Factors' will need to be submitted to Hunter Water prior to providing final approval to the design.

Gas Infrastructure: The report confirms that there is adequate capacity in the 210kPa gas main in Scott Street, subject to a mains extension from the main in Scott Street.

With respect to the need to address any alteration to infrastructure on the top of the former David Jones building, the applicant has advised (in additional information) that *"Iris, the owner of the site, has confirmed that they are not aware of any operational public or private utility provider infrastructure currently located on the former David Jones buildings that are currently under the control of Iris. Nor is Iris aware of any agency with any interest in this issue. In the event that during the pre-demolition planning/inspection phase, a public or private utility service piece of infrastructure is encountered, Iris will consult the relevant utility service provider and negotiate an appropriate commercial arrangement for the termination of that service and if required, relocation of that service to a location suitable for the service provider (with approval)."*

Council's Contract Development Officer (Engineering) has reviewed the Infrastructure Services Masterplan Report and considers the recommendations of this report, with respect to stormwater are satisfactory. Having regard to the outcomes of this assessment, standard conditions should be attached to the Stage 1 application, to confirm the delivery of services in consultation with service agencies.

xiii. Geotechnical Constraints

The Stage 1 development incorporates the construction of two (2) levels of basement carparking over the majority of the site (except the former David Jones building) to depths of RL-2.5 to -3.1AHD. The Stage 1 application is accompanied by a 'Summary of Potential Ground Issues' prepared by Douglas Partners which identifies potential ground related issues likely to require engineering design and management as part of the development.

This report also addresses all sites which form part of the Concept Proposal and provides an update on the Ground Issues Report which was prepared for the previous Concept application in October 2015.

This report confirms that 'Block' 1' has an estimated depth of cut of approximately 6m, although it notes that there is an existing retained cut along King Street ranging up to 5m in height, which will result in an effective cut of approximately 11m. This has increased from the depth of cut identified in the 2015 Concept Proposal, when the depth of cut for Block 1 site was anticipated to be in the order of 1m or up to approximately 5m when including the existing retained cut. The additional depth of cut is due to the inclusion of an additional level of basement parking, above the one level previously proposed, and presumably partly due to more detailed analysis of the floor levels of such parking.

Douglas Partners identified a number of potential geotechnical constraints including (but not limited to) the following:

- *Conventional hydraulic bucket/blade equipment likely to be suitable for general excavations. Possible light ripping of Unit 3 sandstone may be required in the base of some excavations.*
- *There are limited on-site reuse options for materials to be excavated and off-site disposal will be required.*
- There will be a need for remediation (likely removal) and validation of all material with contamination exceeding land-use criteria; removal and validation of USTs; possible groundwater contamination remediation; management of acid sulfate soils; validation of asbestos contamination; and preparation of a hazardous material assessment.
- *Some excavations will extend below the water table and dewatering will be required during construction.*
- *Site water is generally unsuitable for disposal to stormwater or sewer and therefore will require either treatment on site prior to disposal to stormwater or off-site disposal via tankers.*
- Workings are likely to be present in the Dudley Seam below at least the two new buildings proposed in the south east and south west corners of the site at depths of about 10m or slightly more and possibly below others, including buildings nominated for 'adaptive re-use'.

Douglas Partners provide a range of recommendations regarding excavation and fill support. The report identifies that*"for excavations near to structures and services, and for deeper excavations, anchoring is expected to be required. In some instances, such as basements which can be laterally supported by the structure the anchors can be removed, however in the case of large cuts, support from the structure may not be practical, and permanent anchors are expected to be required....Negotiations will be required with NCC and possibly the upslope property owners with respect to having long term anchors below and supporting their sites."*

The consent for the previous Concept application contained a condition (No. 67) which required that "the development application for each stage be accompanied by a detailed geotechnical investigation which identified ground constraints and identified engineering design and management strategies for building and earthworks". In response to this condition the applicant has only provided an update of the 'Summary of Potential Ground Issues' report and has also provided a 'Report on Grouting and Verification Plan' (Douglas Partners, 2017). Whilst the Grouting and Verification Plan addresses the mine subsidence issues of the site (as required by Condition 68) of the DA2015/10182 it does not address condition 67 as it does not address the detailed geotechnical issues of the site, such as excavation and method of support.

