

JOINT REGIONAL PLANNING PANEL (Hunter & Central Coast Region)

JRPP No	2015HCC027
DA Number	DA 2015/10182
Local Government Area	Newcastle
Proposed Development	Staged Development Application for a Concept Proposal of major redevelopment of Hunter Street Mall, a mixed use development comprising retail, commercial, public spaces, residential (565 apartments), associated car parking & site works
Street Address	105, 109, 111, 121, 147, 151, 153, 163 and 169-185 Hunter Street, 22 Newcomen Street, 3 Morgan Street, 66-74, 98, 104, 108, 110 King Street, 14 Thorn Street, 58 and 31 Wolfe Street Newcastle
Applicant/Owner	UrbanGrowth NSW
Number of Submissions	Twenty-three (23)
Regional Development Criteria (Schedule 4A of the Act)	Capital Investment greater than \$20M
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Urban Renewal) 2010 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy 55 - Remediation of Land • State Environmental Planning Policy 65 – Design Quality of Residential Flat Development • State Environmental Planning Policy 71 - Coastal Protection • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • Newcastle Local Environmental Plan 2012 • Amendment to Newcastle Local Environmental Plan 2012 - Planning Proposal No. 2015_NEWCA_005_00 • 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: Complete list of the documents submitted with the application for assessment.</p> <p>Appendix C: Concept Proposals, including overall site Concept Proposal, indicative floor plans, building envelope elevations, sections, public access plan, staging plan and FSR Plan (SJB</p>

	Architects) Appendix D: Building Conservation and Retention Plan (TKD Architects) Appendix E: Building Separation Plan (SJB Architects); Appendix F: Massing Diagrams (SJB Architects) Appendix G: indicative Photomontages
Recommendation	Approval
Report by	TCG Planning on behalf of the City of Newcastle Council
Report date	19 April 2016

Executive Summary

Proposed Development

A staged development application (No. 2015/10182) has been lodged with Council, seeking consent for a Concept Proposal for the redevelopment of the combined GPT/UrbanGrowth NSW land holdings at the eastern end of the Newcastle City Centre between the Hunter Street Mall and the Christ Church Cathedral, Newcastle ('the subject site'). The Concept Proposal seeks consent for building envelopes and height, indicative land use mix and floor space allocation, however does not seek consent for any works. Separate development applications for works will be lodged for the seven (7) stages of the development.

The Concept Proposal includes:

- 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, Wolf 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.

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 not integrated development.

Consultation

The application was publicly notified (via letters to adjoining and nearby owners and occupiers) and exhibited in a newspaper notice from 16 November to 15 December 2015 (ie. 30 days) in accordance with Clauses 8.00.01 'Public Participation: Notification of Development Applications' and 8.00.04 'Public Participation: Advertised Development' of *Newcastle Development Control Plan (NDCP) 2012*. A total of 23 submissions were received. The main issues raised in the submissions were the maximum allowable building height and related inconsistencies between the height provisions of the Concept Proposal, Newcastle Local Environmental Plan 2012 (NLEP 2012) and amendments to the NLEP in 2014, which increased the allowable height. The potential impact of this increased building height on the maintenance of view corridors and the heritage qualities of the City Centre was also raised as a concern. Furthermore, objectors were also primarily concerned by the high

density residential use on the amenity of the area, especially with regards to the insufficient provision of off-street parking within the site and potential construction impacts. A petition containing approximately 475 signatures was also received which raised concern regarding the potential adverse impacts of construction on medical practice operations.

The application was also referred to 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:

- Impact on views and on the continued implementation of the Cathedral Park Masterplan.
- Heritage conservation;
- Built Form including building height and street wall heights;
- Carparking provision and construction impacts;
- Proposed land use (proportion of residential);
- Public Domain Improvements and funding.

Recommendation

That the Joint Regional Planning Panel grant consent to DA-2015/10182, subject to the conditions contained in Appendix A.

1. Background

Planning Context

In 2010 the Newcastle City Centre was identified as a potential Urban Renewal Precinct within State Environmental Planning Policy (Urban Renewal) 2010. This policy required that a study be undertaken to identify the suitability of the precinct to be developed for urban renewal purposes and to identify the appropriate land use and development controls for the precinct. In response to this requirement, the Newcastle Urban Renewal Strategy (NURS) was prepared in 2012. The implementation framework of this strategy recommended amendments to NLEP 2012 to facilitate urban renewal, together with preparation of a consolidated DCP (including Special Area controls) and amendment to the Civic Improvement Plan and Section 94A Contributions Plan to fund the strategy initiatives.

Following completion of this strategy, State Environmental Planning Policy Amendment (Newcastle City Centre) 2014 introduced changes to Newcastle Local Environmental Plan 2012. This SEPP amendment implemented changes to the B3 Commercial, B4 Mixed Use and R4 High Density Residential boundaries; amendment to zone objectives; changes to permissible uses; variation to the height of buildings; and amendment to maximum floor space ratios.

Prior to the SEPP Amendment a maximum 24m height limit applied to the subject site, with clause 7.9 of NLEP 2012 permitting a building height of up to 40m AHD, where the consent authority was satisfied that "*the development will not impede or detract from the view from the Christchurch Cathedral to the Hunter River foreshore or from the Hunter River foreshore to the Christchurch Cathedral*". The SEPP Amendment rezoned the subject site from B3 Commercial Core to B4 Mixed Use and also resulted in permitted building heights increasing to between 24m and 35m over the site, with increased permissible heights of between RL 54.5 to RL 58.9, in specified positions.

Current Planning Proposal

The increase in permissible building heights evoked concern both within the community and the Urban Design Consultative Group, primarily due to inconsistency between the adopted heights and the Newcastle Urban Renewal Strategy. Accordingly, Council resolved at its meeting of 24 November 2015 to prepare a Planning Proposal to reflect a maximum permissible building height of 24m on land bounded by Hunter, Newcomen, King and Perkins Streets and to insert clause 7.9(4) to allow a maximum building height of 40m in certain circumstances. Effectively, the Planning Proposal was intended to reinstate building heights to be as they were prior to the SEPP Amendment. Specifically, Council at its meeting of 24 November 2015 to:

- a) *Endorse the attached Planning Proposal (Attachment A), prepared in accordance with Section 55 of the Environmental Planning and Assessment Act 1979 (EP&A Act) to amend Newcastle LEP 2012 for land in Newcastle City Centre, as follows:*
 - i) *amend the height of building map for land bounded by Hunter, Newcomen, King and Perkins Streets as identified on the site map in the Planning Proposal at Attachment A, to have a maximum building height of 24m; and*
 - ii) *insert Clause 7.9(4) to allow the building height to be exceeded in certain circumstances to a maximum height of 40m AHD.*
- b) *Forward the Planning Proposal to the Minister for Planning and Environment for Gateway Determination pursuant to Section 56 of the EP&A Act.*
- c) *Receive a report back on the Planning Proposal after the public consultation period has concluded.*

At the date of preparing this report the Planning Proposal had been forwarded to the Minister for Planning and Environment for Gateway Determination pursuant to Section 56 of the

EP&A Act. The relationship of this Planning Proposal to the determination of DA 2015/10182 is discussed in the following Section 79C section of this report.

Development Applications

In response to the increased building heights which were incorporated into NLEP 2012, UrbanGrowth NSW lodged Development Application 2014/0323 to Council on 22 April 2015. This application sought approval for a staged development of the subject site and two adjacent parcels to the north of Hunter Street. Council, in correspondence dated 11 August 2014 raised a number of significant concerns with the application and, following extending negotiations (and lodgement of the current development application), DA 2014/0323 was withdrawn.

Development Application 2015/10182 was submitted to Council by UrbanGrowth NSW on 2 November 2015. The key differences between the previous proposal and the current proposal are summarised as within the Statement of Environmental Effects (SJB Planning, 2015) as follows;

- *The indicative land use mix and floor area allocation has been amended as follows:*
 - *Retail GFA reduced from 15,900m² to 4,900m²;*
 - *Commercial GFA reduced from 20,000m² to 2,700m²;*
 - *Residential GFA increased from 39,500m² to 47,800m²; and*
 - *Entertainment GFA reduced from 3,100m² to nil;*
- *Redistribution of GFA;*
- *Building heights of the original towers on King, Newcomen and Wolfe Street reduced significantly by between 14.5m and 18.9m (excluding plant);*
- *The original tower on King and Perkins Street was lodged at a height of RL 69.5. The current application results in a 29.5m reduction in that height;*
- *Car parking reduced from approximately 770 spaces to 491 spaces, and less reliance on Council car park;*
- *Servicing locations altered;*
- *Morgan and Laing Street are no longer proposed to be closed or relocated;*
- *Thorn Street bridge deleted; and*
- *Building massing altered throughout to reflect changed indicative land use mix.*

On 8 January 2016 correspondence was forwarded by Council to Urban Growth/GPT requesting further information to address issues pertaining to traffic, heritage and public/agency submissions. Information was submitted by TKD Architects on 11 March 2016 to address the heritage issues, whilst SJB Planning responded on 18 March 2016 to the matters raised in submissions. Correspondence was received from Roads and Maritime Services (RMS) on 5 April 2016 to address the traffic issue which was referenced in Council's letter of 8 January 2016.

2. Site and Locality Description

The site is located between the Hunter Street Mall and the Christ Church Cathedral, and is bounded by Perkins and Newcomen Streets, as shown in **Figure 1**. The site comprises the majority of the buildings across four (4) city blocks, between Perkins, Hunter, Newcomen and King Streets.

The site has a total area of 1.66ha. The site is approximately 280m in length east to west along Hunter Street and approximately 90m in depth along Thorn Street.

The site is highly urbanised in character, with the majority of development built boundary to boundary, with the exception of the south-east corner of the site between Morgan and Newcomen Streets.

Existing development comprises a mix of building forms, styles and ages, of varying heights. Typically, development is two (2), three (3) or four (4) storeys in scale across the majority of the site. Existing development across the site comprises 25 buildings with a gross floor area of approximately 23,500m². The 25 buildings contain some 91 tenancies, of which approximately 26 are currently vacant. The buildings have typically been used for a varied range of commercial and retail uses.

Car parking across the site is largely limited to on-street parking with the exception of the former David Jones car park, located on the corner of Perkins and King Streets, which accommodates approximately 404 vehicles. The Council's King Street above ground car park located to the south of the site also contributes to the supply of car parking accommodating 445 vehicles.

Land uses within the site include a mix of retail shops and associated parking, cafes and restaurants, medical centres, commercial offices, former theatre (Masonic Hall) and car parks.

The site is located on the southern side of Newcastle Harbour, on the steep north-facing and lower slopes below Cathedral Park. The land has a fall of approximately 21m from a high point at RL 23.47 at the south-eastern corner of Newcomen and King Streets to RL 2.73m at the north-western corner at Hunter and Perkins Streets. The Hunter Street frontage of the site falls gradually from east to west from RL 6.32 at the intersection with Newcomen to RL 2.73 at the intersection with Perkins Street. The southern boundary of the site along King Street falls from east to west from RL 23.47 at Newcomen Street to RL 4.74 at Perkins Street. Newcomen Street on the eastern boundary falls steeply from RL 23.47 at the corner of King Street to RL 2.73 at Hunter Street, whereas the western boundary along Perkins Street has a far more gradual fall of only 2m from RL 4.74 at King Street to RL 2.73 at Hunter Street.

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 Newcomen and Wolfe Streets, is Cathedral Park, the Christ Church Cathedral and the Newcastle Club. The presentation to King Street at this point is dominated by an elevated footpath, large sandstone retaining walls and steeply rising topography. The Cathedral Park and the Cathedral locations enjoy views north towards the harbour over the site.
- East - Newcomen Street forms the eastern boundary of the site and falls steeply from King Street toward the Harbour. Street trees within the road carriageway provide a leafy character to the upper part of the street. Otherwise Newcomen Street is dominated by the seven (7) and eight (8) storey multi-unit residential development on the western side of the street. The at-grade car park of the Newcastle Newspaper site is located on the east side at the corner of King Street. Between Wolfe and Perkins Streets development is a two (2), four (4) and six (6) storey scaled development, which appears to be largely residential in use. Developments east of Newcomen Street and west of Perkins Street along the northern and southern side of King Street vary in scale and form and are typically used for broad commercial uses with some mixed use development on the northern side of King Street.

Figure 1: Aerial photo showing the location of the subject site (Source: Six Maps)



3. Project Description

Development Application (No. 2015/10182) seeks consent for a Concept Proposal for the redevelopment of the combined GPT/UrbanGrowth NSW lands holdings at the eastern end of the Newcastle City Centre between the Hunter Street Mall and the Christ Church Cathedral, Newcastle. The proposal comprises a 'concept' approval, forming part of a 'staged development application' pursuant to Section 83B of the Environmental Planning and Assessment (EP&A) Act 1979. Accordingly, subsequent development applications will be lodged for approval of the seven (7) stages of the project, which must be in accordance with a development consent issued for the Concept Proposal (as required by Section 83D of the Act).

For the purposes of the Act a 'staged development application' is defined by subclause 83B(1) as:

".....a development application that sets out concept proposals for the development of a site, and for which detailed proposals for separate parts of the site are to be the subject of subsequent development applications. The application may set out detailed proposals for the first stage of development."

The application therefore comprises less detail than a standard development application, as the Concept Proposal seeks consent only for building envelopes and height, indicative land use mix and floor space allocation, but does not seek consent for any works. Separate development applications for works will be lodged for the seven (7) stages of the development.

The Concept Proposal includes:

- 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, Wolf 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.

Appendix A: Contains recommended conditions of consent

Appendix B: Provides a complete list of the documents submitted with the application for assessment.

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

Appendix C: Concept Proposals, including overall site Concept Proposal, indicative floor plans, building envelope elevations, sections, public access plan, staging plan and FSR Plan (SJB Architects)

Appendix D: Building Conservation and Retention Plan (TKD Architects)

Appendix E: Building Separation Plan (SJB Architects);

Appendix F: Massing Diagrams (SJB Architects)

Appendix G: indicative Photomontages

Staging:

The staged development application comprises seven (7) stages which are summarised in **Table 1** and which are shown in **Figure 2**. It is not intended that the stages will occur in numerical order, rather approval is sought on the basis that any stage or number of stages could proceed, subject to the approval of development applications for individual or combined stages.

Figure 2: Indicative Staging Plan (Drawing No. DA-2903, SJB Architects, Nov 15)

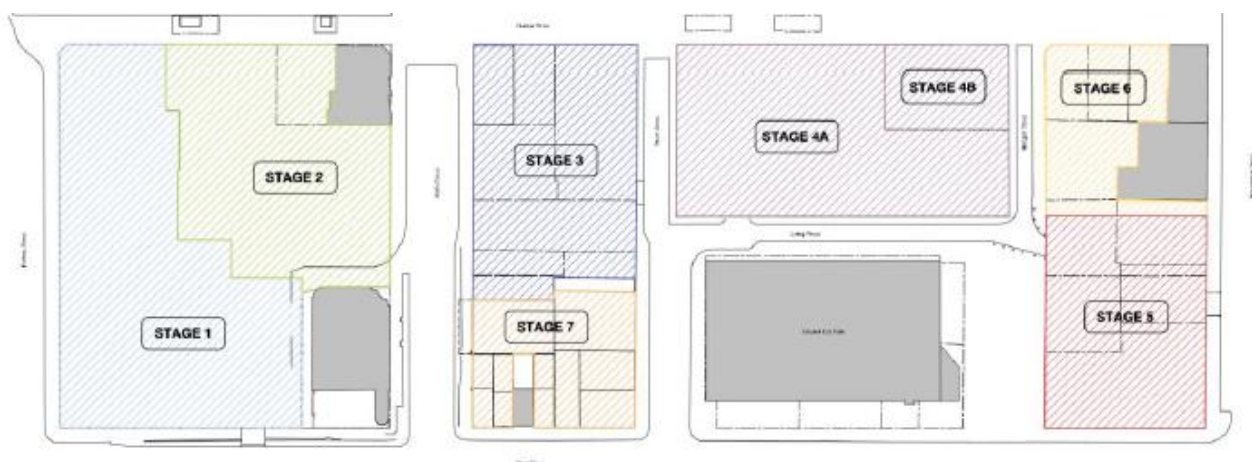


Table 1: Summary of Staging

Stage	Location	Use	Description	No. Storeys	Density
1	Hunter St/Perkins St	<p>Level 1 (Ground): Retail fronting Perkins St and Hunter St with parking/servicing adjacent to King St.</p> <p>Level 2-3: Residential fronting Perkins and Hunter Streets with parking/servicing adjacent to King St.</p> <p>Level 4 - 12 : Residential</p>	<p>Former David Jones Building - facade conservation and adaptive re-use of interiors</p> <p>Former David Jones carpark - Demolition of existing building & substantial new development.</p>	<p>5 storeys (existing building - David Jones)</p> <p>12 storeys (proposed building)</p>	3:1
2	Hunter St and Wolfe St	<p>Level 1 (Ground): Retail fronting Hunter and Wolfe Streets with parking behind.</p> <p>Level 2-3: Residential along street frontages with parking behind.</p> <p>Level 4 - 11: Residential</p>	Central/East - Facade conservation and new construction behind.	<p>10 storeys (northern building)</p> <p>11 storeys (south-eastern building)</p>	3.6:1
3	Hunter St - Between Wolfe St and Thorn St	<p>Basement: Parking/servicing under existing and proposed buildings.</p> <p>Level 1 (Ground): Retail fronting Hunter St with parking/servicing between Thorn and Wolfe Streets.</p> <p>Level 2 - 8: Residential</p>	<p>Generally demolition of existing buildings and substantial redevelopment.</p> <p>Facade conservation/new construction behind No. 151 Hunter St and investigation into adaptive reuse of interior of No. 153 Hunter St.</p>	8 storeys + basement	4:1
4	Hunter St - Between Thorn St and Morgan St	<p>Basement: Parking/servicing under new work and Market Square.</p> <p>Level 1 (Ground): Market Square and retail to all street frontages.</p> <p>Level 2-3: Residential, with commercial at corner of Morgan and Hunter St.</p> <p>Level 4 - 8: Residential</p>	<p>Creation of open space/pedestrian access and demolition of existing buildings with substantial new redevelopment.</p> <p>Facade conservation and adaptive reuse of interior of No. 121 Hunter St.</p>	<p>3 storeys (existing building)</p> <p>8 storeys + basement (new buildings)</p>	<p>Existing building 2.8:1</p> <p>New buildings 3.4:1</p>
5	King St and Newcomen St	<p>Level 2 (Basement): Parking/servicing</p> <p>Level 3-5: Residential (north) and parking/servicing (south)</p> <p>Level 6 - 10: Residential</p>	Demolition of existing buildings and substantial new redevelopment.	6-9 storeys + basement	3.9:1
6	Hunter St and Newcomen St	<p>Level 1 (Ground): Retail fronting Hunter and Morgan Streets.</p> <p>Level 2: Parking/servicing in new building and commercial within retained building fronting Hunter Street.</p> <p>Level 3 - 7: Residential</p>	<p>Generally demolition of existing buildings and substantial new redevelopment.</p> <p>Investigate potential for adaptive re-use of interiors of No.105 Hunter Street.</p>	7 storeys (proposed building)	3.5:1
7	King St - Between	Level 1-3: Generally commercial with residential in three (3)	Generally facade conservation and adaptive	3 storeys	1.7:1

Stage	Location	Use	Description	No. Storeys	Density
	Wolfe St and Thorn St	terraces fronting King St.	re-use of interiors. Demolition of two buildings fronting Hunter St and substantial new redevelopment.		

Retail and Commercial Functions

The retail floor space, which totals approximately 4,900m² GFA, is located at street level extending along the Hunter Street Mall, along a number of the north-south streets and adjacent to public spaces and pedestrian connections throughout the site. A further 2700m² of commercial space will be located at the first and second floor levels of a number of retained buildings.

Residential Accommodation

The 47,800m² of residential space contained within the Concept Proposal is intended to accommodate approximately 565 residential apartments contained within shop top housing and residential flat buildings. The existing dwellings within the King Street terraces will also be retained. The residential towers located in the western section of the site will be the tallest buildings containing 10-12 storeys, over lower level parking. Elsewhere on the site new buildings will be 6-9 storeys in height, reducing to 3-5 storeys for retained buildings, as detailed in **Table 1**. The Concept Proposal incorporates 311 x one bedroom apartments, 226 x two bedroom apartments and 28 x 3 bedroom apartments, with a range of apartment layouts.

Heritage Conservation

A Heritage Impact Assessment (HIA) of the proposal has been prepared by TKD Architects. The HIA confirms that the following buildings are proposed to be retained for adaptive reuse:

- The original north-western portion of the former David Jones' store;
- The Municipal Building (121 Hunter Street);
- The former Lyrique Theatre/Masonic Hall 98 King Street (Wolfe Street); and
- The terrace houses at 104, 108 and 110 King Street.

The following buildings are proposed for conservation of the façade and investigation into the potential for adaptive reuse:

- The former Duke of Kent Hotel, (153 Hunter Street); and
- 105 Hunter Street.

The Concept Proposal also seeks approval for the retention of the façade of the following buildings, with new vertical additions for residential use:

- The later additions to the former David Jones' store fronting Hunter Street;
- The section of the former David Jones' store fronting Wolfe Street;
- No. 163-167 Hunter Street; and
- The Soul Pattinson building (151 Hunter Street).

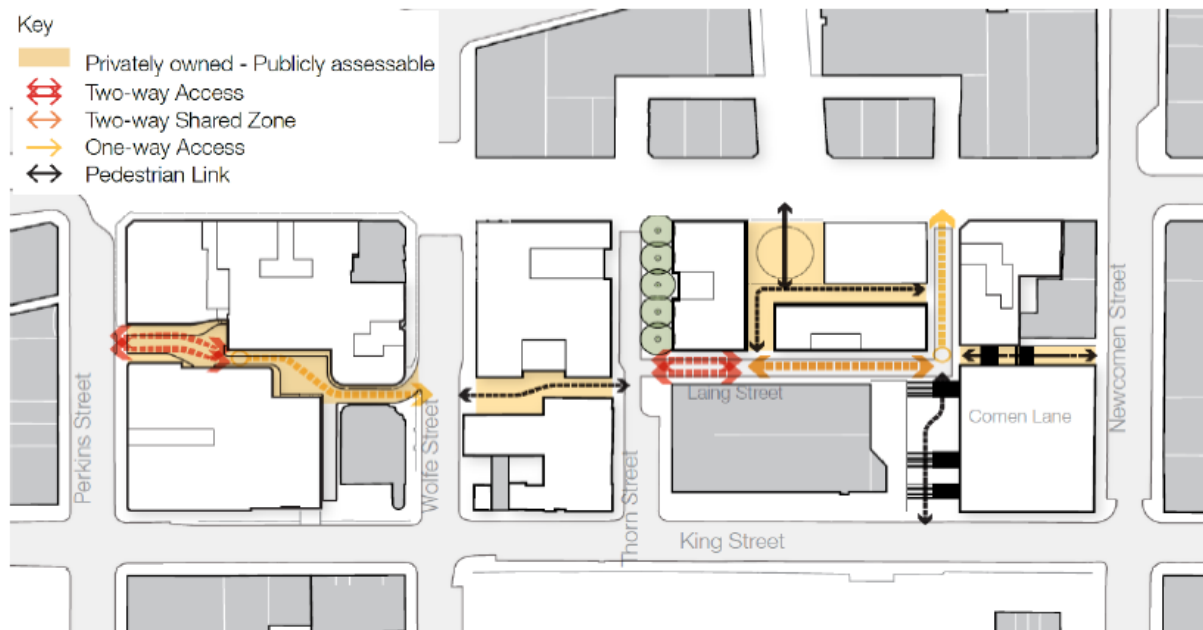
The HIA confirms that the remainder of the buildings on the site are proposed to be demolished to allow for redevelopment.

Public Domain Concept

The Concept Proposal includes an 'Indicative Public Domain Strategy' (prepared by Aspect Studios) that provides for public access across and within the site via a network of smaller squares, routes and spaces, and internal public road reserves within and immediately adjacent to the block network comprising the development site. The Concept Proposal also

includes the dedication land to allow for the creation of a new Market Square between Hunter Street and Laing Street, which will be a privately owned and publically accessible open space. The key features of the movement/circulation concept are shown in **Figure 3**.

Figure 3: Movement and Circulation Plan (Ref: SJB Architects)



Servicing and Parking

A total of 491 carparking spaces are proposed, with such parking to be located in six carparking areas, which are to be accessed from nine locations. The proposed parking areas will be sited as follows:

- **Block 1:** A 3 level carpark located in the position of the 'Wilson' carpark which will be accessed from King and/or Perkins Street.
- **Block 2:** A 3 level carpark located behind the retail frontages which will be accessed from Perkins Street. This parking, which is to be sited north of DJ Lane will be open to the laneway but is proposed to be screened with artwork.
- **Block 3:** A two level carpark sited below (at basement level) and behind the retail space which will be accessed from Wolfe and Thorn Streets.
- **Block 4:** A single level basement carpark (extending under Market Square) which will be accessed from Laing Street.
- **Block 5:** A 2 level carpark accessed from Newcomen Street, with one further lower level for servicing.
- **Block 6:** A single level carpark above the retail level to be accessed from Morgan Street.

The applicant is intending to provide commercial parking in Block 1, with this parking to be accessed via King or Perkins Street, whilst parking for the residential uses will be distributed throughout the site. The primary loading areas will be from Perkins Street (Block 1 and 2) and from Laing Street (Block 5).

4. Consultation

The application was publicly exhibited in a newspaper notice and notified to adjoining properties, with the exhibition period extending from 16 November 2015 - 15 December 2015. A total of 23 submissions were received. Submissions were primarily concerned with the maximum allowable building height and related inconsistencies between the height

provisions of the Concept Proposal, NLEP 2012 and amendments to the NLEP in 2014, which increased the allowable height. The potential impact of this increased building height on the maintenance of view corridors and the heritage qualities of the City Centre was also raised as a concern. Furthermore, objectors were also concerned by the high density residential use on the amenity of the area, especially with regards to the insufficient provision of off-street parking within the site. Specifically, objectors were concerned by the expectation that the deficit in off-street parking is to be accommodated by existing on-street parking spaces, to the detriment of existing residences, businesses and visitors. A petition containing approximately 475 signatures was also received which raised concern regarding the potential adverse impacts of construction on medical practice operations.

The key objections raised in the submissions are summarised as follows:

Height

- Height of proposed towers will be detrimental to the amenity of adjacent residential apartments in terms of privacy and overshadowing (including Segenhoe heritage building)
- Height of proposed development will interfere with sight lines to and from the Cathedral.
- Objections to lift overrun comprising additional 13th floor. No justification why it must be on roof when plant can be placed in basement of buildings.

Bulk and Scale

- Bulk and scale of development is not sympathetic with existing streetscape, particularly with regards to heritage values.
- Bulk and scale of development will cause wind tunnels.

Newcastle LEP 2012

- Seek concurrence of development with height controls of LEP 2012 (i.e. prior to 2014 amendments)
- Need legislative framework stipulating maximum heights, not just reliance on the DA for concept proposal.
- Legislative change is needed to ensure any future developers of subject site cannot go over 12 storey limit (NLEP 2012 NDCP 2012).
- Allowing this development would set a negative precedent for future applications.

Traffic

- Congestion (pedestrian and vehicular) associated with higher population density.
- Increased traffic and vehicular intersections on King and Perkins Streets will compromise access for patients and ambulance services.
- Objections to road closures, temporary or permanent, which prevent direct access to medical treatment provided by medical centres on King Street following arrival of patients in the city by ambulance, car, bus or train.
- Sustained disruption (during construction) and permanent reduced access for patients to medical services and patrons of businesses, with subsequent negative financial impact on the business.

Parking

- Insufficient off-street parking proposed to accommodate residents, visitors and persons accessing new retail and restaurant premises.
- Existing on-street parking bays and the existing Council car park are required to accommodate projected retail and commercial parking spaces. Current on-street parking is insufficient to meet demand by existing residents, businesses and visitors.
- Increased number of vehicles seeking to utilise existing on-street parking during peak times and business hours will further exacerbate existing parking issues and will be to the detriment of local businesses.

- Staged nature of development will exacerbate parking issues as apartments are completed before private car parking facilities are provided.
- When complete, proposed development will result in a reduction of off-street and on-street parking available to the general public, especially loss of public car park (Wilson Car Park) without replacement.
- Unclear whether residents will be offered subsidised on-street parking permits.
- Public transport is inadequate to relieve increased demand on existing on-street parking.
- No justification is provided for reduction of car parking requirements below level required by DCP.
- Parking issues and traffic congestion will deter visitors from the city.

Construction Phase

- Planned hours of construction unclear.
- Dust outputs during construction unclear.
- Traffic control during construction unclear.
- Questions how additional parking will be provided for workers during construction, including trucks.
- Unclear how the car parking management plan will be enforced in relation to construction parking.
- Limited information regarding traffic and pedestrian movement during the construction phases of all stages of the development.
- Construction traffic unfairly concentrated on King Street to protect the Mall from disturbance. Objections to concentration of construction activity and haulage on King Street to the detriment of businesses on King Street
- Noise and increased demand for parking during hours of construction activity coincides with business hours and will impact on local businesses.

Economic impacts

- Economic impacts not adequately addressed in the Social Impact Assessment, including short and long term impacts of the development and construction process on local businesses.
- Lack of data to support claim that the development will generate employment within the East End of Newcastle nor how existing businesses in the area could "grow and succeed economically".
- Objections to disruption caused by building work, noise, trucks, crane movement, permanent and intermittent road closures, insufficient parking etc.

Noise

- Noise associated with higher population density.
- Noise associated with construction and demolition during business hours.
- Impacts of long term exposure to construction noise.

Residential Density

- Objections to increase in gross floor area (GFA) for residential purposes at expense of commercial/entertainment facilities.
- Unclear how the significant increase in resident population within the CBD and East End will be supported by existing and future infrastructure e.g. schools, community facilities, increased transport facilities etc.

Process

- Lack of meaningful community consultation on height and rail issues.
- Critical of alleged conflicts of interest between developer and State Government resulting in poor development decisions. Objections to alleged influence of developer in approval process.

5. Referrals

Approval Authorities- Integrated Development

The staged development is not identified as 'Integrated Development' pursuant to Section 91 of the EPA Act 1979 on the following basis;

Heritage Act. Development is 'integrated' where approval is required under section 58 of the Heritage Act, 1977 for 'approval in respect of the doing or carrying out of an act matter or thing referred to in section 57(1)'. This section specifies the need for approval "when an interim heritage order or listing on the State Heritage register applies to a place, building, work, relic, moveable object, precinct or land". The subject site contains a number of buildings which are identified as heritage items within Schedule 5 of Newcastle LEP 2012 and the land is also located within the Newcastle City Centre Heritage Conservation Area. 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 Concept 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**.

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 is 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. Whilst, future stages of the development will be classed as 'integrated' development, as they will grant approval for 'works', the Concept Proposal seeks consent only for building envelopes and height, indicative land use mix and floor space allocation. Therefore, as the application will not authorise the undertaking of any building, engineering or construction work relating to the alteration or erection of buildings, the Concept Proposal does not require approval under section 15 of the Mine Subsidence Compensation Act, 1961. Development applications for future stages will require the approval of the Mine Subsidence Board, as discussed in Section 6 of this report.

Water Management Act, 2000

Development is 'integrated' where it requires approval under Section 91 of the Water Management Act, 2000. This includes the requirement for an aquifer interference approval, which will be required for future stages of the project. Specifically, as the water table ranges from 17.2AHD in the north-eastern corner of the site to 1.2AHD in the north-western corner, the excavations will be below the water table and dewatering will be required during construction. As the Concept Proposal does not seek approval for any physical works but rather seeks approval for identification of a building envelope and parameters for future stages, DA 2015/10182 is not integrated development. However, future development applications for the various stages of the project (which will seek approval for 'work') will require the obtaining of General Terms of Approval from the Department of Primary Industries (Office of Water).

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

Table 2 - Summary of External Referrals	
Agency/Reason/Date	Response
NSW Office of Environment and Heritage 27 November 2015 No Statutory approval role OEH Expertise: Aboriginal Cultural Heritage, biodiversity and floodplain management.	<p>OEH advises the application <i>“will not impact on biodiversity and floodplain management”</i>.</p> <p>With respect to Aboriginal cultural heritage, OEH notes that <i>“the application is for a Concept Proposal which will not involve physical ground disturbance”</i> and is satisfied that <i>“the impacts on cultural places, values, customs, beliefs and traditional knowledge of Aboriginals have been adequately addressed in the Statement of Environmental Effects (SEE)”</i>.</p> <p>OEH notes the above and recommends that future development applications the following approach is undertaken:</p> <ol style="list-style-type: none"> An assessment of whether Aboriginal cultural heritage values are known or are likely to occur in the area of a proposed development application should be undertaken by the suitably qualified person. Where Aboriginal objects are known or are likely to occur in the area of the development application, further investigation should be undertaken by a suitably qualified person. Consultation with Aboriginal people should be undertaken and documented. The significance of cultural heritage values for Aboriginal people who have a cultural association with the land should be documented in the planning proposal. Impacts to Aboriginal cultural heritage should be avoided. Where impacts cannot be avoided, they should be minimised and managed, and an Aboriginal Heritage Impact Permit sought for that impact to occur.
NSW Heritage Council 18 February 2016 No Statutory approval role.	<p>Built Heritage</p> <ol style="list-style-type: none"> <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> <i>Adaptive reuse of buildings instead of mere façade retention, for the more important or more intact buildings should be considered.</i> <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 strongly recommended that the reduced heights be secured by a revised LEP.</i> <p>Archaeology</p> <ol style="list-style-type: none"> A single detailed Historical Archaeological Assessment should be prepared. A detailed intra and extra site comparative analysis of the potential archaeological resource present within the development area should be prepared; Mitigation measures that consider archaeological features and deposits should be prepared in hierarchical order; 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.

Table 2 - Summary of External Referrals	
Agency/Reason/Date	Response
Roads and Maritime Services SEPP (Infrastructure) 2007 Clause 104 Referral under SEPP (Infrastructure) 2007	<p>5 April 2016: This letter replaces the RMS advice of 24 December 2014 when the RMS advised that the Transport Impact Assessment was required to include allowance to the impacts of the light rail project on the surrounding road network. RMS understands that <i>“recent traffic modelling, undertaken to consider the impacts of the Newcastle Light Rail Project and to identify any road network upgrades that will be required at key signalised intersections as a result of implementation of the light rail, has included traffic generated by known Urban Growth proposals, including the subject development”</i>.</p> <p>Accordingly, RMS has no objections to the subject concept proposal and advise of the following:</p> <ul style="list-style-type: none"> • RMS has no proposal that requires any part of the property. • All matters relating to the internal arrangements on-site are matters for council to determine. • Council should be satisfied that sight line distances promote safe vehicle movements and are in accordance with the relevant Australian Standards. • Council should ensure that appropriate traffic measures are in place during the construction phase of each stage of the development to minimise the impacts of construction vehicles on traffic efficiency and road safety within the vicinity. • Council should ensure that the applicant is aware of the potential for road traffic noise to impact on development on the site. The developer, not RMS, is responsible for providing noise attenuation measures. • If the external noise criteria cannot feasibly or reasonably be met, RMS recommends that Council apply internal noise objectives for all habitable rooms with windows that comply with the Building Code of Australia. <p>RMS also advises <i>“Council should ensure an appropriate funding mechanism is in place that requires the proponent of the development (and future developments within the Newcastle City Area) to provide an equitable monetary contribution towards future local road network upgrades and/or traffic management measures that are likely to be required as a result of the redevelopment of the Newcastle CBD and surrounds”</i>.</p>
Police - No statutory approval role	No response received
Licensed Premises Reference Group - No statutory approval role	No response received
Transgrid - No statutory approval role	No response received
Hunter Water - No statutory approval role	No response received
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 Environment Protection Officer (Planning and Regulatory), dated 7 April 2016
Contamination

- Council is satisfied that the proposed development site can be made suitable in accordance with the objectives of section 5.02 of the Newcastle Development Control Plan 2012 subject to further contamination and/remediation plans.
- The submission of further contamination investigation and/or remediation plans are to be undertaken as part of each stage of the proposed development and submitted with future applications.

Acid Sulphate Soils

- Management of acid sulphate soils will be required in any future development works and future development applications will be required to assess the presence of acid sulphate soils and submit an acid sulphate soil management plan if required.

Noise

- Detailed design of the proposed residential development is required to enable determination of potential noise impacts for both existing and future residential dwellings. Therefore, an acoustic assessment will be required to be submitted for each stage development application.
- The construction of the proposed development has the potential to generate adverse noise and vibration impacts for existing buildings. The method of construction, including construction equipment required, is currently unknown, but an assessment of construction noise and vibration impacts is to be considered as part of any future development applications.
- The future development application for each stage must provide a detailed contamination investigation in accordance with the with EPA's 'Guidelines for Consultants Reporting on Contaminated Sites'.
- If the detailed contamination investigation identified remediation works are required, then a Remedial Action Plan is to be submitted with the development application for each stage.

Development and Building Services (Planning and Regulatory) dated 8.04.2016

Traffic

- *The traffic modelling undertaken by the traffic consultant and in turn reviewed by both Council and RMS has confirmed that intersections continue to operate at acceptable levels of service with minor increases in queue lengths during peak periods.*
- *The impacts of the light rail on traffic flows and the operation of local roads and intersections is unknown at this stage and subject to detailed analysis prior to the installation of the rail project (refer to RMS advice).*

Parking

- *It is considered that the parking shortfall can be adequately catered for in Council's existing multi-level parking station and time restricted kerbside parking based on Council's commitment to change the operational focus of the car park from long term / all day parking to short term parking encouraging regular turnover.*
- *Notwithstanding Council will require the provision of a minimum of 5 dedicated visitor parking spaces within each of the 6 distinct car parks proposed under this development. This equates to 25 % (30 spaces) for visitor parking being provided on-site and the remaining visitor parking 75% (83 spaces) being catered for in Council's multi-level parking station and time restricted kerbside parking in surrounding local streets.*
- *Bicycle parking will be assessed in more detail with each respective stage of development to ensure compliance.*
- *The former David Jones car park should be operational as part of the first stage undertaken to manage car parking activity inclusive of construction vehicles.*
- *The indicative car park layouts would appear to be consistent with the dimensional requirements of AS 2890.1 - Off Street Car Parking. A more detailed assessment will be required to be undertaken with each respective stage of development to ensure compliance.*

- *The site is well serviced by public transport with a designated bus route in Hunter and Scott Streets. A Free Fare Zone currently exists across the city centre from Nobby's Beach in the east to Gordon Avenue in Wickham in the west.*

Pedestrian Network

- *Pedestrian routes are satisfactory and the removal of the heavy rail line provides future opportunity for improved at-grade pedestrian connections through to the harbour and Queens Wharf.*

Site Access

- *Vehicular access locations have been reviewed and are generally considered acceptable with good separation from road intersections. Each individual access will require further detailed assessment with each future stage of development considering access form, width and vehicular and pedestrian sight lines.*

Servicing

- *Service activity will principally occur on-site within designated loading/service areas however opportunity does exist for operators to utilise existing kerbside 'No parking' zones. The proposed designated loading/service areas have been reviewed considering location, access, configuration and operational elements and are generally considered acceptable. Each loading/service area will be further reviewed in detail with each respective stage of development for compliance with AS 2890.2 - Off-street Commercial Vehicle Facilities.*

Contract Development Officer (Engineering) dated 21.12.2015

Vehicular access, driveway design and crossing location

- *The proposed site access seem to be satisfactorily located with good separation from intersections. Construction types, widths and pedestrian and vehicular sight lines would still need to be reviewed at the further DA stage for the construction of each when detailed plans are available*

Traffic Generation

- *The modelling results have been reviewed and the findings are considered reasonable.*
- *It is difficult to make judgement on the impacts of the light rail and any assessment carried out at this stage would be very preliminary.*
- *Council would accept use of available on-street car parking and the King Street car park by visitors as well as commercial and retail customers however whether the extent of this parking actually represents the current parking deficiency needs to be established.*
- *It is recommended that each of the proposed stages/blocks as a minimum need to provide all residential tenant parking, all commercial staff parking, all retail staff parking and 25% of visitor car parking on-site.*
- *Each stage DA should be supported by a concept Green Travel Plan.*
- *A residential development of this scale would be able to support a car sharing scheme whether provided by separate supplier or by the development itself.*
- *It would appear that the servicing arrangements for Blocks 1 and 2 and Block 5 which occur on-site would be satisfactory through would need further review at DA stage for construction. Similarly as Stage 7 involves use of existing buildings then existing servicing arrangements may be ok. The servicing of Blocks 3, 4, and 6 on-street particularly in regard to waste collection is not considered desirable particularly as new buildings are proposed. Future development applications should ensure waste collection from these stages is provided on-site.*

Other

- *The proposed changes to traffic circulation in Laing Street and Morgan Street as well as the proposed shareways within these streets seem reasonable however will require in principle support from Council's Traffic Committee.*
- *The public domain plans are believed to be separate from the DA and will need to include all proposed footpath works and reconstruction. It is highly unlikely the cost of such works would be covered by S94A contribution from the development as stated in the report.*

- Operation of the King St carpark *"would be a matter for Council's operating co-ordinator in charge of the parking stations to consider and would be separate to this or any future development application for the development"*.
- *Discussions with Council's Traffic Section identified the need for improvements to the Scott Street/Hunter Street Intersection at Brown Street due to difficulties with drivers on the eastern section of Hunter Street merging with traffic on Scott Street heading west due to the sharp angle these roads intersect with each other. The intersection needs to be upgraded to increase this angle of intersection to as close to 90 degrees as possible.*

Flood Management

- *The minimum floor level for the ground level of the development should be RL 2.6 metres AHD. Similarly vehicular access to any basement parking areas should also be at or above RL 2.6m AHD. A basic flood assessment should be included with each future building stage DA for the proposal.*

Stormwater Management

- *The proposed treatment of stormwater is deemed satisfactory for the development.*
- *The preliminary modelling carried out on Council's existing drainage infrastructure indicates that some upgrading of this system may be required. Each DA for construction of the buildings/stages will need to be supported by a stormwater management plan for the stage and should include stormwater harvesting for re-use within the development.*

Heritage Strategist (Planning and Regulatory), dated 25.02.2016

Negative impact on Cathedral Park Revitalisation Project:

- *Objects to the proposed building envelopes and resultant view loss from the Cathedral Park to the harbour mouth, Nobbys and Stockton. There is conflict between the proposed building heights of the staged Concept Proposal and the viewing points of the adopted Cathedral Park Master Plan, which Council, State and Federal governments have invested a combined \$1.2 million to date. Stages 1 and 2 are complete and Stage 3 is budgeted for and a design is in train. A key objective of the Master Plan is removal of trees to reinstate sight lines to the north-east and north-west, which will be impacted. The proponent has not demonstrated by way of view analysis that there will be appropriate view sharing to allow continued implementation of the Cathedral Park Master Plan.*

Aboriginal and Non-Aboriginal Archaeology:

- *The construction management plan should address an archaeological program for each stage and consider staging of archaeological approval processes and investigations, required Aboriginal consultation and potential redesign to enable conservation of state significant archaeology in situ.*

General:

- *The outcomes for the majority of items that contribute to the visual character of the City Centre will be demolished and the outcome will be significant loss of heritage significance and built fabric in the city centre. The degree of demolition proposed is lazy design and unsympathetic. The idea of retaining front building facades is unacceptable and will not produce the sympathetic outcomes for the city centre that were promised in the original DA.*
- *As a general comment, facadism is not supported by the Burra Charter principles and it is disappointing that it is being proposed in this DA as a strategy to retain heritage significance. Demolishing buildings to retain only a front wall will completely destroy the integrity of those buildings. Interiors of the David Jones Wolf Street annex, the Wolf Street Annex itself, the agglomeration of the David Jones site, the former Duke of Kent Hotel and the Municipal buildings all have their own values and significance for which a conservation approach should be taken. To argue that on the basis of out-dated services the buildings are not suitable for "repurposing" (page 59) is not substantiated and cannot be supported.*
- *All future development applications should be informed by a conservation management plan and heritage impact assessment that seeks to retain interiors.*

- There is also concern with non-compliance with the adopted street wall heights for new buildings in the city centre in the Newcastle LEP and DCP. The DA should be redesigned to ensure the development complies to retain the valued human scale of the city centre previously identified in the Newcastle Urban Renewal Strategy and other planning documents.

Team Coordinator Strategic Planning (Planning and Regulatory), dated 12.02.2016

- The number of residential units is essentially establishing a new residential precinct without the support of local services, such as a supermarket. It also proposes that areas be closed in the evening thereby not contributing to a vibrant night time economy.
- The change in zone from B3 to B4 zone over the former Hunter Street Mall was to reflect a desired future character as a retail, entertainment, leisure and residential precinct in the NURS. The current Concept Proposal does not provide this mix.
- The Concept Proposal is seeking approval to vary DCP controls. This should only be considered in conjunction with a DA, where the merits of the request can be properly considered.
- The lack of staging detail under the SEE does not clearly identify how each stage would be an acceptable outcome in its own right, particularly if subsequent stages take some time or do not proceed at all. This may further compromise land use mix, if the commercial components are delayed.

Seniors Community Planner (Planning and Regulatory), dated 12.02.2016

Access and Mobility:

- A key negative impact is the significant impact on access and amenity for the existing Newcastle Elderly Citizens Centre over the 5 - 10 year period of construction and it is questioned whether the current services would be better relocated.

Accommodation:

- The inclusion of 10% of housing as adaptable, together with affordable housing and seniors housing is supported.

Community Facility:

- The adaptive reuse of the Masonic Hall for community uses however the proposed refurbishment is Stage 7 (final stage). Access to the hall and sunlight is constrained and it is potentially not suitable as a community facility. A proposal to develop a contemporary arts centre has challenges.

Public Spaces:

- The development of a strategy for social inclusion and connectivity be undertaken by the developer. The underlying principles of the 'Newcastle After Dark: Safe and Vibrant Night Time Economy' strategy which is due to go on exhibition later in 2016 will apply to the development.

Local School:

- The full range of issues relating to the impact of the proposed development and increase in residential population on local schools are yet to transpire.

Health:

- The addition of over 1,100 residents is anticipated to increase pressure on existing GP practices. No mitigation measures have been proposed.

Employment and local economic profile:

- The potentially negative impacts on the viability of existing businesses adjacent to the development are noted. The development and implementation of an ongoing consultation and communication strategy remains the responsibility of the Developer.

Crime and Public Safety

- All future development plans in this location must be submitted to NSW Police for safer by design assessment.

Public Domain:

- The development is in the Newcastle East Heritage Conservation Area. Detailed design must accord with the City centre Public Domain Technical Manual.

Senior Urban Planner – Strategic Planning - Planning and Regulatory, dated 13.01.2016

No objections to what is being proposed with regard to S94A Contributions and Planning Agreements.

Strategic Recreation Planner (Facilities and Recreation: Infrastructure), dated 17.02.2016

Parkland and Recreation:

- The Social Impact Assessment (SIA) does not adequately address the issues of access to and provision of recreation facilities and to provide any mitigation strategies for potential issues/impacts.

Proposed infrastructure:

- Market Square - is extremely small and this space may become an overflow for adjacent food outlets rather than a public square.
- Morgan Street Steps – concern with practicality and safety of staging events at the foot of the stairs.
- Masonic Court – the provision of this pocket park will be of value to the development.

Conclusion:

- The Concept Proposal proposes the development of a very small pocket park in addition to a number of publically accessible urban spaces. These spaces are designed to support and complement the retail experience and very little recreation values can be attributed to these spaces. As a result, existing parkland, sport and recreation infrastructure will be expected to meet the recreational needs of the incoming residential and business community.
- Whilst a number of the existing nearby parks are considered to have sufficient capacity to accommodate this increased demand, there will be a need to upgrade a number of existing spaces and provide additional infrastructure within these parks to service the additional community. Similarly there will be a need to upgrade and/or expand existing sport and recreation infrastructure located within sportsgrounds etc. to adequately meet the increased demand.
- There is a clear nexus to the levying of contributions to upgrade existing and provide new parkland infrastructure within the catchment to service the incoming community.
- Given the scale of the proposed development, the preparation of a specific strategic recreational improvement plan is recommended.

Urban Design Consultative Group

The Concept Proposal was referred to the Urban Design Consultative Group (UDCG) on 18 November 2015. The Group was supportive of the proposal, particularly with regards to changes in the bulk and scale of the development; the significant reduction in height of the proposal under consideration in the subject application, has been successful in mitigating the great majority of the adverse impacts identified by the Group in 2014. Specifically, the UDCC note “.....critically, the maximum heights of the three taller tower elements of the previous scheme have been reduced in height very substantially, as compared with the heights permissible under the LEP. A corresponding reduction to a range of identified adverse impacts arising from the scale of the previous proposal has resulted. The UDCC considered it “to be a very significant step forward from the earlier iteration”.

The following comments were provided:

Built Form and Scale:

- “The significant reduction in height of the proposal.....has been successful in mitigating the vast majority of the adverse impacts identified by the Group in 2014. While the scale of the proposal is moderately greater than what might have been considered ideal in the context, say, of considering new planning controls for the area, it none the less represents a substantial and well targeted decrease in the height from what was permissible under the LEP, which largely address the range of concerns expressed

previously by the Group. Further, the detailed planning at the ground plane and reduction of footprint from previous proposals and of 1960s fabric, give good potential or lively interesting streets and laneways".

- The concerns of the Group with respect to building bulk and separation have been largely addressed following tabling of design development.
- With regards to residential building Block 5, while the tabled design addressed issues arising from the internal central courtyard with respect to privacy and amenity, it was suggested that *"a vertical opening in the building's northern facade, similar to that proposed on the King Street facade, would further assist in reducing the building's apparent bulk and would also provide better cross ventilation to the central courtyard"*.

Density

- The proposed densities for each of the six stages is generally acceptable.