Specifically, the report to the JRPP of 28 April 2016, in relation to DA2015/10182 identified that:

"The suitability of retaining structures and potential impact on adjoining properties owners is an issue which will require detailed assessment for each stage and it is strongly recommended that Council engage an independent geotechnical consultant to review and assess the recommended outcomes of geotechnical reports for each stage of development."

A detailed geotechnical assessment, addressing the broader range of issues beyond mine subsidence has not been submitted, allowing a review by an independent geotechnical consultant. In response to a request for additional information the applicant has now submitted a 'Geotechnical Assessment' prepared by Douglas Partners dated 5.12.17) which confirms the following:

"The Northrop structural drawing nominates ground anchors are required as part of the basement works. The ground anchors nominated on the Northrop plan(s) are temporary (typically required only for the duration of the concrete structure's construction) and will be destressed prior to occupation of the development. The temporary ground anchors will be required to be installed under land controlled by the following third party landowners:

- 1. Telstra (2/336771- 114 King Street);*
- 2. Mr Hemi Mizrahi (10/749730-159 Hunter Street); and*
- 3. Newcastle City Council (Hunter, Perkins, Wolfe and King Street road reserves).*

It is understood from correspondence dated 4 December 2017 that Iris Capital have been in discussion with these neighbours regarding the proposed development and the use of use of temporary anchors to support the excavation."

Whilst this later report provides further detail regarding the anchors and their positioning, no evidence has been submitted to confirm that each of the property owners affected by the temporary anchors has granted consent to the encroachment into their property. Further, the applicant has not provided information to confirm that an alternate means of support is available should this consent not be obtained. Accordingly, it is recommended that a condition of consent be attached to any consent which is issued requiring the submission of a final geotechnical assessment prior to the undertaking of any site works, which confirms the acceptability of the final engineering design and which is accompanied either by the consent of any affected property owners or an alternate engineering solution which does not rely on either temporary or permanent anchors extending into adjacent properties. It is again recommended that Council engage a qualified geotechnical consultant to review this report. Alternatively, in the event that the JRPP is not satisfied that consent can be granted in the absence of the consent of affected property owners, the JRPP may consider the issuing a Deferred Commencement Consent.

xiv. Mine Subsidence

The 'Ground Issues Report' (Douglas Partners, June 2017) confirms that the site is underlain by three coal seams, two of which potentially include mine workings below the site. With respect to Block 1 the report confirms that *"the Dudley Seam will be about 10m or more below the cut level and has a high likelihood of containing mine workings. There are also mapped workings below this part of the site in the Borehole Seam"*. The Stage 1 application is accompanied by a 'Report on Grouting and Verification Plan' prepared by Douglas Partners in September 2017 which details grouting for both the Dudley Seam and the Borehole Seam.

Subsidence Advisory (SA) NSW issued General Terms of Approval on 13.9.17 (in addition to a subsequent letter advising certain conditions had been met by the later-submitted 'Report on Grouting and Verification Plan'), and also advised that this satisfies the approval under section 15 of the Mine Subsidence Act, 1961. The specified conditions require grouting or mine workings in the Borehole Seam and in the Dudley Seam (except under the David Jones building which is proposed for adaptive reuse). The condition also requires the undertaking of additional investigations including further borehole investigation to determine the extent of workings in the Dudley Seam, including a borehole investigation around the perimeter of the

section of the former David Jones site proposed for adaptive reuse. A final design incorporating the design methodology to be contained in an "Engineering Impact Statement" is to be submitted for acceptance by SA prior to commencement of construction.

xv. Waste Management

A Waste Management Plan prepared by Jacobs accompanies the development application for the operational phases of the development once constructed. The following summarises the key content and outcomes of the report:

- The potential waste and recycling generation streams and quantities for each building (estimated retail uses) for the operation of the development upon completion is determined.
- Indicates that no allowance has been made for green waste collection which will be by commercial contractor who will be responsible for removal and disposal.
- Outlines consultation with Newcastle Council in relation to appropriate waste generation rates.
- Outlines the proposed infrastructure to collect, store and present waste and recycling for collection based on the volumes of waste estimated to be generated (a separate/dedicated storage room to be provided for each of the four residential buildings in the upper basement level). Specification of each waste storage room is provided, including number of bins and equipment required.
- Outlines specifications for bin storage rooms and chutes (odour, floor and wall surface etc).
- Identifies bins sizes to be applied (660L mobile garbage bin (MGB) for compacted waste; 240L MGB for uncompacted garbage, and 240L MGB for uncompacted co-mingled recycling.
- Identifies collection frequency (twice weekly for garbage and weekly for recycling) which is increased from Council's normal collection frequency.
- Identifies the number of bins required for each residential building based on generation rates, selected bin capacity, volume reduction (25%) for compaction, and increased frequency.
- Provides the estimated total residential garbage bin allowance: 11,520 litres for twice weekly collection, and 14,880L recycling for weekly collection.
- Describes the separate residential bin storage area adjacent to the loading dock for collection (mechanical turntable accessed from King Street). The MGBs will be transferred to here from the four waste storage rooms on collection day by a caretaker. Assumes separate day collection for waste and recycling.
- Recommends a cardboard cage is provided next to residential bin storage rooms for oversized cardboard.
- Recommends a process for the event of bulky waste.
- Identifies total number of residential bins to be stored: 30 x 660L bins (plus 6 x 660L bins on the collection track) and 120 x 240L bins. This exceeds the estimated number required (29 x 660L and 72 x 240L) and demonstrates sufficient storage area is provided.
- Describes vehicle access requirements for waste vehicles and notes that the internal clearance heights will suit rear and side loading garbage collection vehicles, but not front end loaders.
- Estimates the retail waste and recycling generation of a total of 15,500L per day.
- Identifies the frequency of collection (garbage and recycling 7 times per week) and glass and cardboard (3 times per week) and number of bins required (13 x 660L for garbage; 5 x 660L for recycling; 4 x 360L for glass; and 3 x 400kg bale for cardboard). The bin storage room is deficient by 2 x 660L bins as indicated on the plans, however the adjacent store area could accommodate these.
- Outlines the storage and collection arrangements: Retailers to transfer waste and recycling to separate storage room on Level 1. Access to the collection area is via a lift. Waste transported by a caretaker to the loading dock for collection. The loading dock will have sufficient space for storage immediately prior to collection.

- Retail collection frequency and scheduling for the entire development (retail and will require 'ground truthing' depending on land uses, however there will be insufficient room to store all waste and recycling bins on the loading dock so there will need to be a clear schedule for the arrival and processing of waste and recycling vehicles).
- Describes the ongoing roles and responsibilities of staff and tenants in the proposed development including building manager, caretaker/waste manager/cleaners, retailers and tenants, Council (for residential waste and recycling collection), and Waste contractor (for retail waste and recycling collection).
- Notes that Council's Domestic Waste Management Service Charge will be applicable to the proposed development (however the levy will not be discounted despite no green waste service being utilised).
- Provides an overview of the equipment specification for the waste collection and containment system proposed.
- Provides a cross check of the requirements of the NDCP 2012 Section 7.08.01 Waste Management

Council's Waste and Commercial Collections Manager reviewed the document and provided comments as summarised below and deemed the proposal satisfactory. Relevant conditions can be imposed with respect to the waste management service and operation of the development.

- *"Preferred option for management of bulky goods would be to "book" a certain number of units per week, every week (based on 228 residentially rated units, at 2 collections per annum, there would be a maximum of 17.5 cubic metres of bulky goods items per week able to be presented for collection.*
- *Whilst the numbers of bins allocated (overall cubic meterage) to residential general waste and residential comingled recycling are below the residential site's overall residential rateable entitlement, I believe there has been a sensible balance met between the rateable entitlement and the NSW EPA generation rates (plus 50%), especially when it is considered there is some light compaction of much of the general waste. There has also been a 10% contingency included in the basement storage area. Further, it is acknowledged that the small amount of green waste generated from the common areas shall be managed by a contractor.*
- *The loading dock area looks to be adequately provisioned to allow satisfactory access for collection vehicles, noting that a site access licence shall need to be completed prior to on-site collections occurring.*
- *Anticipated Council collection days for the various waste streams (are provided) based on the current collection cycles and routes). It is noted that there is an overlap of residential waste and comingled recycling on a Tuesday which there may be opportunity to change the recycling collection day. Note that due to the nature of the service, a specific collection time on the nominated collection day is unable to be guaranteed.*
- *It is noted that...a separate waste management contractor shall be engaged for waste management that falls outside the rateable (domestic waste management services charge) entitlements.*