Sustainability

- Provisions for PV solar generation, roof gardens, rainwater capture and utilisation and other measures for reducing environmental footprint are strongly encouraged in the development of the future site specific DA designs.
- The Group notes that the proposed number of car parks is below what would be required by the controls. However, *"given the amenity of the locality with its nearby facilities and with future potential for good public transport access, the shortfall was not considered unacceptable"*. The Group noted that *"with a number of inner city developments gaining approval with reduced dedicated car parking, the future need for good quality, regular and frequent public transport will inevitably increase"*. Additionally, *"provision must be made within the overall development, for cyclists, including secure bicycle storage, and end of trip facilities such as showers, change rooms and lockers"*. The Group suggests that that Council and the applicant might consider suitable locations for dedicated on-street parking for shared vehicles, given the *"growing popularity of car share schemes"*.

Landscape

- The coordination of landscaping with Council at the staged DA phase will be an important element in achieving a good urban outcome.
- The provision for appropriate street tree planting is identified as *"clearly of prime importance"*.

Amenity

- Where separation distances between blocks and individual apartments are numerically less than the separation distances identified in the Apartment Design Guidelines, *"strategies have been applied that give good potential for minimizing any adverse impacts"*. The Group states that *"it will be important in the design development of individual stages, that the level of consideration of amenity issues, and the design response, remain as sophisticated and well considered as are broadly suggested in the current staged DA"*. It is noted that each subsequent DA will need to be assessed on a performance basis, and particularly where separation distances are short of the ADG recommendations.

Safety

- With regards to safety, consideration will need to be given to each successive stage, and to how safety can best be optimised while some sites remain undeveloped.

Housing Diversity and Social Interaction

- *There is a predominance of one and two bedroom apartments with relatively few three bedroom dwellings proposed. While this may reflect the identified current market demand, planning and building structure should retain some flexibility to introduce some additional three bedroom dwellings if the need arises as demographics change over time.*
- It is suggested that *roof gardens and further communal spaces (both enclosed and open) be incorporated at each DA stage.*
- *The subject application represents a substantial reduction in the area of both proposed retail and commercial space, which in part reflects market demand. However, it is vital to the success of the revitalisation, that those retail and commercial spaces that are provided are designed to optimise their usability and adaptability. Access to loading and*

storage, recycling and waste management, staff toilets and back of house space are important to making retail and commercial spaces more viable.

- The problem of ground level retail remaining unused for protracted periods of time should be squarely addressed in the tender/contract specifications for the sale of each stage. *"Developers should be aware at the time of tendering for a lot that there is an obligation to ensure that all tenancies are filled within a nominated (relatively) short time frame".*

Aesthetics

- There is "good potential" to achieve a quality aesthetic outcome if detail on how each block may be articulated is maintained through each DA stage.
- An opportunity exists to positively reinforce the "brand" of the East End through a consistent approach to signage that provides thematic consistency and high quality design. *"Locations for signage should be detailed as part of the building DA for each stage, and should reflect an overall consistent graphic design approach."*

Generally, it was considered that *"the proposed integration of the existing heritage fabric, and the proposed retention of selected buildings and building facades, in conjunction with setbacks for taller elements to retain a more human scale, were likely to be successful in retaining the unique heritage character of the area."* However the Group noted that *"a skilled level of design capability is needed in concert with well considered conditions of tender for each release..... "While the broadly outlined design strategies for mitigating adverse amenity considerations have clear potential for achieving good outcomes, each individual stage should be assessed in this respect – especially where this staged DA proposes reduced separation distances between dwellings"*.

The Group recommends that: *"if the proposal is approved, adjustments be made by Council to the current LEP to ensure that any future changes to the subject sites over time, are also informed by the comprehensive analysis and planning approach that has lead to the subject plan"*.

6. Section 79C Considerations

(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 Preliminary Budget Review prepared by Rider Levett Bucknall in October 2015 which estimates the total project costs to be \$202,500,000. 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. Clause 22 of this SEPP also requires the future stages of the proposal to be determined by the JRPP.

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 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 Concept Proposal 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. Council's Strategic Planner has raised concern regarding the limited quantity of commercial/retail development which is proposed within the current Concept Proposal and the absence of 'entertainment uses from the scheme. This issue is discussed in further detail within the following section of this report [Section 79C(1)(b)]. It is considered that the Concept Proposal 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 following Clauses of this SEPP are applicable to the development application and require the consent authority to take into consideration consultation responses and/or certain matters (refer also external referral comment in Section 5). The following indicates that the provisions of the Infrastructure SEPP are met, or can be met via appropriate conditions of development consent.

Division 17 'Roads and Traffic' Subdivision 2 (Development in or adjacent to road corridors and road reservations) of the SEPP is applicable. 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 will contain approximately 491 parking spaces and will exceed the referral criteria of 300 parking spaces with access to any road. Therefore referral to the RMS is required and was undertaken, with the advice obtained discussed in following section of this report [Section 79C(1)(b)].

State Environmental Planning Policy 55 - Remediation of Land

A 'Report on Preliminary Site Investigation (Contamination)' was prepared by Douglas Partners in October 2015 and submitted in conjunction with the Concept Proposal. This 2015 report updated previous reports for the site which were prepared in 2014 (for the previous DA) and in 2008. The report presents the findings of a Preliminary Site Investigation which identified a number of *"potentially contaminating landuses (current/former) within the site, including: former auto garages and petrol station; plumbers workshop; dryers; timber yards; blacksmiths; shipsmiths; and other activities such as use of underground fuel storage tanks and wells/cisterns/cess pits which have the potential to result in spoil/groundwater contamination"*. Douglas Partners, acknowledging limitations in historical searches and site testing due to the inability to access built areas, conclude that the principal sources of potential contamination are considered to be:

- *Hydrocarbons and heavy metals from former underground storage tanks and current above ground storage tanks;*
- *Possible fill materials (source unknown) which may contain a range of contaminants including hydrocarbons, heavy metals, pesticides, PCBs, asbestos etc.;*
- *Asbestos impact from fibro fragments observed within retaining walls, fill batters and possible presence within areas previously containing building or demolished buildings;*
- *Road pavements which may contain coal tar within the asphalt seal or a range of contaminants within underlying filling. Note. the former tram line along Hunter Street, which may have resulted in hydrocarbon, heavy metal and asbestos impact etc.;*
- *A range of potential contaminants from previous commercial landuses;*
- *Up-gradient cemetery which may contain elevated hydrocarbons, nitrates, heavy metals, formaldehyde and biological hazards. Note Block C (NCC Carpark) may also have contained graves (anecdotal information) and may therefore contain similar contaminants.*
- *...additional potential contaminant sources may be present within the site (for example - grease traps associated with premises such as hotels or food outlets, storage of oils/hydrocarbons for heating etc.).*

Douglas Partners are of the opinion that *"it is likely that a significant portion of materials with contaminant levels exceeding high density residential (HIL B/HSL B), open space / recreational landuse HIL C/HSL C and Commercial (HIL D/HSL D) landuse criteria (see Drawing 6, Appendix H) will be removed during construction"* with cuts of between 1m to 10m below current ground levels, particularly for basement car parks. However the report confirms that *"areas with elevated contaminants concentrations where deep excavation are not proposed will need to be remediated/managed through appropriate methods"*.

Douglas Partners conclude that *"based on the above, the external areas assessed in the above investigation are likely to be suitable for the proposed high density residential/commercial development, provided the following is undertaken:*

- *All materials exceeding landuse criteria are suitably remediated and validated or risk assessed to confirm suitability to remain on-site; and*
- *Appropriate remediation is conducted to address bonded asbestos fragments and asbestos impacted fill materials with reference to NEPM 2013 guidelines."*

"This would require the preparation of a remedial action plan, appropriate excavation and removal / disposal of contaminated fill and asbestos materials, followed by validation sampling and analysis in accordance with NSW EPA guidelines."

With respect to groundwater, Douglas Partners also note that *"the results of chemical analysis on groundwater identified exceedances of ANZECC 2000 criteria in all wells, and as such, treatment of extracted groundwater is likely to be required prior to discharge in the event of dewatering"*.

In conclusion Douglas Partners confirm *"the investigation conducted to date is considered to be suitable for the staged Development Application and identified the requirement for further detailed investigation for subsequent stages. It is noted that proposed development will generally comprise concrete slabs / pavements which will effectively cap the site and minimise the risk of exposure to underlying soils. The site is considered to be suitable for the proposed medium density residential / commercial development from a contamination perspective subject to detailed investigation and appropriate remediation and validation"*.

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 pertinent question in the case of the current Concept Proposal is whether the provisions of Clause 7 have been met, as a complete Phase 2 Investigation has not been conducted, and whether this further investigation can be delayed until lodgment of development applications for the various stages of the development. Council has previously sought advice from its lawyer on the application of Clause 7 during its consideration of a Concept Proposal for a different site (Shortland Waters DA 2012/419). The Lawyer's advice (26 September and 11 October 2013) which continues to have applicability for the current development application confirmed the following:

- *"it is irrelevant whether the final outcome in a general sense is certain;*
- *...the more compelling issue is that it is necessary that Council has sufficient information to assess whether development is hazardous or offensive and whether to impose conditions to reduce or minimise any adverse impact and that the Council has properly traversed the evidence/information in exercising its discretion.*
- *the SEPP 55 requirement that Council's may ask for Stage 2 information is a discretionary issues - and that that information may be critical, and necessary for the Council to make its decision. If a condition is so uncertain so as to leave open the possibility that compliance with it may alter the nature of the development for which this application was made, the application is invalid.*
- *Council must take into consideration relevant matters and council's obligation is to consider all relevant matters at the time that the DA is determined.*
- *Deferred commencement conditions where the information has not been obtained, and the outcome is not certain would render the consent invalid."*

Whilst Douglas Partners note the need for further detailed investigations, the restrictions imposed by the existence of structures on the site is acknowledged. Further, the legal advice indicates that the requirement to obtain Stage 2 information is a discretionary issue. Council's Senior Environment Protection Officer is also satisfied that the proposed development site can be made suitable in accordance with the objectives of section 5.02 of the Newcastle Development Control Plan 2012, subject to the submission of further contamination and/remediation plans. Accordingly it is considered that the Concept Proposal can be approved subject to the submission of further contamination investigation and/or remediation plans which are to be undertaken as part of each stage of the proposed development and submitted with future applications.

A number of recommendation are contained within the Preliminary Site Investigation and such recommendations should form the basis of conditions of consent if the Concept Proposal is approved. Subject to the recommendations and conditions being implemented, it is considered that the provisions of SEPP 55 are satisfied.

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

The proposal includes the development of one residential flat building (Block 5) and six buildings which are defined as shop top housing (Blocks 1, 2, 3, 4A, 4B, and 6), to which the provisions of SEPP 65 apply. As the application pertains to a Concept Proposal, the application of the SEPP is limited, however it will apply to the future detailed development applications for each of the seven applicable buildings. In order to ensure that the Concept Proposal has been prepared having regard to the principles of SEPP 65 and the Apartment

Design Guide, the application is accompanied by a 'Design and SEPP 65 Report' prepared by SJB Architects. This report contains a site and context analysis, identifies the design principles of the Concept Proposal, provides a scheme analysis 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).

Whilst detailed design plans have not yet been prepared the following provides a discussion of a number of the key Design Criteria of the Apartment Design Guide (ADG), having regard to the limited level of details provided at this stage:

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. While a level of variation may be warranted given the site's inner city location, further detail will be required to accompany future development applications to enable a thorough assessment of the appropriate level required and the level of solar access achieved. It is noted that in addition to the communal spaces provided at street level, the UDCC recommended that communal areas (both enclosed and open) in the form of roof gardens be incorporated into each development application stage.

Solar and Daylight Access: 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. Information accompanying the Concept Proposal (including the Solar Access diagrams) indicate that the required 2 hours of sunlight to 70% of the apartments is likely to be achieved, having regard to the general configuration and orientation of units and the proposed building depths. 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 the Concept Proposal shows that there will only be a limited number of southern facing apartments where no direct sunlight will be achieved between 9am and 3pm on June 21 and hence the Design Criteria is anticipated to be achievable at the detailed DA stages.

Natural 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. With respect to this criteria it is noted that many apartments have dual orientation to the street and to a central courtyard and accordingly, it is anticipated that this Design Criteria can be met. The building footprints and apartment configuration as shown in the Concept Proposal also suggest that apartment depths will also meet the recommended 18m, with detailed information to demonstrate such to be submitted at the detailed DA stage.

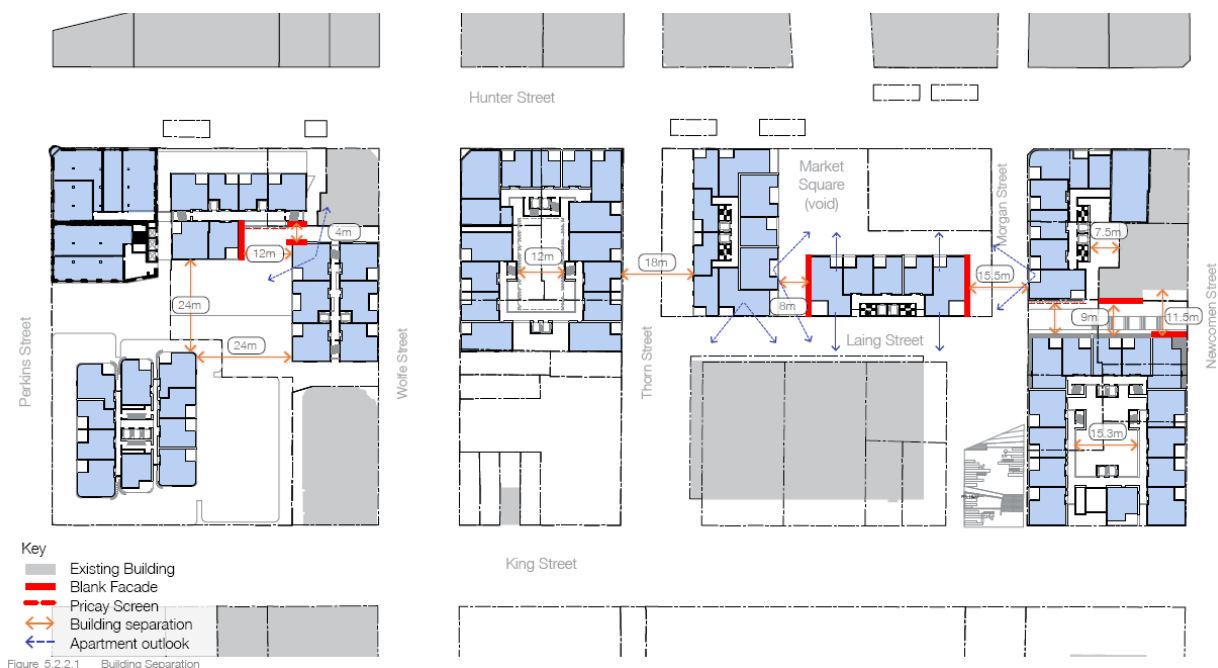
Visual Privacy: The ADG requires that for building of up to 12m (4 storeys) a minimum of 12m separation is required between habitable rooms and balconies; 18m for buildings of up to 25m (5-8 storeys); and 24m for buildings of over 25m (9+ storeys). The proponent suggests that the required minimum distances can be achieved between individual buildings or where not achieved, acoustic and visual privacy impacts can be managed with detailed building design. **Figure 4**, which has been prepared by SJB Architects shows the proposed building separation distances to side boundaries and to other buildings within the site (refer also **Appendix E**).

An analysis of the three dimensional building envelopes within the Concept Proposal indicates that there is capacity for variation to building separation in a number of instances, given the integration between stages and the ability to address this matter in a comprehensive manner. However, the importance of considering this issue in greater detail when floor plates and elevations have been prepared was identified by the Urban Design Consultative Committee which stated:

“where separation distances between blocks and individual apartments are numerically less than the separation distances identified in the Apartment Design Guidelines, strategies have been applied that give good potential for minimizing any adverse impacts. However, it will be important in the design development of individual stages that the level of consideration of amenity issues, and the design response, remain as sophisticated and well considered as are broadly suggested in the current staged DA. It is noted that each subsequent DA will need to be assessed on a performance basis, and particularly where separation distances are short of the ADG recommendations, good design development will need to continue to be demonstrated in order to achieve acceptable amenity.”

This is considered to be particularly important where new buildings are to be constructed adjacent to existing buildings which do not form part of the development site. This includes, but is not limited to, Block 5 which immediately adjoins an apartment building in Wolfe Street. Within this adjacent building there are a number of private open space areas at the upper levels (which are not indicated on the ‘Building Separation’ Plan), which will be sited adjacent to new building work. Detailed documentation will need to accompany future development applications to ensure that separation distances are met or alternatively variation is well justified having regard to the sunlight and privacy objectives of such standards, as recommended by the UDCC.

Figure 4: Building Separation Plan (Ref: SJB Architects, Fig 5.2.2.1 of Design and SEPP 65 Report)



With respect to the other design criteria of SEPP 65 which are not addressed within the above table (such as private open space, ceiling heights, apartment sizes, common circulation, apartment depth and storage etc.) it is noted that this will be assessed when detailed design plans are submitted for each stage, however no major concerns regarding the ability to generally comply have been identified within the Concept Proposal. The UDCC did however note that, with respect to Block 5, many of the issues previously raised with respect to privacy and amenity have been addressed however it was recommended that “a vertical opening in the building’s northern face, similar to that proposed on the King Street façade, would further assist in reducing the building’s apparent bulk and would provide better cross ventilation to the central courtyard”. This requirement can be addressed within a condition of consent, should the Concept Proposal be approved.

SJB Architects, who prepared the concept design, have addressed the nine design quality principles of SEPP 65. In summary, it is considered that the proposed Concept Proposal is generally consistent with the design quality principles within the SEPP, subject to the

lodgement of detailed design documentation in conjunction with the development application(s) for future stages. Specific matters arising from a review of this SEPP 65 assessment (being matters pertaining to built form/scale, density, solar access and social impact) are addressed within the following section 79C assessment.

State Environmental Planning Policy 71 - Coastal Protection

State Environmental Planning Policy No. 71 - Coastal Protection applies to the subject land which is identified on Greater Metropolitan Region Map 2 as being in the NSW coastal zone. The aims and objectives of SEPP 71 are to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast by protecting and improving existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore. Clause 8 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.

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

The Concept Proposal does not include detailed design or floorplans of residential dwellings as approval is sought only for three dimensional building envelopes and land uses. However, the provisions of this SEPP will apply to the detailed future development applications for each of the stages which incorporate residential accommodation. BASIX Certificates will be required to accompany each application to demonstrate the list of commitments proposed to achieve appropriate building sustainability.

Newcastle Local Environmental Plan 2012

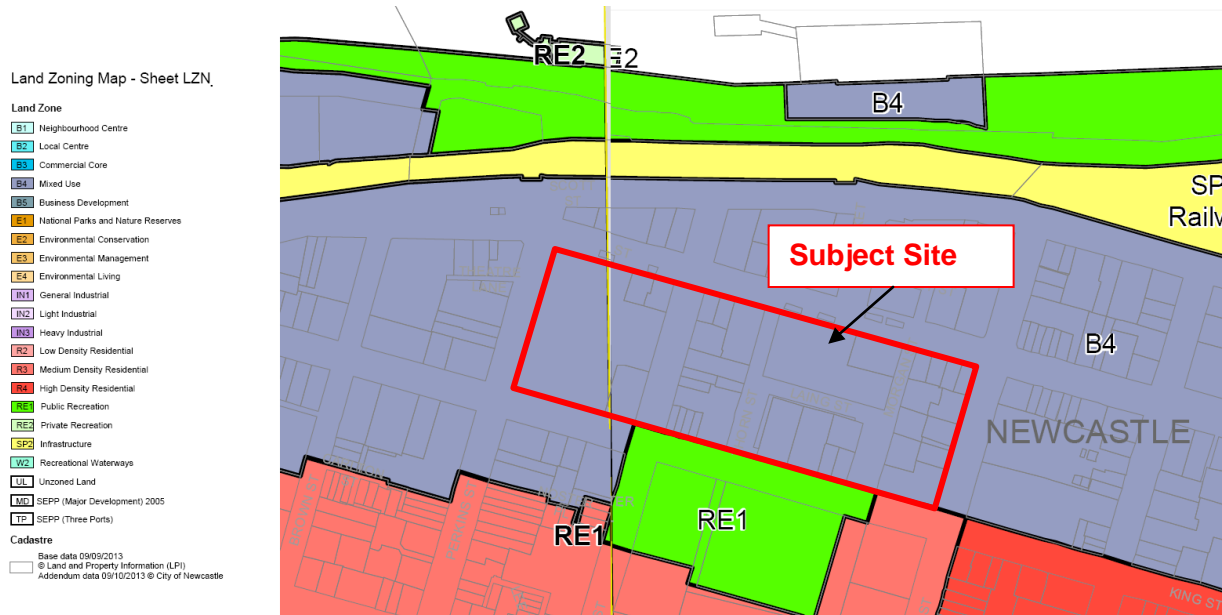
Clauses 2.1 to 2.3: Zoning and Land Use Table

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 Concept Proposal 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. Further discussion regarding the proportion of retail/commercial office space and the absence of entertainment uses is contained in the Section 79C(1)(b) assessment of this report.

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



The Concept Proposal seeks approval for building envelopes and height, indicative land use mix and floor space allocation for the following types of development, as defined by NLEP 2012:

Block 1: 'Shop top housing' (ground level retail/parking, with upper level residential and parking);

Block 2: 'Shop top housing' (ground level retail/parking, with upper level residential and parking);

Block 3: 'Shop top housing' (Basement parking, ground level retail/parking, with upper level residential);

Block 4A & 4B: 'Shop top housing' (Basement parking, ground level retail/parking, with upper level residential);

Block 4C: 'Commercial Premises' (ground level retail with upper level commercial);

Block 5: 'Residential flat building' (ground level parking, with upper level residential/parking);

Block 6: 'Shop top housing' (ground level retail, with upper level residential/parking);

Block 7: 'Commercial premises' (ground and upper level commercial) and 'dwelling house' (existing terraces);

Commercial premises and shop top housing are listed as uses which are permitted with consent within the B4 Mixed Use zone of NLEP 2012. Residential flat buildings are also permitted in the B4 zone, being identified as a use which is "not specified in item 2 or 4" and therefore permissible with consent. Dwelling houses are listed as a prohibited use within the B4 zone. However, the dwelling houses are limited to three (3) terraces on King Street, which benefit from existing use rights and which are proposed to be retained.

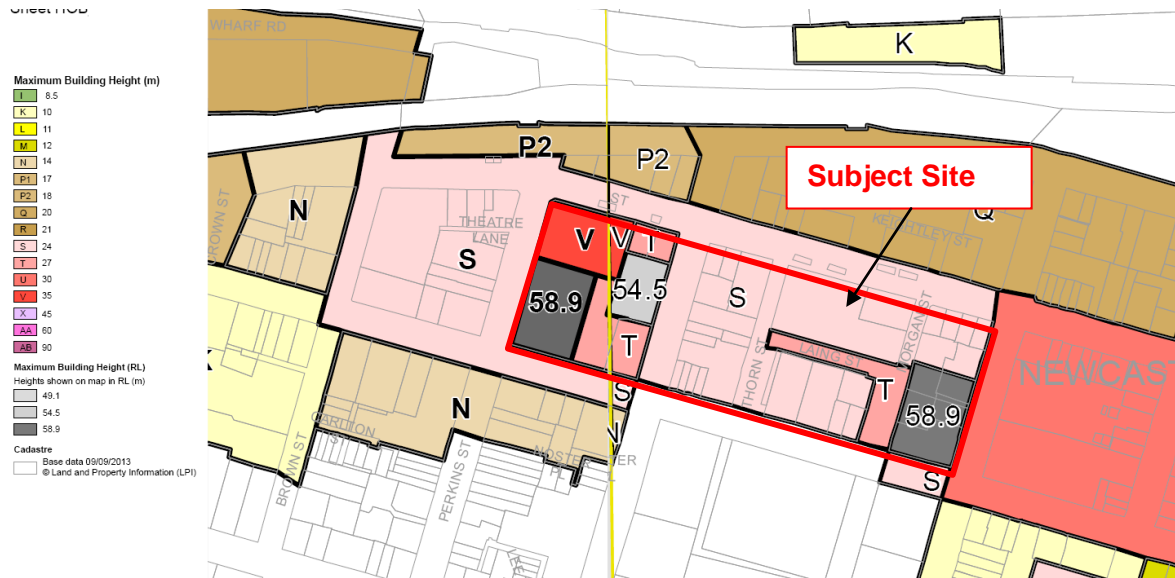
Clause 2.7: Demolition

Whilst the Concept Proposal identifies buildings to be demolished it does not seek approval for any works and therefore demolition of buildings will be the subject of future development applications for the stages of development. Further discussion of construction management issues is contained in the Section 79C(1)(b) assessment section of this report.

Clause 4.3: Height of Buildings

This clause limits buildings heights to that shown on the 'Height of Buildings' Map. The 'Height of Buildings' Map specifies permissible building heights ranging from 24m to 27m across the site, 35m for the former David Jones building and up to RL54.5m on land in Wolfe Street and RL58.9m for land at the corner of King Street and Perkins Street and at the corner of King and Newcomen Streets (refer **Figure 6**).

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



As noted in the foregoing section of this report the Planning Proposal, which seeks to reduce the height controls applying to this site under NLEP 2012, is not a legislative consideration in the assessment of the current development application. Accordingly, the proposed heights have been considered in accordance with the height controls which currently apply to the subject site under NLEP 2012. Notwithstanding this, it is noted that the heights which are now proposed are a significant reduction from the heights which were proposed under Development Application 2014/0323 and more closely align (although are not entirely compliant) with the 24m to 40m height controls (with consideration of view corridors) which are contemplated within the Planning Proposal.

Documentation submitted with the development application confirms that Block 1, Block 2 (Wolfe Street building), Block 5 and Block 6 are compliant with the Height of Building Map of NLEP 2012, however variation is sought for the height of buildings within Block 2 (former DJ's building east), Block 3 (147-153 Hunter St) and Block 4 (Market Square). The following table confirms the heights and extent of variation when measured against the Height of Buildings Map contained in NLEP 2012:

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

Block	Proposed Building	Control	Proposed Height	Compliance	Variation	% Varied
Block 1	King and Perkins Street Building	RL58.9m	RL40(plant at RL42)	Yes	N/A	N/A
Block 1	Former DJ's Building (west)	35m	Existing Building	Yes	N/A	N/A
Block 2	Former DJ's	27m/35m	29.936m/36.09m	No	1.094m to	10.8%

Block	Proposed Building	Control	Proposed Height	Compliance	Variation	% Varied
	Building (east)				2.936m	
Block 2	Wolfe Street	RL54.5	RL40(Allowance for plan to RL42)	Yes	N/A	0
Block 3	147-153 Hunter St	24m	26.078m	No	0.806m to 2.078m	8.6%
Block 4	Market Square	24m	26.110	No	2.110	8.79%
Block 6	105-111 Hunter Street	24m	<24m	Yes	N/A	N/A
Block 5	Newcomen and King Street Building	RL58.9	RL40 (allowance for plan to RL42)	Yes	N/A	N/A

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 Block 2, 3 and 4. The basis of this variation as contained within this report is summarised as follows:

- *"The approach to the allocation of height across the site has involved a reduction and some redistribution of height from the south-eastern and south-western corners of the site, across the site to minimise impacts on public views to and from the Cathedral and mitigate any private view loss and potential overshadowing impacts that may have arisen from a development that maximised the height of building available under the NLEP 2012.*
- *The variations in height are also a response to the sloping topography.*
- *The proposed height variation continues to respect the form and scale of the heritage buildings on site, and results in a better outcome in respect to the siting of the development to heritage items in the vicinity of the site.*
- *These minor variations at particular points provide for some varied height, but do not result in unreasonable amenity impacts. The current proposal provides for a better urban outcome, while at the same time ensuring compatible and appropriate scale relationships to buildings within and adjoining the site.*
- *Essentially the planning framework provides for a variety of building heights within a city centre as opposed to a uniform height. This means that there will be taller buildings juxtapositioned against shorter buildings. This condition is typically seen in the evolution of an urban area over extended periods.*
- *A variety of building scale and height provides interest and diversity to a city. The scale relationships, in some cases, are more abrupt, but these reflect the layer and evolution of building forms within a city.*
- *The proposed scale is also viewed against the backdrop of the Cathedral Hill with streets creating clear boundaries at transition points. The parapet levels of the three (3) taller building elements at RL40 AHD, which are less than the height permitted, are in the order of 18m below the ridge of the Cathedral, which is RL58.65.*
- *From the perspective of the city skyline, the reduction in height of the building envelopes, at the edges of the view cone towards the Cathedral, means any resultant building will sit below the Cathedral, such that the Cathedral maintains its prominence. When considered in the context of an evolving city scale, the buildings envelopes and height proposed are considered appropriate.*

- A development that strictly complied with the standard would result in significantly more height at the corners of the site, potentially resulting in greater impacts on view corridors and potential overshadowing".

The extent of variation which is proposed and the potential visual impact is shown in the **Figures 7 to 10** (as extracted from the applicant's 'Clause 4.6 Exceptions to Development Standards Report').

Figure 7: Section showing height variation to Block 3 - East elevation (Source: SJB Architects)

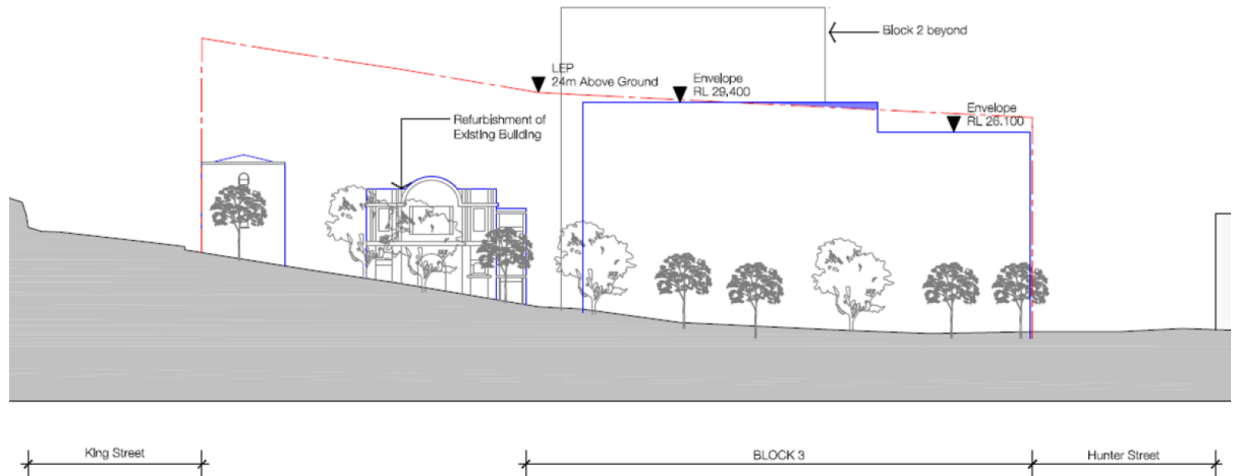


Figure 8: Section showing height variation to Block 3 - West elevation (Source: SJB Architects)

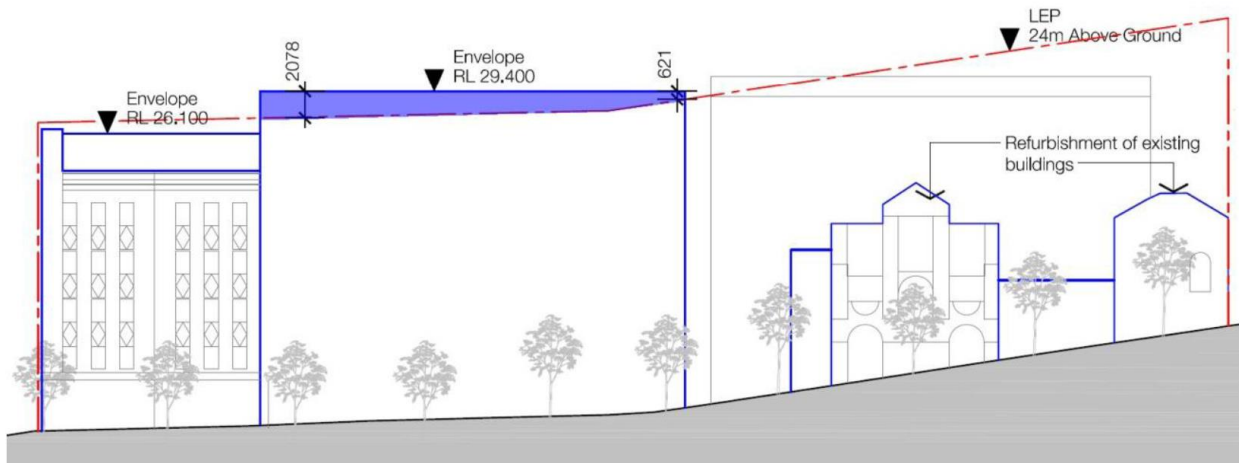


Figure 9: View from Hunter Street showing height variation to Block 4 (Source: SJB Architects)

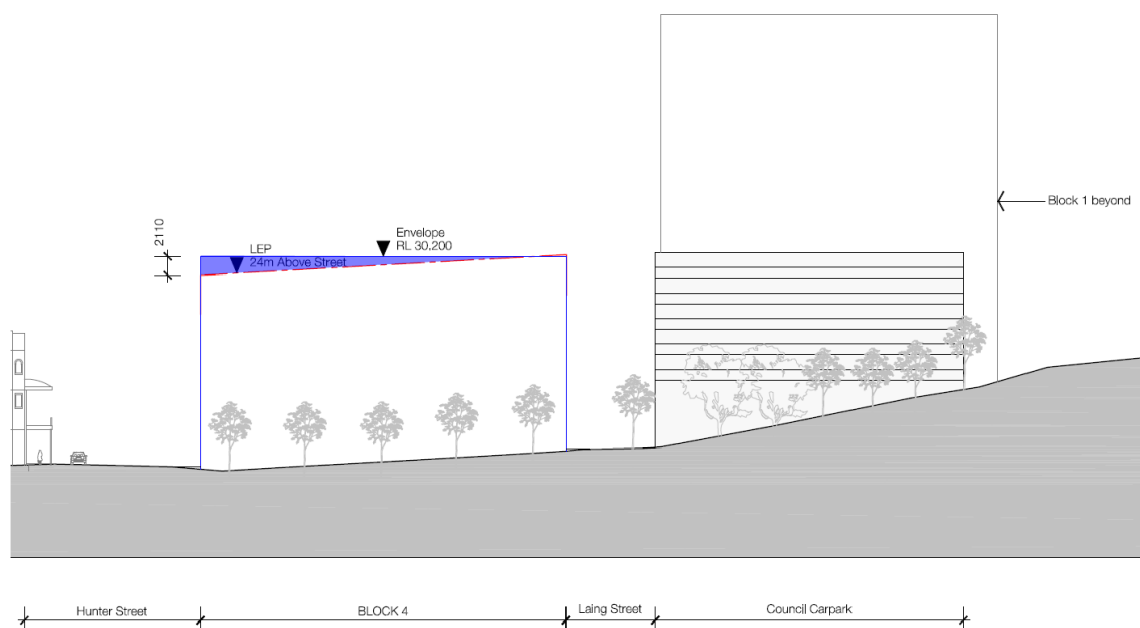
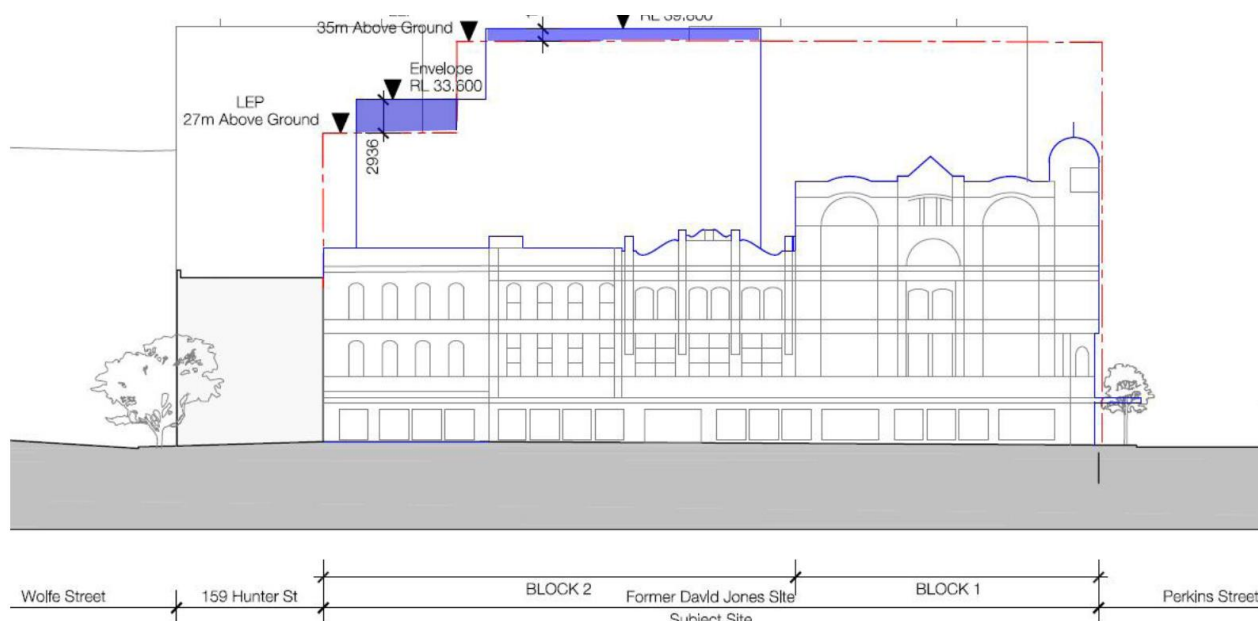


Figure 10: View from Hunter Street showing height variation to Block 2 (Source: SJB Architects)



An assessment of the Clause 4.6 variation has been undertaken and the variations listed below are supported on the following basis:

- **Block 3 (147-153 Hunter Street):** The variation occurs due to the fall of the land from south to north which results in the upper level of the building protruding above the permitted 24m height plane. At the southern facade of the building the height variation amount to 0.806m, whilst at the northern facade the variation amount to 2.087m. The variation is considered to be minor and will not result in significantly greater impact on overshadowing or view loss and will not hinder the ability of the building to integrate within the streetscape. Further discussion on the impact of views

and overshadowing is contained in the Section 79C(1)(b) assessment in the later section of this report.

- Block 4: (Market Square): Similarly, the variation to the building within Block 4 occurs due to the fall of the land. Whilst the southern portion of the building sits within the 24m height plane, the northern portion of the building extends above the height plane by 2.11m. This level of variation is also considered to be minor as it relates to only a partial storey of the building and will not result in unacceptable impacts.
- Block 2: The overall variation to Block 2, which increases its height to 36.2m (rather than the 35m contained in NLEP 2012) is a minor non compliance and is not anticipated to have any significant impact on views towards the Cathedral nor overshadowing, particularly having regard to the positioning of the buildings to the south, which are 11 and 12 storeys in height and which are 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.
- Block 2: Former DJs building east: With respect to the variation to the eastern elevation of Block 2 this variation partly occurs at the line where the height control varies from 35m (for the former David Jones building) down to 27m in the eastern section of Block 1. No objection to this varied height (or any of the proposed building heights) was raised by the UDCC, with the group noting that the *“significant reduction in height of the proposal ...has been successful in mitigating the great majority of the adverse impacts identified by the Group in 2014”*. However, it is considered that detailed design of this building will be required (for future stages) to demonstrate an appropriate level of streetscape integration, together with the relationship to the building at the corner of Wolfe and Hunter Street which does not form part of this development site.

The Concept Proposal also seeks consent for the inclusion of plant/services on the roof of Blocks 1 (King and Perkins), Block 2 (Wolfe St) and Block 5 (Newcomen and King) at a height of up to RL 42. A number of submissions have raised concern that the plant should be compliant with RL40. With respect to such plant/services it is noted that, although it exceeds RL40 which is proposed to apply to such Blocks under the Planning Proposal, the plant will not exceed the current permissible building heights applying to such locations.

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 11**. The Concept Proposal seeks approval for the identification of floor space ratios of between 3:1 to 4:1, except on sites where buildings are to be retained and where lesser FSRs of 1.7:1 to 2.8:1 are evident. Further, the applicant has confirmed that over the total site, which has an area of 16,608m², a gross floor area of 55,400m² is proposed, which results in an FSR of 3.33:1. The proposed density of development is considered reasonable and accords with the requirements of NLEP 2012. Further detailed information to confirm the calculation of GFA for individual buildings and compliance with the definition of GFA will be required at each stage of development.

Figure 11: Extract of Floor Space Ratio Map - NLEP 2012

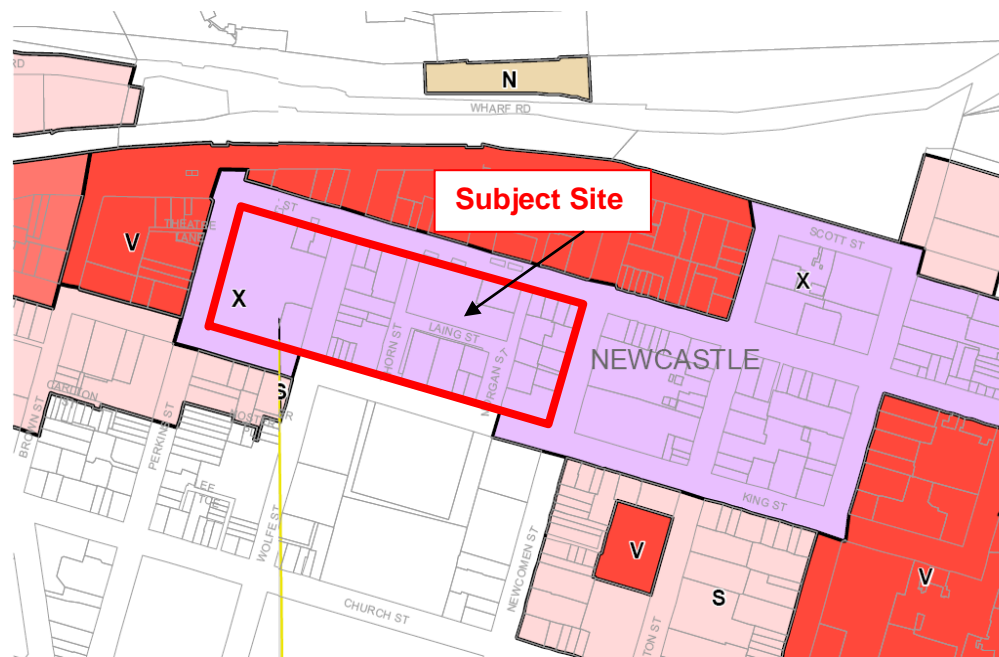
Floor Space Ratio Map - Sheet
FSR

Maximum Floor Space Ratio (n:1)

F	0.6
I	0.75
L	0.9
N	1
S	1.5
T	2
U	2.5
V	3
X	4
Z	5
AA	6
AC	8
Area A	

Cadastre

Base data 09/09/2013
© Land and Property Information (LPI)



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 King Street to Hunter Street, providing opportunity to access Scott Street and the foreshore; 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; will not impact on biodiversity and ecosystems, including water quality; and will not have adverse cumulative aspects on the coastal catchment.

Clause 5.9 Preservation of Trees

Further detail will be required with respect to the detailed landscape design for future stages of development to confirm the extent and location of tree removal. The applicant has confirmed that it is intended that significant street trees will be retained and augmented with further street trees.

Clause 5.10 Heritage Conservation

The subject site contains four heritage items of local significance listed within NLEP 2012 and the whole site is located within the Newcastle City Centre Heritage Conservation Area (Item C4). A Statement of Heritage Impact prepared by TKD Architects (dated October 2015) 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.

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. 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.

The Preliminary Site Investigation which has been prepared by Douglas Partners (October 2015) confirms that acid sulphate soils within the site may be associated with silt/clays in natural soils. Whilst the acid sulphate soils risk maps indicates that acid sulphate soils may be present in the north-western corner of the site, Douglas Partners suggest that this is based on limited sub-surface investigation and is therefore approximate only. The Preliminary Site Investigation, together with the Ground Issues Report, also prepared by Douglas Partners in October 2015, recommends that further investigation be undertaken to confirm the extent of acid sulphate soils and the implications for the proposed development. The Ground Issues Report recommends that following such investigation *"an Acid Sulphate Soils Management Plan (ASSMP) would then need to be prepared to provide management procedures for the handling and treatment of Acid Sulphate Soils"*. The Preliminary Site Assessment recommends that *"any disturbance of acid sulphate soils through excavation or dewatering should be conducted in accordance with a site specific Acid Sulphate Soil Management Plan, which should be prepared for the proposed development prior to the commencement of works"*.

The recommendations of Douglas Partners are considered reasonable, subject to the lodgement of the Acid Sulphate Soils Management Plan prior to issuing of development consent *"for the carrying out of works"*. As the Concept Proposal does not seek approval for *"works"* it is appropriate that a condition be attached to the development consent for the Concept Proposal, if approved, requiring that future development applications for the stages be accompanied by an Acid Sulphate Soils Management Plan prepared in accordance with the Acid Sulphate Soils Manual. Subject to this occurring the requirements of Clause 6.1 will be met.

Additional Local Provisions - Newcastle City Centre

Clause 7.3 Minimum Building Street Frontage

This clause specifies a minimum street frontage of 20m for the erection of a building in the B3 Commercial Core zone. The site is zoned B4 Mixed Use and therefore this clause does not apply.

Clause 7.4 Building Separation

This clause requires that a building must be erected so that the distance *"to any other building is not less than 24metres at 45metres or higher above ground"*. All buildings are less than 45m in height and therefore this clause does not apply.

Clause 7.5 Design Excellence (Newcastle City Centre)

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. Whilst concept floor plans, sections and massing diagrams have been submitted with the application, detailed floor plans, elevation and a colours/materials schedule has not yet been prepared to confirm compliance with this clause. As the application pertains only to a Concept Proposal it is considered appropriate that this level of detail, which will confirm compliance or otherwise with Clause 7 (Design Excellence), accompany the development application for the future stages of the development.

Subclause (4) states that development consent must not be granted for development having a capital value of more than \$5,000,000 on a site identified as a "Key Site" unless an architectural design competition has been held. This clause does not apply if certified by the Director General. As detailed design plans are not required, nor provided at the Concept Proposal stage, this clause will only be applicable to development applications for future stages of the project.

Clause 7.6 Active Street Frontages in Zone B3 Commercial Core

This clause seeks to promote active street frontages in the B3 Commercial Core zone and therefore is not applicable to the subject site as it is zoned B4 Mixed Use.

Clause 7.7 Residential Flat Building in Zone B3 Commercial Core

This clause requires residential flat buildings in the B3 Commercial Core zone to be part of a mixed use development involving a permitted non-residential use. As the subject site is zoned B4 Mixed Use this clause is not applicable.

Clause 7.9 Height of Buildings (Newcastle City Centre)

This clause is not applicable as the provisions relate to areas identified within Areas A, B or C of the Height of Buildings Map.

Clause 7.10 (Floor Space Ratio for Certain Development in Area A)

This clause specifies maximum floor space ratios for land in Area A. The subject site is not located in area A and therefore this clause is not applicable.

Clause 7.10A (Floor Space Ratio for Certain Other Development)

This clause specifies maximum floor space ratios for sites with an area of less than 1500m². The total site to which the Concept Proposal relates has a site area of 16,608m² and each of Block 1-7 have a site area of in excess of 15,000m². Therefore the provisions of this clause do not apply.

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

Amendment to Newcastle Local Environmental Plan 2012 - Planning Proposal No. 2015_NEWCA_005_00

Council at its meeting of 24 November 2015 resolved to prepare a Planning Proposal (No. 2015_NEWCA_005_00) to reflect a maximum permissible building height of 24m on land bounded by Hunter, Newcomen, King and Perkins Streets and to insert clause 7.9(4) to allow a maximum building heights of 40m in certain circumstances.

Section 79C(1)(a)(ii) of the EPA Act, 1979 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)..."

The Planning Proposal was forwarded to the Department of Planning and Environment on 18 March 2016 and at the date of preparing this report the Planning Proposal was awaiting Gateway Determination pursuant to Section 56 of the EP& Act. Accordingly, whilst the Department of Planning and Environment has been notified of the draft instrument, the instrument has not been the subject of public consultation and therefore it is not recognised as a draft environmental planning instrument for the purpose of Section 79C(1)(a)(ii). Hence, whilst Council has resolved to prepare a Planning Proposal to effectively lower permissible heights for the subject sites, the progress and outcome of the Planning Proposal has no bearing on the current development application.

It is understood that Council has specifically resolved to prepare the Planning Proposal to reinstate the height of building controls which applied prior to the making of SEPP Amendment (Newcastle City Centre) 2014. However, the consent authority in its consideration of the Concept Proposal is required to assess the application under the local environmental plan which currently applies, being Newcastle LEP 2012.

Should the 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.

Should Council seek to obtain a greater level of certainty that a future stage of the development will not seek to benefit from the increased heights which are currently permissible on the land under NLEP 2012, **it** should actively seek to progress the Planning Proposal. However, the current development application cannot be held in abeyance pending the outcome of this Planning Proposal.

(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 the proposed concept development.

- 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

With the exception of Section 6.01 'Newcastle City Centre', which is relevant to the built form outcomes of the precinct, the Concept Proposal is considered to be generally consistent with the DCP, noting that the detailed provisions of the DCP will more relevantly need to be addressed for the individual DAs at each stage of the development. The key issues within each section, where relevant, are discussed within the relevant heading under 'the likely impacts of the development' section later in this report.