A Site Waste Management and Minimisation Plan (SWMMP) has not been submitted for the demolition and construction phase of the development (with the exception of a brief reference in the Construction Management Plan, which is inadequate). This is a requirement of NDCP 2012 Section 7.08.01 Waste Management. To address this, should the application be approved, a condition will be imposed requiring a detailed SWMMP in accordance with NDCP requirements to be submitted to Council for approval prior to issue of a Construction Certificate.

xvi. Flood and Stormwater Management

A Flooding Assessment and Stormwater Concept Plan (SMP) in addition to other supplementary documentation prepared by Northrop accompanies the development application. The SMP report concludes that *"the stormwater management design...has been*

prepared to comply with Newcastle City Council's DCP as well as industry best practice. The design philosophy is based on the principal of at source treatment, to reduce conveyance infrastructure and manage water quantity and quality aspects. Based on the above, our investigation and designs indicate the proposed development can adequately manage and address all items surrounding stormwater runoff."

Council's Senior Development Officer (Engineering) assessed the application (including additional information submitted to address certain matters, and has advised:

"Flood Management: This site is affected by flooding. Council have issued a Flood Information Certificate for the site recommending a minimum floor level of 2.6m AHD based on available flood modelling. Since then the applicant's engineers, Northrop, have established that the local catchment flooding could be higher. The applicant's engineers, Northrop, established that local catchment flooding from The Hill draining down Perkins and Wolfe Streets would be more critical based on the ground levels in Hunter Street. Northrop subsequently provided a letter addressing this issue. They have calculated a maximum local catchment flood level of 2.85m AHD and propose a minimum floor level of 3.0m AHD. It is also proposed to include measure to minimise flood damage for any possible flooding up to 3.3m AHD. This proposal is considered acceptable from a flood management perspective. .

Stormwater Management: The site drainage system proposed satisfies Council's current DCP requirements with roofwater collected in 120kL of onsite storage which is proposed to be reused for toilet flushing, landscape watering and car washing. Pollution control measures are proposed to satisfy Council's requirements. The applicant's engineers have assessed the capacity of the existing underground pipe network in the surrounding streets and identified deficiencies in the system in Perkins and Hunter Streets. A plan has been provided nominating proposed new pit and pipework designed to improve the local drainage to accommodate the 10% Annual Exceedance Probability (1 in 10 year) flows."

Following this assessment, Council's Senior Development Officer (Engineering) recommended conditional approval.

xvii. Sustainability

A Sustainability Report has been prepared by ADP Consulting Pty Ltd which identifies an ecologically sustainable design (ESD) framework within the proposal. This framework includes compliance with Section J of the Building Code of Australia (for the commercial components of the development) and for the residential component, achievement of the requirements of the water and energy targets/commitments identified on the BASIX Certificate (No. 818302M_02 issued 20 June 2017) accompanying the application in accordance with *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

The Sustainability Report outlines some key sustainability initiatives including:

- Energy efficiency: passive design; solar gain and sun shading; thermal mass; natural ventilation; demand shifting; high efficiency heating, ventilation, and air conditioning equipment; high efficiency air conditioning systems;
- High performance building envelope;
- Insulation;
- Lighting: high efficiency lighting and use of sensors;
- Renewable Energy (Photovoltaics not to be used in Stage 1 due to limited available roof area; to be considered for future stages), solar hot water systems to be provided;
- Indoor Environmental Quality: provision of natural daylighting where possible;
- Water: efficient fittings and fixtures, capture and retain water from roofs and common areas;
- Waste Management: reduction reuse and recycling targets; commercial waste plan;

- Materials: to be reviewed against sustainability criteria, minimisation of use of Volatile Organic Compounds (VOCs), formaldehyde, mould and moisture control, life cycle assessment;
- Transport: public transportation optimisation, walking;
- Embedded Energy Networks and Smart metering.

Some of the building roof areas are to be landscaped/planted as roof terrace areas for rooftop gardens. The Concept Stormwater Concept Plan (Northrop) confirms that three separate stormwater tanks with a combined storage of 120kL will be used to retain stormwater from roof areas and will be used for flushing of retail toilets, irrigation of landscaped areas and for use in the car wash bay.