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:

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:

- 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

New lanes and site links are to be provided as shown in Fig 6.01-29 of the DCP including:

- a pedestrian link between Newcomen and Perkins Streets mid block between Hunter and King Streets;
- a min 3m wide pedestrian only link between Newcomen and Laing Streets;
- a new pedestrian link or arcade between Thorn Street and Wolfe Street; and
- a pedestrian connection between Morgan and King Streets.

The Movement and Circulation Plan (prepared by SJB Architects) includes an east west link through the site which extends via a pedestrian only link from Newcomen Street to Laing Street; along a shared zone in Laing Street; via a pedestrian only link north of the Masonic building from Thorn Street to Wolfe Street; and via a shared zone north of the former David Jones carpark. The Concept Proposal also shows the siting of the Morgan Street steps which will provide the connection from King Street to Morgan Street, as required by the DCP (although construction of such steps is not proposed by the applicant). The proposed pedestrian access is satisfactory and is in accordance with this section of the DCP.

B.02 - Significant Views

The Concept Proposal incorporates 'Market Square', which is a public space to be sited opposite Market Street, together with an open link through to Laing Street, created by separation between the two buildings in Block 4. Block 4, which is adjacent to this link, is sited at a comparable height to the carpark at the rear, providing views towards the Cathedral. Further discussion of views is contained in the following Section 79C(1)(b) assessment.

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 "Shadow Analysis" prepared by SJB Architects (Oct 2015) demonstrates that the Hunter Street Mall is already impacted between 9am and 3pm but the proposed development will not impact further, as it is contained to the southern side of the Mall.

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. It is considered that articulation has been adequately achieved through the use retention of a number of contributory buildings and/or facades and through the use of mid block connections to provide a break in the building form. 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 not considered that the Concept Proposal 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 Concept Proposal does not seek to utilise Hunter Street Mall for servicing, with the main service areas for the proposed development accessed from Perkins Street for Blocks 1 and 2 and from Laing Street for Block 5. Detailed plans demonstrating the location of service areas will be required to accompany development applications for each stage and it is recommended that such documentation also include further detail of the service access from Perkins Street (north of the former David Jones carpark) to ensure that there is no potential conflict with pedestrians who are also seeking to utilise this mid block link.

Section 6.01.03 - General Controls

A1 - Street Wall Heights

The required street wall heights range from 16m to 22m within this precinct. A number of variations have been identified within the Concept Proposal with such variations discussed in detail within the Section 79C(1)(b) assessment of this report.

A2- Building Setbacks

This control specifies that buildings shall be sited on the boundaries up to street wall height and shall have a 6m side and rear boundary setback between street wall height and 45m. Zero front setbacks are specified. The subject site comprises four street blocks, which are bounded on all sides by road frontage and effectively there are no 'side' or 'rear' boundaries, with the exception of those positions where the development site adjoins sites which are not part of the Concept Proposal. Given the integrated nature of the proposal, setbacks have been considered on the basis of building separation controls as discussed within the section pertaining to State Environmental Planning Policy No. 65 and with reference to street wall heights as 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 'Design and SEPP 65 Report' (SJB Architects) indicates that Block 1 will have a floor plate of 751m², whilst Block 2 (Wolfe Street) will have a floor plate of 502m². Other buildings are perimeter buildings or are anticipated to have a floor plate of less than 900m². With respect

to building depth this report also confirms that depths will be exceeded for Block 1 and Block 2 (Wolfe Street), which will have building depths of 30m and 21.5m respectively. The applicant has advised that an indicative layout for each building has been developed to ensure that the sunlight and cross ventilation requirements of the ADG are met. Development applications for future stages will be required to demonstrate that the residential amenity requirements, including sunlight access and cross ventilation, are adequately addressed.

A5 - Building Exteriors

This clause specifies requirements with respect to exterior finishes and detailing. As the application pertains only to a Concept Proposal further detailed plans, elevations and materials/colours will be required to accompany development applications for future stages.

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, which specifies requirements with respect to awnings, will be addressed in conjunction with development applications for future stages.

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 Concept Proposal generally incorporates parking areas which are located behind or above retail spaces, to reduce the level of visibility. The parking structures in Block 1 (former David Jones carpark) and Block 5 (Newcomen Street) are anticipated to be the most visible. The Block 1 carpark will replace the existing carpark and preliminary photomontages indicate that it is capable of effectively integrating within the streetscape, particularly due to the siting of retail and residential spaces directly fronting Perkins Street (refer **Appendix G**). The Block 5 carpark projects above ground on the Newcomen Street elevation due to the fall of the land and extends partly above ground level on the King Street elevation. Detailed information, including elevations and photomontages will be required at future DA stages to confirm that such carparks will be effectively screened or will integrate within the streetscape to meet the requirements of this clause.

This clause also requires the carpark entry to be above the flood planning levels, which will be included as a condition of consent (as discussed within this report).

A9 - Access Network

This clause requires the provision of improved and new pedestrian connections which has been appropriately addressed by the Concept Proposal. The clause also provides acceptable solutions with respect to the design of laneways, lighting and surveillance which will require detailed consideration in conjunction with more detailed site planning at the future development application stage. Through site connections on privately owned land appear to comply with the required 5m width, however a condition will be attached to this effect.

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 Concept Proposal 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 and this will be attached as a condition on the Concept Proposal consent, if approved, with detail to accompany future development applications.

B4 - Addressing the Street

This clause provides detailed requirements regarding the siting and height of building entries. Information submitted with the Concept Proposal does not contain sufficient detail to confirm compliance with this clause however there are no issues identified which would prevent compliance, with detailed information to accompany future development applications for the various stages.

B5- Public Artwork

This clause requires that development on key sites and over 45m in height are to allocate 1% of the capital cost of development towards public artwork. As the majority of 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 Concept Proposal, if approved. The applicant acknowledges that the development will provide opportunity for the identification of public art spaces.

B6 - Sun Access to Public Spaces

The 'Shadow Analysis' prepared by SJB Architects confirms that the proposed development will not impact Cathedral Park. Within the development site the new public space which is to be created (ie. 'Market Square') will obtain northern sunlight as it is sited directly opposite Market Street.

Section 94A Development Contributions Plan 2009

A levy of 1% 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 concept development are summarised below, and includes relevant comments Council's specialist officers, including a response to issues raised in submissions.

View Analysis and Impacts:

A number of documents accompanying the application (listed below) provide an analysis and consideration of 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 is also provided.

- Section 6.9.1 of the Statement of Environmental Effects (SJB Planning, 2 November 2015)
- 'Visual Impact and Street View Analysis' (SJB Architects, 30 October 2015)
- "Section 2.0 'Site and Context Analysis' of the Design and SEPP 65 Report' (SJB Architects, 2 November 2015)

There are several identified view corridors and vistas of importance for the City East Precinct that have been contained within various planning documents over time. One of the most important view corridors identified the one to and from the Christ Church Cathedral. The impacts to this view by the proposed building envelopes and heights has been raised as a matter of concern in some of the submissions and by Council's Heritage Strategist (refer Section 5 of this report).

The impact on this view (and others) has also been considered in relation to appropriate height controls for the subject site/precinct, most recently in the report to Council dated 24 November 2015 (Item 118) which sought its endorsement of the a Planning Proposal to commence the statutory process for an amendment to NLEP 2012 to alter (lower) the maximum building heights currently permitted due to community concern. The status of this Planning Proposal and the relevance of the proposed building height controls to the development application is addressed elsewhere in this report. However, it is relevant to provide an extract from some of that report (p124-5) to obtain background and clarification on this important matter (ie. in the context of views in particular to and from the Cathedral) concerning the staged concept development application currently before Council.

"View corridors

DCP 2005 - Element 6.2 City East

12. Element 6.2 City East identified important views and vistas for the city centre. These included views to and from Christ Church Cathedral, Customs House, the harbour, the ocean and Heads, Nobby's and Fort Scratchley. The most important views were identified and used to regulate height limits and building form, subsequently ensuring any development would maintain and reinforce their existence. In other words, each view corridor was considered in setting the overall height limits so that, provided the height limits were maintained, the view corridor would be maintained.

13. Height limits were set on a block by block basis and over the subject site (bounded by Hunter, Newcomen, King and Perkins Streets) ranged from 13 and 16m (corner of King and Newcomen Streets) to 25m (between Perkins and Wolfe Streets), with sites between Wolfe and Newcomen Streets having either 22m or 19m height limits.

Newcastle City Centre LEP 2008 and Newcastle LEP 2012

14 Newcastle City Centre LEP 2008 adopted a height of buildings map, which replaced the height limits set in DCP 2005. There was a blanket 24m height limit set over the site by Newcastle City Centre LEP 2008.

15 The Newcastle City Centre LEP 2008 also included the new clause that allowed building heights to 40m AHD on the land bounded by Hunter Street, King Street, Newcomen Street and Perkins Street provided the site area was greater than 10,000m² and the consent authority was satisfied that the impact of the building height on view corridors to and from Christ Church Cathedral and the Hunter River foreshores was not unreasonable.

16 The building heights and the clause in relation to the 40m AHD building heights were transferred to Newcastle LEP 2012. The clause became clause 7.9(4) in the LEP.

17 Clause 7.9(4) is intended to allow taller buildings on a consolidated, masterplanned site if they can be located on sites that did not impact on the view corridor to Christ

Church Cathedral and Hunter River foreshore. The height limit of 40m AHD was determined to be the ground level at the base of the Cathedral. The clause is not intended to be read as allowing a blanket height of 40m AHD across the site but rather for specific buildings.

Newcastle Urban Renewal Strategy 2012 (as originally exhibited)

18 The Newcastle Urban Renewal Strategy 2012 (NURS), as originally exhibited in December 2012, proposed to retain the 24m height limit on the site between Newcomen and Wolfe Streets and increase the height limit on the block between Wolfe and Perkins Streets to 27m. The increase in height on this block was justified in the Strategy on the basis of the block being a key redevelopment site that did not have the same topographical or view corridor constraints as the block to the east between Newcomen and Wolfe Streets.

19 The NURS shifted the emphasis of the view of Christ Church Cathedral from 'the Cathedral on the hill' to a view of the Cathedral tower as viewed along a street corridor. Oblique views of the Cathedral were considered to be a 'general view' rather than a specific 'view corridor'. The NURS states:

20 "The most important views in Newcastle tend to be street views terminated by views of the water, or prominent buildings such as the old Courthouse. Other significant views that need to be preserved are those where the tower of the Cathedral terminates a street vista, such as the ones across the block between King, Wolfe, Hunter and Newcomen Streets."

21 Similar to Council's earlier planning controls, the NURS set building heights, floor space ratios and built form controls (setting upper building levels back from the street) to maintain views along streets to important buildings, such as the Cathedral and Courthouse, and to maintain views across the subject site to the Cathedral tower.

Newcastle Urban Renewal Strategy 2012 (exhibition of amendments)

22 In March 2014, the Department of Planning publicly exhibited several amendments to the proposed planning framework for the city centre, including significant increases to building heights on three development sites within the site bounded by Hunter, Newcomen, King and Perkins Streets. The three 'tower' sites, as exhibited, were allocated heights of RL 54.5m, RL 58.5m and RL 69.5m.

Newcastle LEP 2012 City Centre Amendment 2014

23 The City Centre amendment in July 2014 gazetted various building heights across the site: 24m, 27m, 35m and the three 'tower' sites, one site at RL 54.5m and two sites at RL 58.9m. The identified view corridors considered as part of this amendment were limited to Market and Morgan Streets and distant views from Stockton and Fort Scratchley. The view to be maintained of the Cathedral was formally altered in the new City Centre DCP to be to the tower, roof-scape and pinnacles of the buttresses rather than to be of the 'Cathedral on the Hill'. The City Centre DCP has now been incorporated into the Newcastle DCP 2012 as Section 6.01 Newcastle City Centre."

Newcastle DCP 2012: View-related controls for the City Centre and Subject Land

Table 5 provides view-related controls within NDCP 2012 relevant to the subject land, which are numerous and strongly reference the importance of the Christ Church Cathedral (in general terms).

Table 5: Summary of View-related controls in NDCP 2012 (6.0 Locality-specific provisions)

6.01.02 Character areas
<i>F. East End</i>

<i>Principles - East End</i>	<i>d) Significant views to and from Christ Church Cathedral are protected, including views from Market Street and Morgan Street. Views to Hunter River are protected and framed along Market Street, Watt Street and Newcomen Street.</i> <i>e) Vistas that terminate at significant heritage buildings are protected, such as Fort Scratchley</i> <i>h) Heritage items and their setting are protected. New buildings respect the setting of heritage buildings.</i>
6.01.03 General Controls - Building Form	
<i>A6. Heritage buildings</i>	
<i>Performance criteria</i>	<i>A6.01 Development conserves and enhances the cultural significance of heritage items</i>
<i>Acceptable solutions</i>	<i>d) Views and sight lines to heritage items and places of historic and aesthetic significance are maintained and enhanced, including views of the Christ Church Cathedral, T&G Building, Newcastle Courthouse and former Post Office.</i>
<i>B2 Views and vistas</i>	<i>The most important views in Newcastle tend to be along streets leading to the water or landmark buildings, including Christ Church Cathedral and Nobby's head</i>
<i>Performance criteria</i>	<i>B201 Public views and sight lines to key public spaces, the waterfront, prominent heritage items and landmarks are protected.</i>
<i>Acceptable solutions</i>	<i>a) New development protects the views nominated in Figure 6.01-24.</i> <i>b) New development in the vicinity of views to Christ Church Cathedral nominated on Figure 6.01-24 must ensure that vistas of the Cathedral's tower, roof-scape and pinnacles of the buttresses are preserved.</i> <i>c) A visual impact assessment accompanies the application and confirms that this performance criteria has been met.</i>
6.01.04 Key Precincts	
<i>B. Hunter Street Mall</i>	
<i>Objectives</i>	<i>5. Protect views to and from Christ Church Cathedral.</i>
<i>Performance criteria</i>	<i>B.02 Significant views are protected (refer to section B3) P</i>
<i>Acceptable solutions</i>	<i>a) Development between Thorn and Morgan Street provides an opening on the Market Street alignment to preserve views of Christ Church Cathedral.</i> <i>Figure 6.01-28 28 Hunter Street Mall precinct plan indicates " Important view corridor to Christ Church Cathedral</i>

The 'Visual Impact and Street View Analysis' (SJB Architects, 30 October 2015) provides visual representations ("before" and "after") of impacts of the proposed built form along streets and of key views (ie. generally those identified in NDCP 2012 Figure 6.01-24 and too numerous to list in this report), and at various points at and near the Cathedral (including Cathedral Park).

The proposed 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, noting the DCP's required vistas of the Cathedral being of the "tower, roofscape and pinnacles of the buttresses of the building." TCG Planning concur with the conclusions (page 67) made by SJB Architects but again, are too numerous to reproduce in this report. In summary, with the exception of the views from Cathedral Park (discussed below), the impacts on views and view corridors are considered to meet the objectives, performance criteria and acceptable solutions of the DCP.

Impact of Views from Cathedral Park

Section 5 of this report details concerns raised by Council's Heritage Strategist regarding the impact of the proposed building envelopes on the views from key viewing points of the Cathedral Park, many of them recently (or proposed to be) constructed through already-allocated Council funds and government grants (totalling \$1.2 million) having regard to the obvious existing and potential tourism and historical benefits of the cathedral grounds.

The 'Visual Impact and Street View Analysis' (SJB Architects) in addressing the impacts to this space, reference the obstruction of views by existing foliage and provide justification to the proposed continued view loss to important viewpoints on this basis (harbour entrance, Nobbys and Stockton). The report further concludes (p67):

"Views away from the Cathedral towards the harbour, such as those along Wolfe and Newcomen Streets, will feature the proposed building envelopes, however their alignment with existing frontages help frame views along these corridors."

Views across the site from the Cathedral Gardens towards the north-west (Throsby Basin) and north-east (Stockton), prominently feature the two higher built forms at the corner of Perkins/King and Newcomen/King Streets, whilst views north from the same vantage point are completely unobstructed.

The lower levels of the Cathedral Gardens feature views across the East End's roofscape towards the harbour and Stockton. The buildings envelopes at the corner of Perkins and King Streets and the corner of Newcomen and King Streets are prominent in views to the north-west and northeast respectively. Views north, place these envelopes in the periphery, where the building envelopes have little impact."

A key aspect of the adopted Cathedral Master Plan is a tree succession plan, with planting to reinstate and improve views from the site as identified in the Map 13 from Newcastle DCP 2005 Element 6.2 (referenced earlier in this Section).

The Visual Analysis does not have regard to this matter and hence, TCG Planning concur with the Heritage Strategist's comments that the proposal will negatively impact on the Cathedral Park Project and will undermine the contribution and significance of the Cathedral Park. This will be a major blow to the investment made to date, and will significantly impact for the attractive and important vantage point of the city. The consent authority needs to be aware of this major impact and the opportunity lost for perpetuity of this historical place.

It is, however, 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 unclear whether the impacts to the Cathedral Park Master Plan (exhibited in June 2012 and adopted in July 2012) was considered at the time of these LEP amendments, or whether the LEP height controls were considered for the preparation of the Cathedral Park Master Plan. In any case, there is a major conflict between the DCP controls (to protect the setting of heritage items and views from the Cathedral) and the height controls of the LEP.

There is a major objective to revitalise this part of the City and as part of that, it is apparent through historical and current LEP height controls that increased building heights are anticipated on the four blocks that are the subject of this application to achieve this outcome. These four blocks are located within several view corridors from the Cathedral Park and hence there is a direct physical conflict of these objectives. On balance, it is therefore assumed that Council's higher order LEP height control take precedence over the views achieved from the Cathedral Park. If this is the case, then the consent authority needs to be aware that the adverse impact to the Cathedral Park setting will occur for longevity should the Concept Proposal be approved.

Impacts to Private Views

With respect to the impact on views from privately owned properties the Statement of Environmental Effects acknowledges *"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.

The Statement of Environmental considers view loss from three properties where the occupiers previously objected to Development Application No. 2014/323, and who specifically raised concerns about the loss of views from their respective property. Whilst this does not address view loss from all properties which will be affected by the current development application it provides a representative sample for consideration. The following provides a summary of the discussion of views which is contained in the Statement of Environmental Effects. This analysis considers the extent of view loss as a result of the proposed building envelopes and is prepared in accordance with the NSW Land and Environment Court Planning Principle for view loss and view sharing,

Unit 10/16-18 Newcomen Street (apartment): Views are currently available from standing and seated positions on the rear balcony and within the rear bedroom and sitting room. The impact assessment revealed all views from the rear balcony will be removed. This would be categorised as severe to devastating in terms of the Tenacity terminology. However, the SEE concludes that *"the impact is reasonable given that this balcony is at the rear adjacent to the rear boundary of the site, looks over side and rear boundaries across the roof tops of the East End of the city. The views cannot reasonably be expected to be retained. The proposed building envelopes generally comply with the building heights controls of the LEP"*.

Newcastle Club, 40 Newcomen Street: Views are currently obtained from standing position in the first floor bar at the northern end of the premise. The Impact is assessed to be severe to devastating impact on views of the Harbour and River. SJB Planning suggest that the impact is reasonable given *"the proposed envelope is significantly below the building envelope permitted under the building height controls of the LEP. The views are from a commercial building in the middle of a CBD. Views around the building will still be maintained"*.

70 Church Street Impact (2 storey terrace): Ocean glimpses are currently available from between buildings and over Cathedral Park, the Council's multi storey carpark and the site. Views are obtained within the ground floor kitchen and seated and standing position in the first floor rear study. SJB Planning conclude that *"the proposal will have minor impact with the majority of the ocean glimpses retained"*. The impact is assessed to be minor impact with the majority of the ocean glimpses retained.

The view analysis as prepared by SJB Planning has been reviewed and the conclusions with respect to the above three properties are concurred with. Whilst noting that similar views losses are anticipated to be experienced from a number of other properties (including from additional properties identified in more recent submissions), it is considered that the impact is reasonable given the inner city context of the development site, the significant reduction in building heights which is now proposed (from DA 2014/323) and the general compliance of the Concept Proposal with Council's desired building heights for this locality, which will be reflected within the proposed amendment of NLEP 2014 (if this Planning Proposal is supported and ultimately 'made').

Aboriginal and Historical Archaeological Heritage

The development application is accompanied by an 'Archaeological and Historical Archaeology Report' (Umwelt, October 2015) and provides advice regarding the likely key Aboriginal and historical archaeological requirements and associated processes and procedures and statutory context which would apply to the subject site and any proposed future redevelopment of the subject site, in addition to key risks. The report notes the Concept Proposal status (with no physical works proposed).

The report (p30) concludes that:

"The subject site has the potential to contain archaeological evidence of Aboriginal occupation of the area and historical development and occupation throughout the nineteenth and twentieth centuries. In addition, evidence of early contact between Aboriginal people and European settlers may also be present within the subject site.

Physical subsurface disturbance to areas of archaeological potential across the subject site is likely to require approval (or an exception from the need for approval) from the Heritage Council of NSW (under Section 139 of the Heritage Act 1977 [NSW]) and OEH (under Section 87 of the National Parks and Wildlife Act 1974 [NSW]). Obtaining approval from both statutory authorities would require further archaeological research and assessment and consultation with relevant Aboriginal stakeholders.

Note: Archaeological test excavations (if/where possible) could be utilised to inform this process."

Section 4.0 'Management Strategy' (p31) of the report also states that the applicant has indicated that *"individual Aboriginal Cultural Heritage and Historical Archaeological Assessments will be prepared as part of separate development applications to be lodged for the subsequent stages of the development of the subject site. The Aboriginal Cultural Heritage Assessment and Historical Archaeological Assessment for each stage will be submitted with the respective development application. The assessments will be prepared in accordance with legislation current at the time of the respective development application and all relevant codes of practice and guidelines."*

Section 5.0 of the report 'Key Constraints and Opportunities' lists recommended process and approaches to the future development of the site with respect to site archaeology including consultation, consideration of legislative reform, in situ retention of significant historical archaeological remains, archaeological test excavation and excavation, burials, interpretation and unexpected finds.

Responses to the Aboriginal and historical archaeological considerations from State Agencies and Council's Heritage Strategist are detailed in Section 5 of this report, however in summary, no objections are raised by these, subject to recommended detailed considerations within documentation to accompany future development applications.

Future development applications will also need to address the provisions of Clause 5.10 of NLEP 2012 and Sections of NDCP 2012: 5.04 Aboriginal Heritage, 5.06 Archaeological Management and 5.07 Heritage Conservation Areas.

European Heritage

Heritage Significance of Site and Surrounds

The subject site for the Staged Concept Proposal (ie four city blocks) is located within the Newcastle City Centre Heritage Conservation Area (Item C4) and contains four heritage items of local significance listed within NLEP 2012:

- Item 406: Municipal Building at 164–170 Hunter Street (Lot 1, DP 600274);
- Item 407: Former David Jones (commercial building) at 169–185 Hunter Street (Lot 1, DP 749729);
- Item 423: Former Lyrique Theatre at 98 King Street (Wolfe Street) (Lot 500, DP 879162);
- Item 477: Retaining wall and sandstone steps, Wolfe and King Streets.

An extract of the NLEP 2012 Heritage Map is provided at Figure 12 indicating these items. The map also indicates the location of numerous heritage items in the vicinity of the subject land, including the State-listed Newcastle Cathedral Park and Cemetery (Item A6) and Christ Church Cathedral (Item 562) located to the immediate south.

Figure 12: Extract from NLEP 2012 Heritage Map showing the Newcastle City Centre Conservation Area (diagonal red lines) and heritage items within the subject site (bounded in blue) and surrounds.

Source: Figure 54 of Statement of Environmental Effects (SJB Planning, 2015)



A Statement of Heritage Impact (TKD Architects, October 2015) accompanies the development application which provides: a historical background to the staged concept proposal; a historical development of the East End Precinct; a summary statement of significance of the four listed items and Conservation Area; an assessment of potential heritage impact, and makes recommendations with respect to the proposal in terms of general principles for the redevelopment of heritage places and general objectives for the redevelopment of the site. The report also identifies several buildings within and immediately adjacent to the subject landholding as being 'contributory items' within the Conservation Area.

The following description of the broad scope of works relating to the listed heritage items or contributory items within each of the city blocks is provided within the report.

"Hunter, Perkins, King, Wolfe Streets Block"

- *Demolition of the former David Jones' Car Park and southern portion of the store to make way for a new retail, commercial and residential building with associated parking.*
- *Conservation and adaptive re-use of the original north-western portion of the former David Jones' store for retail and residential use.*
- *Conservation of the facade of the later additions to the former David Jones' store fronting Hunter Street with new development behind for retail and commercial use including major vertical additions for residential use.*
- *Conservation of the facade of the portion of the former David Jones' store fronting Wolfe Street for retail and commercial use with major vertical additions for residential use.*
- *Conservation of the facade of 163-167 Hunter Street with new development behind and vertical additions for retail and residential use.*

Hunter, Wolfe, King and Thorn Streets Block

- *Conservation and adaptive re-use of the former Lyrique Theatre/Masonic Hall 98 King Street (Wolfe Street)*
- *Conservation and adaptive re-use of the terrace houses at 104, 108 and 110 King Street*

- *Conservation of the facade and investigate potential for adaptive re-use of the former Duke of Kent Hotel, (153 Hunter Street) for retail and residential use.*
- *Retention of the façade only of the Soul Pattinson building (151 Hunter Street) with vertical additions for retail and residential use.*
- *Demolition of the remainder of the buildings to make way for retail, commercial and residential development.*

Hunter, Thorn, Laing and Morgan Street Block

- *Conservation and adaptive re-use of the Municipal Building (121 Hunter Street) for retail/commercial use.*
- *Demolition of retail development on Hunter Street and re-establishment of Market Square retail precinct with a flanking building with Hunter Street alignment to match the original Municipal building and to reinforce the planning axis of Market Street and Market Square.*
- *Realignment of eastern side of Thorn Street to align with the western side of the King Street car park to improve the amenity of Thorn Street.*
- *Design of new development to respond to views to Cathedral from Scott Street and Hunter Street.*

Hunter, Morgan, King and Newcomen Street Block

- *Conservation of the facade and investigate potential for adaptive re-use of 105 Hunter Street for retail and commercial use.*
- *Demolition of the remainder of the buildings on the site for redevelopment of whole block including major excavation of southern portion of site for the new retail and car park below King Street level."*

Figure 13 illustrates the broad design principles relating to the heritage aspects of the site and proposal, which in summary: retain the facade and adaptive reuse of all listed heritage items, shown in solid purple [original portion of the former David Jones site (with lesser significant portions of the item to be demolished), Lyrique Theatre; and Municipal Building], retain some facades and investigate potential for adaptive re-use of interiors. All other buildings will be demolished. Further detail is shown on the 'Building Conservation and Retention Plan' (TKD Architects, March 14) which is contained in **Appendix D**.

Figure 13: Design Principles - Heritage Buildings Source: (SJB Planning, Fig 3.6.1 of Design and SEPP 65 Report (p33) and Figure 70 of SEE(p109)

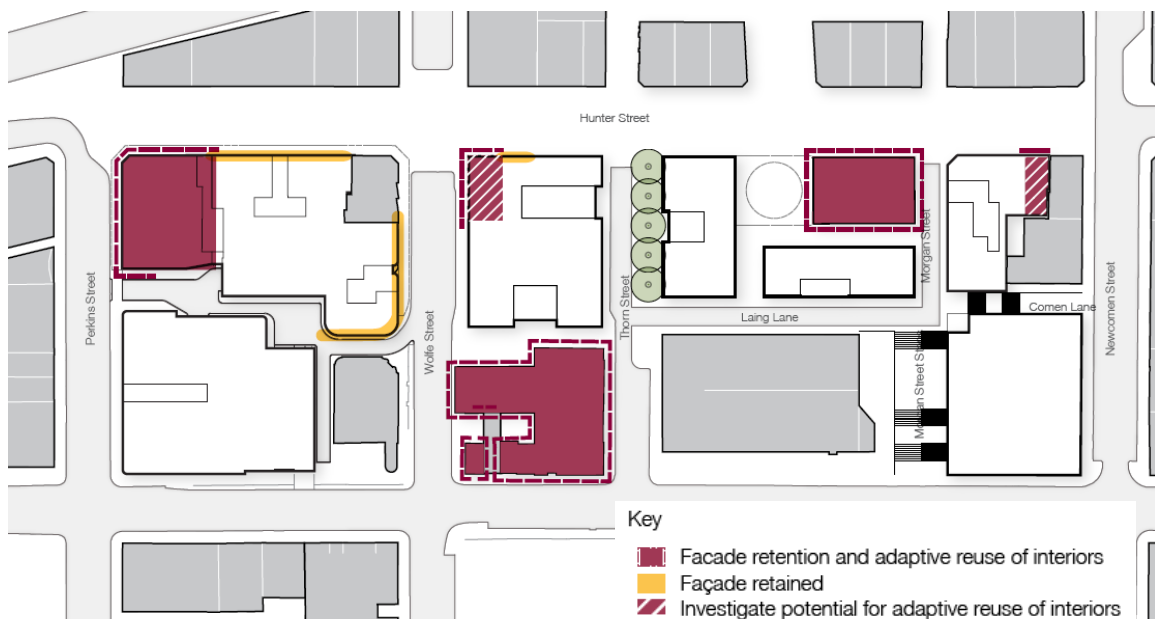
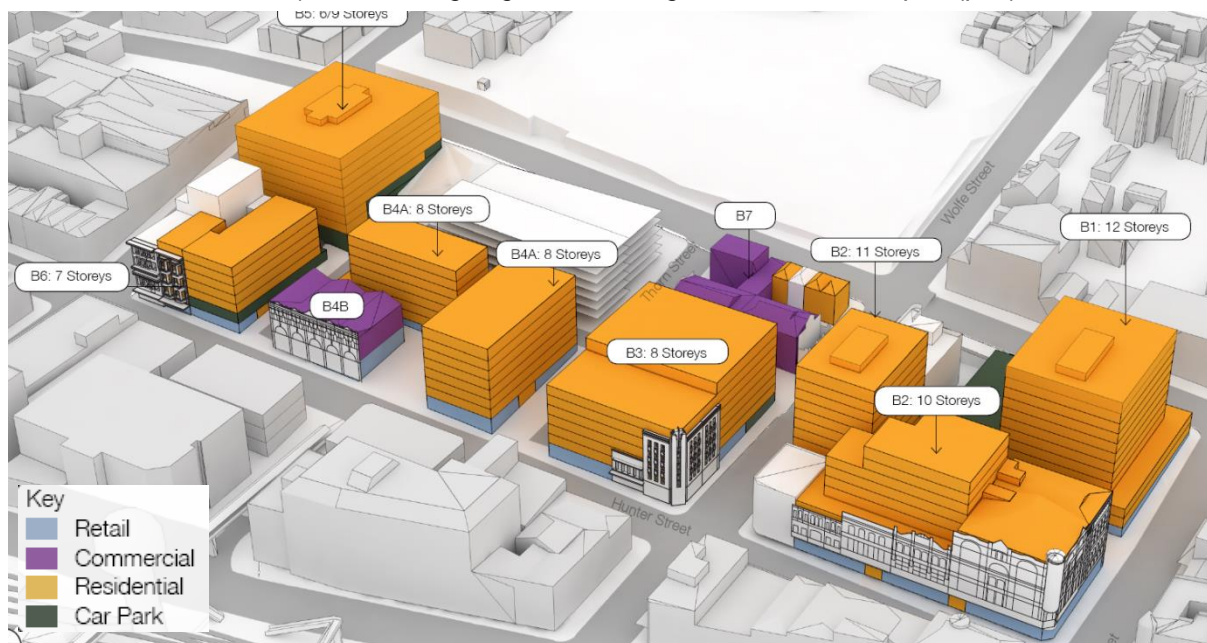


Figure 14 is a diagram that illustrates the proposed massing of the proposed staged concept development as viewed from above, but also is useful to illustrate the building and/or facade retention proposed for the listed heritage and contributory items within the site (for the buildings fronting Hunter Street in particular, noting the Lyrique Theatre and most King Street terraces at rear of diagram are also proposed to be retained).

Figure 14: Massing Diagram indicating proposed buildings and facades proposed to be retained at Hunter Street. Source: (SJB Planning, Fig 4.16 of Design and SEPP 65 Report (p49))



The development application for the staged Concept Proposal does not seek consent for specific works and hence the Statement of Heritage Impact assesses the potential impacts of the building envelopes, indicative massing and floor space allocation with respect to the heritage items on the site and surrounds and the Conservation Area. It addresses the proposal in the context of: proposed demolition; minor partial demolition; major partial

demolition (including internal elements); change of use; minor additions; major additions and new development adjacent to a heritage item.

The heritage provisions of the NLEP 2012 and relevant Sections of NDCP 2012 (5.05 Heritage Items; 5.06 Archaeological Management; 5.07 Heritage Conservation Areas and the relevant considerations of Section 6.01.02 East End Precinct) are not specifically addressed in the application. Rather, a statement deferring the relevant matters to future development applications is provided.

The Statement of Heritage Impact provides the following conclusions (p73):

- *"The identified heritage items (both the individual LEP items and the majority of the Conservation Area contributory items) within the site will be retained, conserved and adapted to new viable uses in conjunction with the new development, which will enhance their public appreciation.*
- *The proposed new building envelopes (siting, heights, massing and scale) comply in principle with the Newcastle Local Environmental Plan 2012 and the Newcastle Development Control Plan 2012.*
- *The proposed building envelopes (siting, heights, massing and scale) have been determined to minimise negative impacts on the adjacent heritage items and the heritage items within the immediate vicinity of the site and to regain and reinforce significant relationships within the Precinct eg. Market Square and alignment of axis with Christ Church Cathedral.*
- *The proposal, comprising new buildings together with the conservation of heritage buildings, structures and relationships has the potential to reactive this part of Newcastle by: increasing the diversity of uses; reinforcing the significant architecture and urban design; and providing improved amenity for the increased number of residents and visitors.*
- *The proposal has the potential to regain and reinforce significant views to and from Christ Church Cathedral by locating the higher building forms outside of the primary view corridors and by respecting the planning axis linking Market Street with the Cathedral.*
- *The proposal has the potential to re-establish and enhance the historic retail (market) presence along Hunter Street."*

The report also concludes that each of the subsequent development applications seeking consent for the specific works:

- *"will respond to the parameters established in the report and the development consent issued;*
- *will address the provisions of NLEP 2012 and the controls within NDCP 2012;*
- *will require preparation of conservation management documents to guide the cultural significance of the items and architectural design of adaptations, alterations and additions and new buildings;*
- *will require preparation of detailed archaeological assessments for proposed excavations; and*
- *should pursue opportunities for the interpretation of the Precinct through the design of the new elements and public art."*

Assessment

Comments were received from Council's Heritage Strategist (detailed in Section 5 of this report) that object to the proposal, summarised below.

Loss of Heritage Significance - General: *"the outcomes for the majority of items that contribute to the visual character of the City Centre will be demolished and the outcome will be significant loss of heritage significance and built fabric in the city centre."* Concerns:

- The degree of demolition; retaining front building facades is unacceptable and will not produce the sympathetic outcomes for the city centre, noting, facadism is not supported by the Burra Charter principles,
- Demolition of interiors will destroy the integrity of the buildings
- Justification for demolition on the basis of out-dated services, and the buildings being unsuitable for "repurposing" is not substantiated and cannot be supported.
- All future development applications should be informed by a conservation management plan and heritage impact assessment that seeks to retain interiors.

Response: It is agreed that the character of the east end is largely defined by the intact nature, quality and scale of the existing buildings, many of them heritage listed and/or contributory items within the conservation area. It is also agreed that justification provided for certain modifications and/or demolition (including of interiors of these buildings) in the Statement of Heritage Impact is unsubstantiated. Notwithstanding this, it is considered that there is a genuine attempt in the broad design principles for the heritage aspects of the concept proposal to (i) retain the significant portions of the LEP-listed items and their interiors (David Jones building, Municipal Building and Lyrique Theatre and adjoining terraces fronting King Street); and (ii) attempt to retain other significant components of listed items and contributory items (at the minimum the facade). While 'facadism' and major demolition of buildings may not be the ideal outcome for buildings having heritage (or contributory) significance, it may, on balance, be the best outcome for certain buildings in the context of the site and precinct. The character of this precinct will change, however the aim is for the new development to compliment and respect the existing buildings through essential character elements of the new built form and spaces.

The UDCC, when considering the application at its meeting of 18 November 2015, were also of the opinion that *"the proposed integration of the existing heritage fabric and the proposed retention of selected building and in some instance building facades, in conjunction with setbacks for taller elements to retain a more human scale were likely to be successful in retaining the unique heritage character of the area"*.

The final outcome will be informed by the preparation of a conservation management plan/s and heritage impact statement/s to which will be required to accompany detailed future staged development applications. A conservation management plan must robustly consider all options for retention (including interiors and with or without the facade), viability of existing use and adaptive reuse. It is necessary for justification for demolition or removal to be supported by strong assessment and investigation, not unsubstantiated statements that the structural systems are unsatisfactory, services outdated and unsuitability for re-purposing etc. Such investigations should also extend to the extent of remedial measures which are required to address mine subsidence under buildings which are subject to adaptive reuse, as the Ground Issues Report prepared by Douglas Partners notes that *"remedial works in the Dudley Seam would be very difficult to undertake in an existing building unless extensive gutting and reconstruction of the interior floors was proposed"*.

Should the staged Concept Proposal be approved, the development consent will not grant consent to the any works (including as proposed within the Concept Proposal to which this consent applies). Proposed physical works to heritage items and contributory items within the site will be subject to detailed assessment at each development application (ie. conservation management plan and heritage impact statement) as indicated above. This is the appropriate point at which to decide what aspects of the heritage of the proposal are satisfactory.

Negative impact on Cathedral Park Revitalisation Project: Council's Heritage Strategist also objects to the proposed building heights and envelopes and resultant view loss from the Cathedral Park to the harbour mouth, Nobbys and Stockton (sought to be a feature of the adopted Cathedral Park Master Plan). The matter of views to and from Christ Church Cathedral are a key item of consideration for this application and is matter is addressed in detail separately later in the Section 79C(1)(b) 'Views Analysis' of this report.

Non-compliance with the adopted street wall heights for new buildings in the city centre in the Newcastle LEP and DCP was also raised as a concern by Council's Heritage Strategist. The referral recommended that the development should be redesigned to ensure that it retains the valued human scale of the city centre previously identified in the Newcastle Urban Renewal Strategy and other planning documents. This matter is a key item of consideration for this application and is matter is addressed in the Section 79C(1)(b) 'Street Wall Heights and Building Form' section of this report.

Building Heights

An assessment of overall buildings heights is contained in Section 6 'NLEP 2012' of this report.

Street Wall Heights and Building Form

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.

The following provides a summary of those area where the required street wall heights are provided and those buildings where variation is sought, with this shown diagrammatically in **Figure 15**. For those areas where a street frontage height is not specified in this figure a default 16m height applies under clause A11.01 of Section 6.01.03.

Figure 15: Street Wall Heights – Comparison of DCP requirements and proposed wall height (Source Fig 68 of SEE. SJB Architects)



Compliant Wall Heights:

Block 1 (King and Perkins St): An 8-10m street frontage height is proposed along the three level retail and residential sleeve to the carpark (Max 22m permitted).

Block 2 (Hunter St): A 16-18m wall height is proposed to respond to retained built elements (18-22m permitted).

Block 4 (Morgan St): Approx 4m wall height proposed (18m permitted)

Variation Sought:

Block 2 (Wolfe Street): 24m street wall height proposed (16m permitted)

Block 3 (Hunter St/Wolfe St/Thorn St): 24m street wall height proposed (18m permitted)

Block 4 (Hunter St/Thorn St/Laing St): 24m street wall height proposed (18m permitted)

Block 5 (Newcomen St): 17-26m street wall height proposed (16m permitted)

Block 5 (King St): 17m street wall height proposed (16m permitted)

Block 6 (Hunter St and Morgan St): 24m street wall height proposed (18m permitted)

The Statement of Environmental Effects prepared by SJB Planning seeks variation to the wall heights of Block 2, Block 3, Block 4 (south and west) and Block 6 on the basis that the proposed wall heights "*take cues from important and retained built elements*" including the dome of the former David Jones building which sits 4m above the proposed 24m wall height. Variation is sought to the street frontage height in Newcomen Street due to the nature of the perimeter block building and the slope of the land.

The objectives of the DCP with respect to street wall heights seek to ensure that streets retain a satisfactory level of sunlight and that the height of walls provides an appropriate ratio to street width. When assessing the proposed street wall heights it is considered that the objective of the street setback control with respect to sunlight access is achieved along the Hunter Street frontage as all development is sited to the south of the mall, ensuring that sunlight access is maintained. Further, Market Square will receive a satisfactory level of sunlight throughout the day, despite street wall heights around its perimeter exceeding the recommended 16m maximum.

In contrast Block 4, which is sited adjacent to Laing Street will significantly overshadow this laneway throughout the day on June 21 and the increased wall height on this boundary is not ideal given the narrow width of this laneway. However, when considering that the primary purpose of this laneway is for the movement of pedestrian and vehicles, with no direct retail frontages and minimal use as a passive open space, this outcome is considered acceptable. In contrast the street wall height of Block 4 (east) along Morgan Lane and the increased overall setbacks of all levels of Block 4 (west) to Thorn Street will provide a more desirable outcome. In particular, the reduced wall height of Block 4 to Morgan Street will promote an appropriate built form scale within this pedestrian link to the Morgan Street steps.

The Urban Design Consultative Committee in reviewing the submitted documentation raised no objection to the proposed street wall heights and were of the opinion that with respect to wall to street ratio "*the detailed planning at the ground plane and the reduction of footprint from previous proposal and of 1960s fabric, give good potential for lively, interesting streets*".

The integrated nature of the development will provide further opportunity to ensure that building design and fabric are considered in a comprehensive manner and that any limitations posed by an absence or reduction in upper levels setbacks can be appropriately mitigated. This is reflected in the comments of the UDCC in the statement "*the proposal offers considerable promises, but an outstanding urban outcome will depend upon a similar level of design sophistication being carried through tho the detailed design of each of the six stages.*"

Land Use

In their response to Council's internal referral the Strategic Planning Unit raised a number of concerns relating to the inconsistency of the current development proposal with the initiatives of the *Newcastle Urban Renewal Strategy 2012*. Specifically, the Strategic Planning unit raised objections to the following changes from the 2014 development application:

- The reduced commercial/retail floor areas;
- The omission of space for entertainment use;
- The increase in the number of residential units.

With regard to the reduction in commercial/retail floor space, it is noted Newcastle Local Environment Plan (NLEP) 2012, permits 'mixed use development' and 'shop top housing' with development consent in the B4 Mixed Use zone. There are no provisions within the NLEP 2012, Newcastle Development Control Plan 2012 or the Urban Renewal Strategy that specify what proportion of a 'mixed use' or 'shop top housing' development must comprise commercial purposes and what proportion must comprise residential purposes, outside of the requirement for an active ground level/street frontage. The ground floor of the proposed development is wholly comprised of retail and commercial floor space (with the exception of lobby facilities servicing the upper floor residential component of the development), and meets the requirement for active use at ground floor.

With regard to the increased proportion of residential accommodation which is now proposed, section 4.4.4 of the *Newcastle Urban Renewal Strategy 2012* states that one of the "*principal economic initiatives*" promoted by the strategy is to attract residents to the city centre. Specifically, "*promoting an increase in the residential population will support the evolution of Hunter Street Mall into a vibrant main street shopping destination along with a diverse range of other uses such as small commercial and tourism facilities*". Section 4.3.2 describes the East End's character as comprising "*a mix of heritage buildings with more recent infill development and a higher proportion of residential development gives this part of Newcastle a unique character, as distinct from other parts of the city centre...*".

With regard to the omission of dedicated space for entertainment purposes, it is clear that the reduction in building heights from the previously lodged DA (DA 2014/0323) has been at the expense of dedicated space for entertainment purposes, as well as retail and commercial purposes. However, it should be acknowledged that the Newcastle City Centre, in particular the East End, has a history of vacancies in commercial and office space. A more concentrated focused city centre that is occupied and actively engaged at street level is considered to be a preferred outcome to a centre containing a high level of commercial space that cannot be readily filled. The proposed development comprises 4,900m² of dedicated retail floor space and 2,700m² of commercial floor space. Tenants occupying such premises may include cafes and restaurants and Market Square provides opportunities for markets, and although these land uses are, strictly speaking, not within the meaning of 'entertainment facility' defined in the NLEP 2012, such uses will be tourism attractors meeting the intended vision for the East End.

To preserve opportunity for adaptive reuse, should a larger floor plate entertainment, commercial or retail use be contemplated at a future date, it is recommended that floor to ceiling heights for ground and first floor levels of new buildings be a minimum of 4m at ground floor and 3.3m at first floor.

Overshadowing

The Concept Proposal is 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). The analysis demonstrates on June 21:

- Hunter Street Mall is currently overshadowed by buildings on the northern side of the mall, however the proposed development will not result in further overshadowing as the development site is now restricted to the southern side of the mall.
- There will be no impact on Cathedral Park.

- Buildings to the west of the site will be impacted to a small extent during the early morning period with no further impact during the day.
- Buildings to the east and south-east will be impacted to a small extent during the later afternoon period however will be affected at other times of the day.

The greatest overshadowing impacts will be on properties to the south and south-west of the site and to a number of properties immediately adjacent to the development footprint (which are not part of the subject site), with the anticipated impacts summarised as follows:

Table 6: Primary Overshadowing Impacts on June 21

Property	Discussion	Sunlight Achieved June 21
Surrounding Properties (west to east)		
133 -135 King St	Commercial Office	Overshadowed prior to 10am (>3 hours sunlight achieved)
115 - 123 King St	Commercial offices	Overshadowed between 9am and 2pm midwinter
113 King St	3-6 storey residential	Sunlight achieved prior to 1pm (>3 hours sunlight achieved)
40 Newcomen St	Newcastle Club	No overshadowing impact
83 King St	Commercial offices	Overshadowed by 2pm (>3 hours sunlight achieved)
81 King St	2 storey residential	Overshadowed by 3pm (>3 hours sunlight achieved)
Properties Within Boundary of Subject Site (but which are not part of the Concept Proposal)		
Cnr Wolfe & King St	Telstra exchange	Less than 3 hours of sunlight achieved
Cnr Hunter & Wolfe St (SW)	Commercial building	Minimal impact - Greater 3 hours sunlight achieved
No. 103 Hunter St and No. 16-18 Newcomen St.	Commercial /residential buildings	No overshadowing impact

The Shadow Analysis (as summarised in Table 6) confirms that the impact of overshadowing will not be significant, particularly when considering that the Concept Proposal includes 10-12 storey buildings located towards the southern boundary of the site. Most importantly, Cathedral Park will be unaffected by overshadowing and surrounding residential developments will continue to receive in excess of 3 hours of sunlight on June 21. The only buildings which will not receive 3 hours of sunlight are the commercial office spaces located at No. 115-123 King Street, which are located directly to the south of the 12 storey building to be located at the corner of King and Perkins Street. Whilst not achieving the required 3 hours of sunlight it is considered that the level of sunlight retained on June 21 is adequate having regard to the commercial use of the building and the current level of shadowing experienced from the former David Jones carpark.

Public Domain and Publicly Accessible Private Land

The Concept Proposal includes an 'Indicative Public Domain Strategy' (Aspect Studios, October 2015) that provides a network of smaller activities, squares, routes and spaces within the site and along internal public road reserves within and immediately adjacent to the site. The Strategy has been prepared in line with several design principles (activity, access, experience, sustainability and comfort) which aim to "*uplift the quality of the streetscape and public domain, enhance the experience within the precinct and integrate the site with its surrounding context.*" The overall scheme provides new pedestrian links from east to west running parallel to Hunter Street, and providing improved connections and integration with King Street.

Sitting alongside this document, but expanding the applicable area to the full width of Hunter Street and Market Street is the 'Draft Hunter Street Plan' prepared for Newcastle City Council (also prepared by Aspect Studios). TCG Planning understand from Council's

Strategic Planning Staff that the final version of the Master Plan will be forwarded to Council's Executive Management Team for approval. This plan provides more detail on the treatment of the public domain areas owned by Council, although it does include areas within the publicly accessible private land (ie that is the subject of this staged concept development application) to illustrate how these spaces can be integrated.

Table 7 summarises each of the publicly accessible areas that are proposed by the concept staged development application and reference to each of the spaces is illustrated in **Figure 16**.