Furthermore, a condition will be imposed requiring the submission of a detailed Green Travel Plan prior to the issue of the Occupation Certificate for implementation upon occupation of the development.

(c) the suitability of the site for development

The submitted pre-demolition subsurface site investigations documentation prepared by Douglas Partners concluded that no significant contaminants were detected. As the proposed development will require excavation for a basement carpark it is likely that a significant portion of materials with contaminant levels will be removed during construction. Hence the report concludes that *"the site is considered to be suitable for the proposed residential/commercial development from a contamination perspective subject to additional confirmation investigation and appropriate remediation and validation once buildings have been demolished."*

The site is also flood-affected, contains Class 4 and 5 Acid Sulfate Soils, requires dewatering during construction; and is located within a Mine Subsidence District. However as detailed in this report, these physical constraints can be appropriately addressed enabling development of the site.

The redevelopment for a mixed use development is a suitable use and is consistent with planning instruments and strategies for the precinct.

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

Section 4 of this report contains a summary of the issues raised within public submissions. A response to the concerns raised are contained throughout Sections 6 of the report, including non-compliance with height and building envelopes; inconsistent with scale, aesthetics and character of area; impacts on views and property values; traffic and parking impacts (including during construction); amenity impacts during construction; structural impacts on nearby buildings; and lack of sustainability measures.

With respect to construction impacts, it is evident that construction impact on the community and businesses will be significant and ongoing and on this basis will need to be well managed by Council and the proponent. The concerns of the community are indeed valid and this issue is detailed in the report. Should the development be approved, it is recommended that a condition be imposed requiring a high level of detail confirming that construction impacts can be adequately managed and details submitted prior to the commencement of any site works or the release of the Construction Certificate.

(e) the public interest

The proposed mixed use development comprising Stage 1 of the Concept Proposal (as amended and recommended to be approved in a separate report for a concurrent development application DA-2017/00701), if approved, will bring to reality the vision for the revitalisation of the Hunter Street Mall and East Newcastle Precinct as contained within Council's Planning Documents. The development will activate all street frontages and

provide for the planned through-block connection between Perkins and Thorn Street. Through a design excellence process, the built form will integrate existing heritage elements within the site and surrounds and will deliver the urban design outcomes contemplated by the strategy.

It is recognised that there is potential for short to medium term economic impacts on businesses and amenity impacts on residents (noise, vibration and parking during construction phase). Subject to the submission of further detailed information to clearly address mitigation strategies, on balance, it is considered that the overall economic and social benefits of this Stage 1 development are in the public interest.

7. Conclusion

The development application for the mixed use development is a significant development within the East Newcastle Precinct that will contribute to its revitalisation. The proposal allows for the delivery of the first stage of this precinct through a built form outcome which closely aligns with the scale and height of development previously approved via a Concept Plan in 2016.

The proposal has a number of benefits including: retention and adaptive reuse of the former David Jones building for ground level retail use and residential apartment above; retention of heritage facades on Hunter Street and Wolfe Street; and a mid-block pedestrian connection linking Perkins and Wolfe Streets. The design is a result of an accepted alternative design excellence process with collaboration with three architectural firms for the four buildings proposed on the site.

The proposed development is compliant with the (revised) Concept Plan submitted concurrently with the application, with the exception of the height of proposed Building C and some street wall heights and setbacks (of Building A and D as addressed in detail in this report), the design is consistent with Council's Development Standards and Controls. The assessment of the application has identified some non compliances with the Apartment Design Guide and is deficient with respect to some information, including construction impacts.

However, on balance, the development is considered to be an acceptable outcome for the site and it is recommended that the application be supported subject to conditions.

8. Recommendation

That the Joint Regional Planning Panel grant consent to 2017/00700, subject to the conditions contained in **Appendix A**.

APPENDICES

Appendix A: Contains recommended conditions of consent

Appendix B: Provides a list of current/final submitted plans and documentation.

The key plans/documents of the proposed concept development are provided at **Appendix C to D**, listed below:

Appendix C: Architectural Drawing Package for the Precinct (Block 1) (SJB Architects)

Appendix D: Clause 4.6 Report - Height of Buildings (SJB)