Figure 16: Proposed upgrades to and/or creation of public domain areas (*Map Source: 'Landscape Space' Dwg No. 13077-DA02 Rev D, Aspect Studios, Oct 2015*)

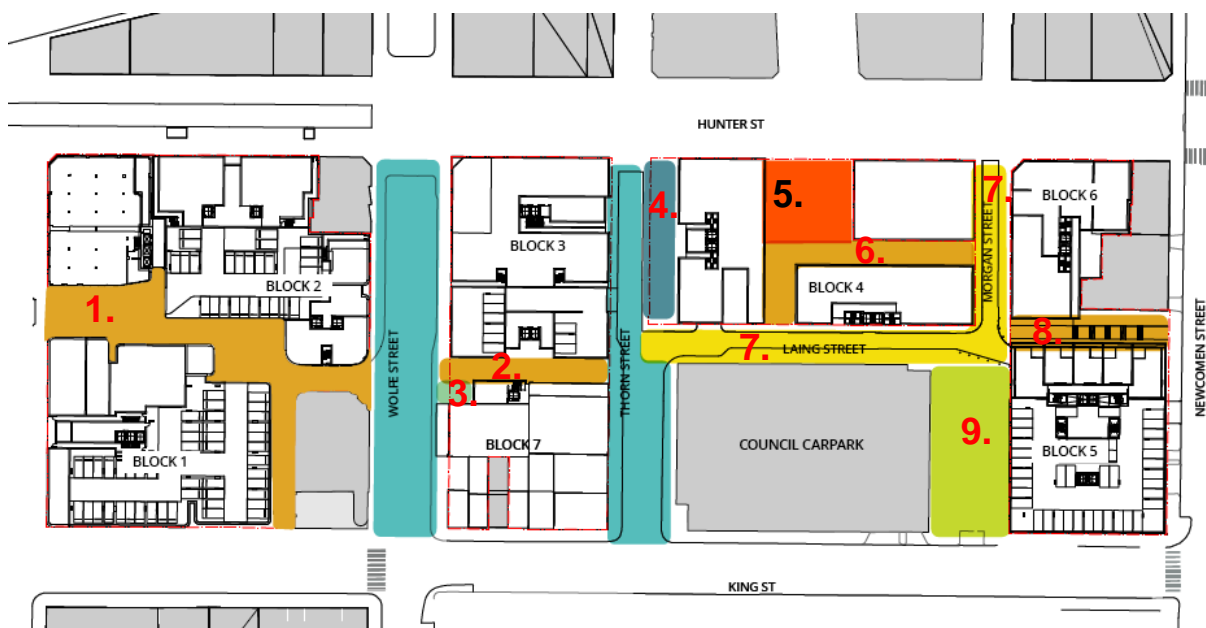


Table 7: Summary of proposed upgrades to and/or creation of public domain areas

Map No.#	Brief Description of Proposed Space, and use/function, and Design Principles (by Aspect design)	Public/Private	Stage	Access
1	<p>Creation of a new shared way between Wolfe Street and Perkins Street (Pedestrian and one and two way Vehicle Laneway)</p> <ul style="list-style-type: none"> <i>It is intended that these laneways provide a high level of pedestrian amenity including high quality paving, lighting, planting and opportunities for public seating and dining.</i> <i>Provide high quality legible lane connections that utilise the spatial character and play upon the existing urban grain of the Newcastle CBD</i> <i>Provide adequate lighting throughout the lanes to promote surveillance and safe night time use.</i> <i>Provide opportunities for integrated public art throughout the laneways</i> 	Private	1 & 2	Publicly accessible During shop operating hours
2	<p>Creation of a new pedestrian link between Thorn Street and Wolfe Street (Pedestrian Arcade/Laneway)</p> <ul style="list-style-type: none"> <i>Design principles for laneway as per #1 above</i> 	Private	3	Publicly accessible 24 hours
3	Masonic Court (Open Space)	Private	3	Publicly

Map No.#	Brief Description of Proposed Space, and use/function, and Design Principles (by Aspect design)	Public/Private	Stage	Access
	<ul style="list-style-type: none"> • Opportunity for an additional passive recreation space located at the lobby entry to Block 3. • Provide high quality legible lane connections that utilise the spatial character and play upon the existing urban grain of the Newcastle CBD • Provide adequate lighting throughout the lanes to promote surveillance and safe night time use. • Allow for new accessible connection to adjacent Masonic Centre 			accessible 24 hours
4	Thorn Grove (Open Space) <ul style="list-style-type: none"> • Provide generous public seating opportunities • Include decorative trees with understorey planting with possible Water Sensitive Urban Design opportunities 	Private	4A	Publicly accessible
5	Creation of a new Market Square between Hunter Street and Laing Street (open space) <ul style="list-style-type: none"> • Provide a high quality publicly accessible space of minimum 450sqm (The Market Square) • Allow flexibility in the design of the square for the inclusion of small gathering / events to occur. • Provide high quality publicly accessible laneway connections, open to the sky of minimum width 6m • Include tree planting, understory planting and appropriate lighting to create an attractive laneway space • Provide services infrastructure to support outdoor dining 	Private - to be dedicated to Council (Stratum) over a private car park	4A	Publicly accessible 24 hours
6	Market Square connections through to Laing Street and Morgan Street (Pedestrian Arcade/Laneway) <ul style="list-style-type: none"> • Design principles for laneway as per #1 and #2 above 	Private	4A	Publicly accessible 24 hours
7	Conversion of Morgan and Laing Streets to shared ways (Roadway: Varied 1 and 2 way vehicular access and/or shared zone laneway) <ul style="list-style-type: none"> • The shared zone could consist of high quality unit pavement, public amenities, potentially benches, street trees and lighting to provide a safe and enticing environment. Vehicular connections will be maintained to allow for access to carpark entries and for delivery purposes. • Provide high quality legible lane connections that utilise the spatial character and play upon the existing urban grain of the Newcastle CBD. • Provide adequate lighting throughout the lanes to promote surveillance and safe night time use. Provide opportunities for integrated public art throughout the laneways	Public	4A-6	Publicly accessible 24 hours
8	Creation of a new pedestrian link between Newcomen and Morgan Street referred to as Comen Lane (Pedestrian Arcade/laneway) <ul style="list-style-type: none"> • Design principles for laneway as per #1 above 	Private - to be dedicated to Council (Torrens Title)	5	Publicly accessible 24 hours
9	Morgan Street Steps (not within Concept DA): Pedestrian-only linkage and open space)	Public	N/A	Publicly accessible

Map No.#	Brief Description of Proposed Space, and use/function, and Design Principles (by Aspect design)	Public/Private	Stage	Access
	<ul style="list-style-type: none"> • An open paved space at the base of the stairs could provide the opportunity for informal events and performance • Provide generous width stair connection (minimum 3m wide) between King Street and Laing Street • Include planted terraces and seating areas adjacent the stairs • Provide adequate lighting throughout the terraces that allows safe night time use 			24 hours

Significant rows of street trees along the Hunter Street Mall, Newcomen Street and Perkins Street which will be retained and augmented where appropriate.

Assessment: The proposed Public Domain Strategy is considered to be an appropriate response to the staged concept proposal. If delivered in a consistent and integrated approach, as proposed in the submitted Indicative Public Domain Strategy, with high quality finishes and relationship to existing and proposed buildings, it will provide a desirable outcome for the East Newcastle precinct. The following statement by the Council's Urban Design Consultative Group is concurred with:

"...much of the landscape evaluation will necessarily occur at the stage DA phase, and crucially, will also occur in consultation with Council with respect to public streets and laneways. The coordination detailing of the latter will be an important element in achieving a good urban outcome. Plantings, pavement detailing, street furniture design and placement, attractive and consistent public realm signage are all key elements that must be coordinated across development stages. The provision for appropriate street tree planting is clearly of prime importance."

In this regard, the final designs for these spaces and consent will be need to be developed as part of the future DAs for the staged development of the site (including subdivision for dedication of land for public spaces). It is recommended that a condition be imposed for the concept proposal that requires the development application for each stage to carefully address the principles and design requirements of the following documents:

- Indicative Public Domain Strategy (Aspect Studios)
- 'Draft Hunter Street Plan' prepared for Newcastle City Council, Aspect Studios)
- City of Newcastle's Technical Manual City Centre Public Domain (September 2014)
- Crime Prevention through and Environmental Design Principles (a formal crime risk assessment will be required to be prepared for each stage with a particular emphasis on publicly accessible areas, including at night).
- Infrastructure requirements, upgrades, rectification and potential amplification and staging.

Funding responsibilities for public domain and publicly accessible areas and Section 94 Contributions

The timing, staging and funding of these spaces will be paramount to the success of the deliver of the public domain outcomes. Section 6.6.1 of the Statement of Environmental Effects addresses Council's Section 94A Contribution Plan 2009 (as amended) and states:

"The proposed development involves substantial redevelopment of four (4) city blocks. The development generates a significant public benefit to the broader community but also seeks to change existing infrastructure and will require the upgrade, rectification and potentially amplification of surrounding infrastructure."

Part B of the plan applies to the Newcastle City Centre area. The contribution payable under the plan for development involving the erection of a building, works or subdivision

is 2% of the estimated cost of development. This amount is regulated at 3% at clause 25K of the EP&A Reg 2000. Council have resolved to seek 2% until the 2015/16 financial year.

The contribution payable on a development having an estimated cost of \$202,500,020 (excl. GST) is approximately \$4.05 million, which will be levied across subsequent Development Applications.

The works arising from this development can be categorised as follows:

- 1) Works as a direct function of the development – power to impose conditions on all development consent under S80A (1) & (6) EP&A Act 1979; and*
- 2) Works and/or contribution levied under s94A – power to impose conditions under s80A(1) to (f), s94, 94A, and 94B of EP&A Act 1979.*

At this stage, the development will be subject to S94A Contributions, assessed as part of the assessment of future Development Applications. Public domain works would be anticipated to be funded by these contributions."

Council's Senior Strategic Officer (Section 94) reviewed the above and noted that they have no objection to the above approach. However, the following needs to be considered in the implementation and delivery of these works:

It is considered that all public domain works within private property (ie. Items 1,2,3,4 and 6 as listed in the table above) should be fully funded by the developer and completed within the applicable stage (also listed in the above table). Other works within the public domain that are ordinarily required to be provided as part of a development (infrastructure upgrades, paving for full frontage of the development and tree planting etc) should be imposed as conditions of development consent (ie. Section 80A) for all stages. The development of Market Square, conversion of Morgan and Laing Streets to share ways, Comen Lane and Morgan Street steps are all public domain works outside the subject land (once land is dedicated), and therefore Section 94 Contributions should apply to the funding (or partial funding) of these works. However, the following considerations apply and provide some complexity in the implementation and delivery of the specific works in the context of the provisions of the existing Plan.

Part B 'Newcastle City Centre' of Council's Section 94A Development Contributions Plan 2009 (May 2015) (Schedule 4: Works Schedule for Expenditure within the City Centre) identifies \$3,000,000 for public domain works at the East End Precinct within the 2018-2024, in addition to other general works within the city centre (open space embellishments, community centre etc). According to Part b (7) of the Plan, "the funds collected under Part B of this Plan will be pooled *for city project and priorities for spending will be determined as part of Council's annual Management plan process.*" Therefore the 2% (or 3% depending on the timing of the future DAs) levy for future development applications will be pooled for the purposes listed in the plan, not for the specific works proposed as part of this staged concept DA. There may be some overlap with the public domain works at the East End Precinct specified in the Schedule, however this has not been ascertained for the assessment of this application. In addition, the estimated \$4.05 million contributions to be levied by the entire development is not likely to be enough to fund the proposed public domain works within the land (including land to be dedicated to Council, being Market Square and Comen Lane) and publicly owned areas (Morgan Street Steps and Shareways).

It is critical that this be established at the earliest opportunity and it is recommended that, should the concept application be approved, that the Part B of the Section 94A Contributions Plan (City Centre) be reviewed as soon as possible in the context of the draft Hunter Street Newcastle Public Domain Masterplan (to be costed), to ensure the proposed public domain works are constructed at the appropriate time having consideration to the likely staging.

Social Impacts

GHD were engaged by UrbanGrowth NSW to prepare a Social Impact Assessment (SIA) for the proposed GPT/Urban Growth NSW development fronting the Hunter Street Mall in Newcastle East. The SIA provides a detailed Community Profile and demographic analysis of the identified 'Development Area' and notes that the area is a key employment centre, has low levels of disadvantage, contains small households and a relatively young population, moderate levels of public transport use and is located in proximity to existing local and prominent regional social infrastructure in the local area. The Assessment also provides an anticipated demographic, age and community profile based on the estimated likely future population of the Development Area. The SIA provides that the proposed development will result in a younger population, smaller households comprising double income couples or young couples with children, with a high proportion of renters and increased use of public transport facilities and walking/cycling orientated modes of travel.

Consultation which was undertaken by GPT/Urban Growth NSW with the community Newcastle City Council's Community Planning Newcastle Now Business Activation Officer, Newcastle East Public School, Mercy Care (manage the Newcastle Elderly Citizens Centre), NSW Fire, General Manager Renew Newcastle Coordinator and Community Safety Facilitator provided the following feedback:

- Impacts on local character and sense of place.
- Potential traffic congestion and lack of carparking.
- Need for major supermarket to support the community.
- Economic effects include devaluation of properties.
- Need for a district level multi-purpose community centre incorporating some office space, meeting rooms and activity space was recognised.
- Significant accessibility issues due to steep inclines in Newcomen and King Street.
- Need for outdoor youth space.
- Inappropriate site for seniors housing due to steep slopes – accessibility issues would need to be addressed adequately.
- Community Connection, Public Safety and crime prevention issues must be addressed.
- Concerns about Licensed Premises being located in laneways.
- Provision of a child care centre would be beneficial.
- Cultural identity with Newcastle's history.
- Community and stakeholder consultation and communication.
- Newcastle East Public School - Issues raised including the lack of capacity to expand; upward trend in enrolment; importance of outdoor play areas for inner city schools;
- Newcastle Elderly Citizens Centre – issues raised for accessibility and open space/facilities provision;

The report concludes that the negative impacts of the development include:

- Potential construction impacts, including amenity, health and access impacts (particularly for the Seniors centre and the medical practice at 106 King Street);
- Potential for anti social behaviour for young people and those attracted to any new licensed premises;
- Potential adverse impacts on existing business tenants in the area, including the relocation of Renew Newcastle tenants.

The recommended mitigation measures which have relevance to the Concept Proposal include:

- Retail and commercial space to include a child care centre and a small supermarket.
- Provision of affordable housing, and seniors housing and provide 10% of residential housing as adaptable.

- Consideration of incorporation of additional commercial, retail and alternative land uses on the site, including a new supermarket, and use which provide leisure, entertainment, shopping services;
- Include a way-finding strategy for the Seniors centre and Masonic Hall (if available for community use);
- Provide opportunity for public art in the public domain;
- Provide high speed broadband and night-time activation in laneways.
- Design of public spaces to be undertaken in collaboration with the Newcastle community
- Market Square to provide a balance of inclusive public use with alfresco dining.

Council's Seniors Community Planner has assessed the SIA and concurs that a key impact of the development will be during construction and questions whether the current location of the Newcastle Elderly Citizens Centre is appropriate and whether it would be better incorporated into a new multipurpose community facility to be located elsewhere. It is recommended that Council investigate this matter as a separate issue, particularly in view of the potential construction impacts by the eastern stages of the development.

Council's Seniors Community Planner also notes that the additional population of over 1,100 residents will place pressure on existing GP practices. Whilst this issue is noted, Council does not have ultimate control over the uses which will occur the commercial/retail spaces and will be reliant on medical practices and a small supermarket recognising such demand and seeking to occupy available spaces. It is considered that the floor plates proposed provide sufficient flexibility to accommodate a range of uses.

The SIA also makes a number of recommendations to Newcastle City Council to expand on their existing plans and policies to address social interaction and public space activation in urban renewal areas, such as through the development of a policy to support positive social interaction with young people while addressing potential anti-social behaviour. The SIA also recommends that further consultation with Department of Education and Communities should be undertaken to ensure cumulative growth is considered in future asset planning in the area for primary and secondary schools. Council's Seniors Community Planner concurs with such advice and it is recommended that Council consider implementing such recommendations as a separate matter as part of the overall development of this precinct.

With respect to the recommendation for the incorporation of 10% of the development to be provided as affordable housing, this is supported to allow for a range of occupants, including seniors. The recommendations of Council's Seniors Community Planner with respect to public art, laneway security and the public domain are discussed in detail in the respective sections of this report.

In order to specifically address the potential issues or opportunities addressed by the SIA it is recommended that a Strategic Social Plan be prepared and submitted in association with the first development application for each stage of the proposed development, with details of the proposed community consultation process with key stakeholders and the local community. The document should specifically reference the requirements of Section 4.05 (Social Impact) contained within the Newcastle Development Control Plan 2012. The requirements for this detailed Social Plan should be included as a condition of consent of the Concept Proposal, if approved.

Safety and Crime Prevention

Councils' Senior Community Planner provides a number of recommendations regarding measures to minimise potential security risks including lighting, landscaping, use of communal areas, building security and access controls and entrances, surveillance opportunities of laneways and space management. Such recommendations are concurred with, however are appropriate for inclusion in a CPTED - 'Safer by Design Assessment'

which will be required to accompany development applications for each stage of the development, in conjunction with detailed design plans.

Traffic, Parking & Access

A Traffic Impact Assessment (TIA) was prepared for the Concept Proposal by GTA Consultants in October 2015 to examine pedestrian, bicycle, parking and servicing requirements and to assess the impact of the development on the surrounding road network.

Carparking:

Whilst detailed plans to confirm the layout of carparking areas, the plans show the location of carparking and access, with the TIA confirming that the development will provide a total of 491 carparking spaces within 6 carparking facilities, as listed in Table 8:

Table 8: Summary of Proposed Carparking (Extracted and adapted from Table 3.2 and Fig 3.2 of Transport Impact Assessment, GTA, 2010)

Block	Access Street	No. Levels	No. Car Spaces
1	Perkins/King Street	3	149
2	Wolfe St	3	84
3	Thorn St/Wolfe St	2 (inc basement)	76
4	Laing Street	1 (basement only)	88
5	Newcomen Street	2 (+ 1 basement loading area)	72
6	Morgan St	1 (located above retail level)	22
7	-	-	-
TOTAL			491

The carparking areas are proposed to be accessed from nine locations as shown in Figure 17. It is intended that commercial parking will be located in Block 1 and will be accessed via King or Perkins Street. Parking for the residential uses will be distributed throughout the site.

Figure 17: Servicing and Parking Plan (SJB Architects)



Based on the carparking requirements contained in Section 7.03 (Traffic, Parking and Access) of NDCP 2012 the following parking spaces are required:

- 429 residents spaces to service the 565 apartments;
- 113 visitor spaces (for 565 apartments)
- 127 spaces to service the 4900m² of retail and 2700m² of commercial.

A total of 669 carparking spaces are required to service the development, whilst 491 spaces are proposed, leaving a shortfall of 178 parking spaces. The TIA justifies this shortfall on the following basis:

- The development provides in excess of the number of parking spaces required for resident parking, with the majority of this surplus proposed to be provided in Block 1. *"Block 1 will be capable of supporting the residential visitor parking demands associated with the western part of the precinct with minor surplus within each of the other blocks to be also allocated to visitor parking. The remaining parking demand...will be accommodated on the streets within the precinct."*
- *With respect to the non -residential parking activity, it is appropriate to assume that the retail demand...and the commercial demand....would also partially use the streets within the precinct and Council's multi deck carpark (478 spaces):*
- *Considering that the multi deck carparks original approved function was to accommodate the parking demands associated with the precinct (including retail activity), it is justifiable that it be made available, in part for use by the various land uses within the precinct".*

Council's Senior Development Officer estimates that *"around 25 % of Council's 478 multi-level car park or 120 spaces will be required for this development. This would require a change to the current operational focus of the car park from long term / all day parking to short term parking encouraging regular turnover"*. In this regard he confirms that Council Management has advised the following:

'Council is committed to supporting the renewal of the broader Newcastle CBD and will implement the necessary operational changes to facilitate the parking demands of this and other developments are met. This means ensuring:

- *Hours of operation are extended to meet retail and commercial function of the development;*
- *The car park operates on weekends;*
- *Pricing mechanisms reflect the need to promote short stay parking."*

Council's Senior Development Officer concludes that "the parking shortfall can be adequately catered for in Council's existing multi-level parking station and time restricted kerbside parking. Notwithstanding Council will require the provision of a minimum of 5 dedicated visitor parking spaces within each of the 6 distinct car parks proposed under this development. This equates to 25 % (30 spaces) for visitor parking being provided on-site and the remaining visitor parking 75% (83 spaces) being catered for in Council's multi-level parking station and time restricted kerbside parking in surrounding local streets." Further, Council's Contact Development Officer (Engineering) recommends that in addition to the requirements for 25% of the visitor parking which is to be located on site, all residential parking, all commercial staff parking and all retail staff parking should also be located on site. This recommendation will be reflected in a condition of consent, should the Concept Proposal be approved.

This will ensure that permanent resident/tenant parking is provided on site, whilst accepting use of the Council carpark for shorter term stays. Further, the use of Council's carpark for visitors to the residential and commercial components of the site is acceptable having regard to the fact that the carpark currently services the commercial/retail floor area which exists within the subject site, as individual sites do not contain on-site parking. This effectively results in a situation where carparking 'credits' apply to the subject site, whereby it is reasonable to accept that the 'new' floor area which replaces 'existing' floor area should be allowed to continue to benefit from the continued use of such public carpark.

Whilst the operation of the Council carpark is not a matter which the applicant can address in conjunction with the proposed development and is a separate matter to the Concept Proposal, it is recommended that Council proceed with the above operational changes to the carpark, should the stages of the Concept Proposal proceed. Such changes should be implemented prior to occupation of the various stages of development.

Further, it is noted that whilst an indicative staging plan has been provided by the applicant, it is not the applicant's intention that such staging will proceed in numerical order, but rather that this plan only defines the boundaries of each stage. As the Stage 1 carpark provides the largest number of parking spaces (ie. 149 spaces), it is considered essential that this stage proceeds first to ensure that there is no shortfall of parking, in the event that later stages do not proceed. Council's Seniors Development Officer concurs with this recommendation and has advised:

"It has been recommended that this car park be operational as part of the first stage undertaken to manage car parking activity inclusive of construction vehicles. An appropriate condition has been recommended for this application requiring Stage 1 to be the first stage undertaken as part of this development and completed prior to the commencement of any other stage."

The TIA also confirms that motorcycle and bicycle parking will be provided in accordance with the requirements of NDCP 2012 and a condition should be attached to any consent which is issued requiring demonstration of this. Council's Contract Development Officer (Engineering) also recommends that in assessing the commercial/retail and residential parking requirements that each stage of the development should be supported by a concept Green Travel Plan. This will be attached as a condition of the consent if the Concept Proposal is approved, together with a condition requiring that a car sharing scheme be provided.

Access:

The primary loading areas for the development will be from Perkins Street (Block 1 and 2) and from Laing Street (Block 5), as shown in Figure 17. The Perkins Street loading/waste collection area will have capacity for two service vehicles (of up to 10-11m in length) to access the area, with a turntable to assist with manoeuvring. The Block 5 loading/waste collection area will be located under the building, with access from Laing Street. Additional secondary service entrances are proposed from Thorn Street, Laing Street and Morgan Street. It is also intended that loading and garbage collection will occur on street, utilising existing on street loading zones.

Council's Contract Development Officer (Engineering) has reviewed the servicing arrangements and has advised:

- *"This is probably a rationalisation of existing accesses in the area and is not considered onerous given the road frontages and scale of the development. The proposed site accesses seem to be satisfactorily located with good separation from intersections. Construction types, widths and pedestrian sight lines would still need to be reviewed at the future DA stage for the construction of each when detailed plans are available."*
- *It would appear that the servicing arrangements for Blocks 1 and 2 and Block 5 which occur on-site would be satisfactory though would need further review at DA stage for construction.*
- *As Stage 7 involves use of existing buildings then existing servicing arrangements are anticipated to be satisfactory.*

However, he has raised concern that *"the servicing of Blocks 3, 4 and 6 on street, particularly in regard to waste collection is not considered to be satisfactory, particularly as*

new buildings are proposed. Further development applications should ensure that waste collection from these stages is provided on-site".

Having regard to the above advice it is recommended that a condition be attached to the Concept Proposal requiring the submission of detailed plans and documentation to demonstrate the provision of on-site servicing and waste collection arrangements for Blocks 1-6, unless it can be demonstrated that on street arrangements are acceptable and will not conflict with vehicular/pedestrian movements and the availability of on street parking.

Traffic Circulation:

The Concept Proposal incorporates the following changes to traffic movements:

- The eastern end of Laing Street will be altered to provide one lane two way operation (between Block 4 access and Morgan Street), the western end will continue to provide two way vehicle access; and
- Morgan Street will change to one way northbound (from one way southbound).

Council's Contract Development Officer (Engineering) has advised that the *"proposed change to traffic circulation in Laing street and Morgan Street as well as the proposed shareways within these streets seem reasonable however will require in principle support from Council's Traffic Committee"*. This issue has been discussed with Council officers who have subsequently advised that consideration by the Local Traffic Committee is not required at this stage as approval is not currently being sought for works. The need for referral of the Concept Proposal to the Local Traffic Committee has been considered during the preparation of this report and it is concluded that the Local Traffic Committee is required to be consulted where there are actual changes proposed to traffic control devices, signage, linemarking etc. The approval of the Local Traffic Committee will however be required for the proposed road changes for each applicable stage, when physical changes to traffic movements and associated signage are proposed. Whilst there is no certainty that this approval will be granted, it appears that alternatives with respect to parking would remain available to maintain current traffic flow patterns should this be necessary.

Traffic Generation:

The Transport Impact Assessment prepared by GTA Consultants also assessed the impacts which the development traffic will have on the surrounding road network, at the current point in time and by 2025. The assessment indicates that traffic volumes generated by the development will be in the order of 301 to 384 vph in the AM and PM peaks. Council's Contract Development Officer (Engineering) has reviewed the analysis which has been undertaken by GTA and has concluded that *"this assessment has demonstrated that whilst additional traffic will reduce the level of service experienced by motorists on the road network around the site including at the major intersections the road network would still be operating with average delay ie. LOS (level of service) within the acceptable guidelines provided by NSW RMS. I have reviewed the modelling results provided within the report and have no issue with this conclusion."*

Council's Senior Development officer has also reviewed the traffic modelling and notes:

"The modelling has confirmed in accordance with RMS guidelines that surrounding intersections generally continue to operate post development at acceptable levels of service during both AM and PM peak periods. The exception is the operation of the King and Darby Street intersection with existing 116m vehicle queue lengths for westbound vehicles in King Street during the PM peak. It is however acknowledged that this development proposal results in only a minor increase of around 25m (4 vehicles) to this existing queue length and is therefore considered acceptable."

Contract Development Officer (Engineering) notes that the modelling which was undertaken by GTA Consultants did *"not take into consideration impacts associated with the proposed Newcastle Light Rail route along Hunter Street/Scott Street, as the detailed design has not*

been finalised" The RMS had initially advised in its correspondence of 24 December 2015 advised that a revised TIA was required that made an appropriate allowance *"for the potential shift in traffic movements (current anticipated to be up to 40%) from Hunter & Scott Streets to King Street and the potential impact on the operation of the Hunter Street/Darby Street traffic signals by the provision of a light rail network"*.

Council officers acknowledged the difficulties in undertaking accurate modelling given the design for the Light Rail has not been finalised. The RMS provided further advice on 5 April 2016 which advised that RMS has no objections to the Concept Proposal and it:

"understands that recent traffic modelling, undertaken to consider the impacts of the Newcastle Light Rail Project and to identify any road network upgrades that will be required at key signalised intersections as a result of implementation of the light rail, has included traffic generated by known Urban Growth proposals, including the subject development".

On the basis of the above advice further traffic modelling is not required at this time however, in accordance with the advice from Council's Contract Development Officer (Engineering) it is recommended that a condition be attached to the Concept Proposal, if approved, requiring the submission of a detailed TIA in conjunction with a development application for each stage. The TIA should include a review of traffic data and road network assessment to account for any road network changes affecting the road capacity.

Council's Contract Development Officer (Engineering), in consultation with Council's Traffic Section has also identified the need for improvements to the Scott Street/Hunter Street intersection at Brown Street *"due to difficulties with drivers on the eastern section of Hunter Street merging with traffic on Scott Street heading west due to the sharp angle these roads intersect with each other. The intersection needs to be upgraded to increase this angle of intersection to as close to 90° as possible. This would need to be included in the public domain plans for Stage 1"*.

Whilst it agreed that any upgrading which is necessary may be incorporated in the public domain plan there will also be a need to prepare a comprehensive design and costing for such intersection. Due to the need to ensure that there is a nexus between the works and the development it would be unreasonable to apportion the full costs of such works to Stage 1 of the development. Alternatively, it is appropriate that, following the preparation of a detailed design and costing by Council that the Section 94 Development Contributions Plan 2009 be updated to reflect the cost of this intersection and to apportion costs appropriately to works within an identified area of the Newcastle City Centre, where a nexus exists.

The RMS concurs with this advice as noted in its statement:

"Council should ensure that an appropriate funding mechanism is in place that requires the proponent of the development (and future developments within the Newcastle city area) to provide an equitable monetary contributions towards future local road network upgrades and/or traffic management measures that are likely to be required as a result of the redevelopment of the Newcastle BCD and surrounds".

Acoustic Impacts

Whilst the provisions of Clause 102 (Impact of road noise or vibration on non-road development) of SEPP (Infrastructure) 2007 do not apply as the site is not adjacent to a road corridor which carries an annual average traffic volume of more than 40,000 vehicles, the RMS has advised of the following:

"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 Roads Noise Policy 2011.....If the external noise criteria cannot be feasibly or reasonably met, Roads and Maritime recommends that Council apply internal noise objectives for all habitable rooms and windows that comply with the Building Code of Australia".

It is considered reasonable that an acoustic assessment be provided in conjunction with future development applications for the various stages of the project, when comprehensive development plans are prepared and when mitigation measures can be addressed in greater detail. This requirement should be attached as a condition of consent, should approval be granted to the Concept Proposal.

Construction Management

A Construction Management Plan was prepared by Caverstock Group in October 2015 as part of the Concept Proposal documentation which confirms 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 raised concern regarding potential construction impacts, particularly given the extended timeframe between commencement and completion. The concerns raised by residents and businesses are 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. It is considered critical that impacts on residential amenity and business operations are minimised to the greatest extent possible, however it is apparent that some level of disturbance is inevitable. Whilst the Construction Management Plan provides a broad outline of the method and staging of operations it does not provide the finer detail to address matters which have been raised within submissions including contractor parking, traffic controls, temporary and permanent road closures, dust control measures and skip bin location.

The issue of greatest concern is considered to be the impact of on-street parking by construction workers which will significantly diminish the availability of parking for residents and businesses including medical practices in the City Centre, which were the subject of submissions and a petition by patients and staff. Further, there will clearly be a greater impact on residents in King Street due to the increased volume of construction traffic on this road as a result of the need to maintain access to the Mall and businesses in Hunter Street.

The Construction Management Plan identified the need for further detailed information to accompany the development applications for the various stages of the works and this is considered essential. Specifically a detailed Construction Management Plan should be provided for each stage to incorporate the following:

- A Traffic Management Plan which details:
 - The carparking management strategy for each stage which details the location of site personnel parking, including consideration of public transport options to minimise on street parking, where parking cannot be provided on site throughout the construction phases. The Traffic Management Plan should provide options for alternative parking locations outside of the City Centre, with access by employees of the work site via public transport where parking cannot be accommodated on site or within the Stage 1 carpark;

- Location of construction zones and delivery access, including pedestrian and traffic management;
- Proposed traffic control measures;
- Construction hours, including hours for deliveries and delivery location;
- Any required temporary road closures.
- A Noise and Vibration Management program which details measures for minimising the impact of the construction phase on the amenity of the neighbourhood;
- Location of material storage and temporary storage sheds.
- Details of site fencing/hoarding, excavation and shoring.
- Measures to mitigate dust impacts arising from demolition and construction activities.
- Measures to minimise potential odour associated with the operation of machinery or other potential odour sources.

Service Infrastructure

An 'Infrastructure Services Masterplan Report' has been prepared by Aurecon Australia Pty Ltd (dated 29 October 2015) to assess what existing utilities will be affected by the proposed development and to outline 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 will require further liaison with service agencies to determine works required. More specific conclusions and recommendations from the initial investigations and strategy formulations are summarised as follows:

Electrical Power Supply and Reticulation

- *Ausgrid was planning substantial substation upgrades for Newcastle East End in the near future, so this project is an opportunity to undertake a rationalisation of services and potentially save costs for all parties.*
- *Further consultation with Ausgrid and the engagement of an Accredited Service Provider Level 3 will be required for each stage of the development.*

Water and Sewerage

- *Hunter Water has confirmed that, based on the demand projections provided, the current water and sewer system is likely to have sufficient capacity for the new development in a general sense, with some local upgrades possibly required.*

Stormwater Drainage

- *The area does not currently suffer from serious flooding. Newcastle Council proposed that the development will increase pedestrian traffic and therefore that drainage upgrades to alleviate drainage issues should be part of the development scope.*
- *Hydraulic modelling of the local drainage network is required to identify any deficiencies which will need to be addressed by augmentation or upgrades to the network during the design phase for each subsequent development application.*

Gas

- *Gas supply is currently available in the Newcastle East End. No demand data for the development is currently available and so supply capacity of gas was not investigated.*
- *A gas demand and supply assessment for each subsequent stage of the development should be undertaken when proposed gas usage within each stage has been addressed.*

Telecommunications

- *It is not possible to present an accurate telecommunication demand characteristics for the development at the time of this report. Whilst a large demand will be created by the development, Telstra along with other carriers advised that they would contribute to the telecommunications design, as required, at a later stage of design process.*
- *Some aerials on top of the former David Jones building may be impacted by the development.*
- *Consultation with telecommunications and optic fibre providers will be required to determine the available network capacity, and upgrades required for each subsequent development application, is required. An agreement may be required between GPT/UrbanGrowth and Telstra to allow relocation of existing aerials from the top of the former David Jones building to Block 1.*

Roads

- *All roads are proposed to remain in service within the development site, essentially on their current alignment.*
- *A Condition Assessment of roads and related infrastructure must be completed, as required, for each subsequent development application.*

General Street Infrastructure and Buildings

- *A Condition Assessment of General Street Infrastructure must be completed, as required, for each subsequent development application.*

Council's Contact 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, conditions should be attached to the Concept Plan, if approved, requiring the provision of documentation to confirm the delivery of services in consultation with service agencies, details of any relocated equipment and a Condition Assessment of general street infrastructure, roads and related infrastructure.

Flood Management

Council's Contract Development Officer (Engineering) has advised:

"The lower part of the site (north-western corner) along Hunter Street between Perkins and Wolfe Street is flood prone being within the flooding inundation area for the local catchment PMF flooding. However the site is clear of the 1% AEP flood inundation and the PMF flood level is only 200mm higher than the 1% flood level. Therefore the only flood management control required is a minimum floor level which because of the small difference between the 1% flood level and the PMF flood level needs to be set at the PMF levels, therefore the minimum floor level for the ground level of the development should be set at RL 2.5metres AHDF. Similarly vehicle access to the basement parking areas should be set at or above RL 2.6m AHD. A basic flood assessment should be included with each future building stage DA for the proposal".

The above requirement will have minimum impact on the development, having regard to existing site levels and will be attached as a condition to the Concept Proposal, if approved.

Contamination

Comments regarding site contamination are contained in the SEPP 55 assessment contained in Section 6 of this report.

Geotechnical Constraints

Douglas Partners undertook a preliminary review of potential issues relating to ground conditions associated with the current concept design, which included geotechnical, mine subsidence, contamination and groundwater assessments for the site. The 'Summary of Potential Ground Issues' report provides a succinct review of the results of the previous development (DA2014/0323) considering the potential footprint of the proposed development (DA 2015/10182). Douglas Partners identify a number of potential geotechnical constraints including 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.*
- *Remediation (likely removal) and validation of all material with contamination exceeding land-use criteria would be required. Much of the material may be removed as part of general excavations however the remediation would require the preparation of a remedial action plan.....*
- *If USTs are present, they will need to be subject to removal and validation.*
- *There is also a possibility that groundwater contamination remediation could be required.*
- *A hazardous materials assessment will be required for the existing buildings..... A site specific management plan would be required for the removal of asbestos.*

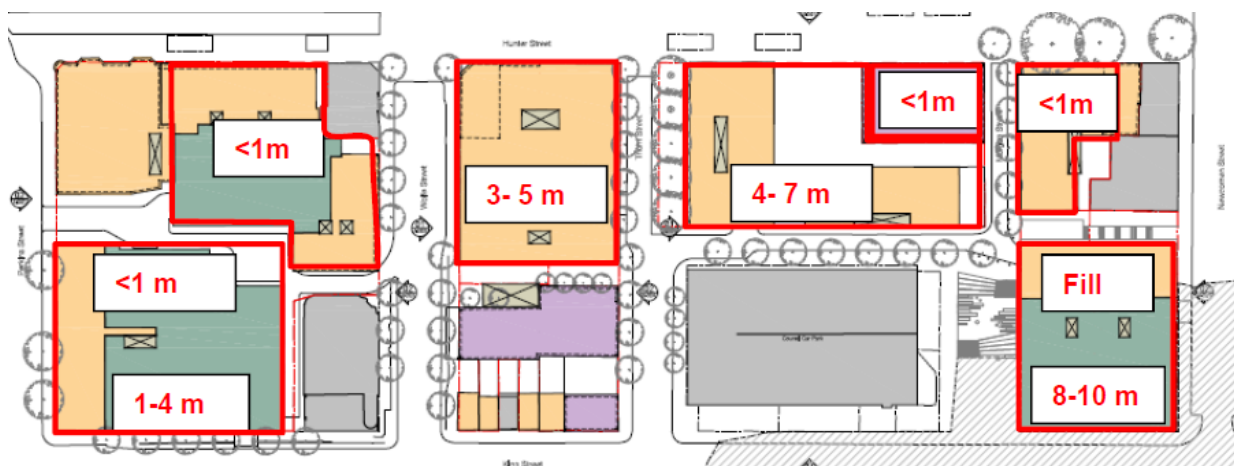
- Acid Sulphate Soils “would need to be managed in accordance with an ASSMP and will require reuse on site or disposal as General Solid Waste”.
- Some excavations will extend below the water table and dewatering will be required during construction.
- Site water is generally unsuitable for disposal to 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'.
- Where there are workings present there is an unacceptable risk of pothole subsidence potentially leading to undermining of any overlying footings or slabs. For slabs, full grouting is required, otherwise the slabs would need to be effectively suspended between the footings.

With respect to the proposed level of cut on the site, the report confirms that:

"Basement car parking is proposed for two blocks along the southern side of Hunter Street, between Wolfe and Morgan Streets with floor levels of about RL 0 to 1 AHD requiring cuts in the order of 3 m to 4 m along Hunter Street and 5 m to 7 m along Laing Street. In the south-east corner of the site the block at the corner of King and Newcomen Streets has a finished floor level of about RL 15 AHD. This is expected to result in cut of about 8 m to 10 m along King Street, and fill at the northern end of the building, supported by vertical retaining wall up to about 12 m high. Much of the remaining development has finished floor levels in the range RL 4 to 60 AHD generally requiring only limited cut, often less than about 1 m."

The location and estimated depths of potential cuts are shown in red on Figure 18.

Figure 18: Development Footprint Showing Approximate depths of Cut (in red)
Source: Figure 5 of ground Issues Report (Douglas Partners, 2015 page 10)



Douglas Partners provide a range of recommendations regarding excavation and fill support, particularly in relation to the excavations in to the south-west corner of the site, where cuts of up to 10m-12m are required. The report identifies that*"for deeper excavations anchoring is expected to be required. In some instances, such as basement, 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 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.

Given the preliminary nature of this assessment there will be a need for such further detailed investigations to address the range of ground issues including geotechnical constraints, contamination, acid sulphate soils, mine subsidence and groundwater. Relevant conditions will be attached as conditions of consent, should the Concept Proposal be approved.

Mine Subsidence

The 'Ground Issues Report' (Douglas Partners, 2015) confirms that

- *The site is underlain by three coal seams, two of which potentially include mine workings below the site.....On balance it seems likely that workings in the Dudley Seam are present below much of the site.*
- *Modelling has indicated that the factor for safety for the workings is marginal, with pillar instability possible following collapse of the coal tops.*
- *Worst case predicted subsidence on the site ranges up to approximately 0.6m of subsidence with tilts of up to 10mm/m and strains up to ± 3 mm/m.*

Douglas Partners also conclude the following with respect to each of the seams which may be affected by the development:

- *Dudley Seam: Where there are working present there is an unacceptable risk of pothole subsidence potentially leading to undermining of any overlaying footings or slabs. Localised grouting or piles to below the seam level could be used to protect footings against potholing, however for the slabs, full grouting will be required, otherwise the slabs would need to be effectively suspended between the footings.*
- *Market Shaft: Is mapped as being present below the existing Market Square Building on site. The MSB and Department of Mineral Resources has recently adopted a policy of precluding any development over shafts. It is considered however that an argument can be presented that provided the overlying structure is founded on competent rock and that the ground slab is fully suspended over the shaft that this removes any risk associated with the shaft.*
- *Yard Seam: In the unlikely event that workings were encountered in the Yard Seam there may be some requirements to grout the workings.*
- *Borehole Seam: It is proposed to undertake remedial grouting of the Borehole Seam to limit potential subsidence. The development of grouting strategies would need to be undertaken in ongoing consultation with MSB.*

Whilst, the Concept Proposal is not integrated under section 15 of the Mine Subsidence Compensation Act 1961 (as no works are proposed), it is noted that the application was accompanied by supporting documentation obtained from the Mine Subsidence Board by the applicant, to confirm the suitability of the site to accommodate the proposed development. The Mine Subsidence Board provided the following advice;

Correspondence of 28 April 2014:

The general area is underlain by old mine workings and the Board's current surface development guidelines provide for 3 storey structures. The Mine Subsidence Board would have no objection in principle to development of the site, including high-rise structures, providing the mine subsidence risks are assessed and addressed. I note the geotechnical report indicates grouting of the mine works is proposed. The Mine Subsidence Board's approval conditions for larger footprints and high rise buildings are likely to require:

- *Removal of any risk of mine subsidence by grouting of the mine workings. A report on the grouting strategy is to be submitted to the Mine Subsidence Board for approval;*

- *A geotechnical investigation that must include at least on (1) borehole to below the floor of the coal seam. The investigation is to include confirmation of the depth coal seam, heights of workings, floor conditions and thickness of competent rock as well as providing details of the pillar dimensions used in any analysis. The report must be to the satisfaction of the Mine Subsidence Board and include the measured deviation from vertical and ISG coordinates of any boreholes;*
- *Final drawings to be submitted prior to commencement of construction, contain certification by qualified structural engineer, to the effect that any improvement constructed to meet the specifications of such final drawings will be safe, serviceable and repairable taking into account the geotechnical conditions on the site; and*
- *On completion, verification by a qualified structural engineer is to be forwarded to the Board to confirm that all improvements have been constructed in compliance with plans approved by the Board under the development application.*

The Mine Subsidence Board assesses each application on its merits. There are a number of general conditions that may be applied to an application such as design of drainage and sewerage pipe work, permanent survey marks and attention to internal finishes. In some instances, a design component may need to be included for a small level of residual mine subsidence risk. In this case, design measures would need to be identified and certified by a qualified structural engineer to the effect that the improvements will remain "safe, serviceable and any damage from mine subsidence will be slight, localised and readily repairable" taking into consideration mine subsidence parameters determined by a geotechnical engineer and acceptable to the Mine Subsidence Board."

Correspondence of 15 October 2015

"By way of clarification of the Board's letter dated 28 April 2014, please note;

- 1. The proposed development has not been approved. The Board has only indicated it has no objection "in principle" to the proposed development.*
- 2. To obtain the Board's approval details of specific structures would need to be submitted for consideration. This would include property details, drawings, geotechnical reports and commentary on how the risk of mine subsidence and damage to improvements will be managed."*

Douglas Partners recommend that "a range of potential mitigation measures are presented to the Mine Subsidence Board (MSB) for their 'approval' so that there is flexibility to adjust the approach used in response to potential changes to design and/or construction methods/preferences over time".

Having regard to the MSB's advice that it has no objection in principle to development of the high-rise structures it is considered that the Concept Proposal can be approved subject to the imposition of conditions requiring the undertaking of further detailed investigations and the obtaining of approval for MSB for future works. Specifically, the approval of the Mine Subsidence Board will be required for future development applications pertaining to the various stages of the development as such applications will seek approval for actual works and hence will be classed as 'integrated development' requiring the General Terms of Approval of the Board. Any consent which is issued should be conditioned to reflect this requirement.

Wind Impacts

A wind assessment report will be required to accompany future development applications, having regard to the height of the proposed buildings and their proximity to each other.

(c) the suitability of the site for development

The submitted Preliminary Site Investigation (Contamination) prepared by Douglas Partners concludes that the proposed development will require removal of much of the contaminated

material as part of general excavations and the development will also effectively cap the site, which will minimise the risk of exposure to underlying soils. The report concludes that the site is suitable for the proposed development from a contamination perspective, subject to detailed investigation and appropriate remediation and validation.

With respect to issues relating to ground conditions, a number of potential constraints have been identified including the need for remediation of contaminated groundwater; the management of acid sulphate soils; the need for dewatering during construction; and the extent of cut which will be required on the site which will require detailed consideration of retaining wall design and impacts. Further, 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 is required for high rise buildings and large footprint structures. However, the Mine Subsidence Board has advised that it has no objections in principle to the Concept Proposal providing mine subsidence risks are assessed and addressed.

On the basis of the above advice it is considered that the site is suitable for the proposed staged development, subject to the submission of further detailed investigations, documentation and strategies to comprehensively address contamination, mine subsidence, geotechnical constraints, retaining wall construction, acid sulphate soils, groundwater and flooding in conjunction with each stage of the development.

(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 regarding height and density is contained in Section 6 (Section 79C(a)(i) - NLEP 2012), whilst bulk/scale, heritage, traffic, parking and noise is discussed in section 79C(1)(b).

It is agreed that construction impacts, as raised in numerous submissions have the potential to adversely impact on residential amenity and business operations. Detailed construction management plans will be required to accompany each stage of development and will be required to clearly document potential risks and mitigations strategies to manage and minimise impacts, given the extended timeframe over which construction work will occur. The inclusion of a condition requiring the construction and completion of the Stage 1 carpark, prior to proceeding with the construction of later stages of the development, will assist in reducing potential impacts on carparking availability and business access.

Concern regarding the need for a legislative change to NLEP 2012 with respect to height is also acknowledged. However, the amendment to NLEP 2012 is a separate matter to be addressed within the Planning Proposal which has been forwarded to the Department of Planning and Environment for 'Gateway Determination' and is not a matter which should, or can, prevent the determination of the current development application.

(e) the public interest

The Concept Proposal will facilitate the achievement of Council's vision for the Hunter Street Mall as contained within the Newcastle Urban Renewal Strategy and NDCP 2012 (Section 6.0104) by promoting a boutique shopping, leisure and retail destination, with street level activation. The current development application has reduced the level of retail and commercial uses and removed entertainment uses, with an increase in the proportion of residential accommodation (when compared to that submitted in DA 2014/0323). Whilst not ideal, it is nonetheless considered that the desired vision for this precinct can still be achieved through the inclusion of range of landuse types within both heritage/contributory buildings and within new building works. When coupled with the mid block pedestrian

connections which are proposed, the Concept Proposal has the ability to 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. Subject to the submission of further detailed information to clearly address mitigation strategies and ongoing management, it is considered that the overall economic and social benefits of the Concept Proposal are in the public interest.

7. Conclusion

The Concept Proposal allows for the delivery of a built form outcome which more closely aligns with the scale and height of development which was previously anticipated by Council and the community prior to the recent amendment to NLEP 2012, which significantly increased the permissible heights in the Newcastle City Centre. However, this has been at the expense of a broader land use mix and has resulted in a loss of public domain improvements which were previously to be funded by the developer.

The Concept Proposal, whilst containing the fundamental principles of the development does not, nor is it required to, provide the level of detailed which is necessary to allow for complete assessment of the application against the detailed controls of NLEP 2012, NDCP 2012 and relevant state environmental planning policies. However, an initial assessment of the information submitted with the application confirms the Concept Proposal can generally achieve the required built form outcomes, subject to the submission of detailed documentation at the development application for each stage of the project to address any variation to standards of NDCP 2012 or the 'Apartment Design Guide' (including street wall height and separation distances). It is considered that the integrated nature of the development will provide further opportunity to ensure that building design and fabric are considered in a comprehensive manner. The submission of such documentation and the undertaking of a rigorous assessment of future applications is considered critical, as referenced in the comments of the Urban Design Consultative Committee which state *"the proposal offers considerable promises, but an outstanding urban outcome will depend upon a similar level of design sophistication being carried through tho the detailed design of each of the six stages."*

In assessing the application a number of key issues have been identified including:

- There is a major objective to revitalise this part of the City and the four blocks on which development is proposed are located within several view corridors from the Cathedral Park. Hence there is a direct conflict between the heights proposed and the achievement of the objectives of the Cathedral Park Masterplan. On balance, it is assumed that Council's higher order LEP height control take precedence over the views achieved from the Cathedral Park. If this is the case, then the consent authority needs to be aware that the adverse impact to the Cathedral Park setting will occur for longevity should the Concept Proposal be approved.
- While 'facadism' and major demolition of buildings may not be the ideal outcome for buildings having heritage (or contributory) significance, it may, on balance, be the best outcome for certain buildings in the context of the site and precinct. The character of this precinct will change, however the aim is for the new development to compliment and respect the existing buildings through essential character elements of the new built form and spaces.
- The timing, staging and funding of the public domain spaces will be paramount to the success of the delivery of the public domain outcomes. The development of Market Square, conversion of Morgan and Laing Streets to share ways, Comen Lane and Morgan Street steps are all public domain works outside the subject land (once land is dedicated), and therefore Section 94 Contributions should apply to the funding (or partial funding) of these works. Council will be required to expedite an amendment to

its Section 94 Development Contributions Plan 2009, as a separate matter, to cost such works and any necessary infrastructure upgrades and to apportion costs.

- The development will be reliant on Council's 478 multi-level car park to provide approximately 120 spaces for commercial/retail and residential visitors. This would require a change to the current operational focus of the car park from long term / all day parking to short term parking encouraging regular turnover or alternatively to a mix of short and long term parking, which Council will be required to implement as a separate matter.

On balance, and having regard to the recommendations above, it is considered that the Concept Proposal will achieve the desired street level and built form outcomes for this precinct and will promote the revitalisation of the Hunter Street Mall. Accordingly, approval of the Concept Proposal is recommended subject to the provision of detailed documentation and management plans with development applications for future stages, together with ongoing consultation with referral bodies and the community.

8. Recommendation

That the Joint Regional Planning Panel grant consent to 2015/10182, subject to the conditions contained in Appendix A.

APPENDICES

Appendix A: Contains recommended conditions of consent

Appendix B: Provides a complete list of the documents submitted with the application for assessment.

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

Appendix C: Concept Proposals, including overall site Concept Proposal, indicative floor plans, building envelope elevations, sections, public access plan, staging plan and FSR Plan (SJB Architects)

Appendix D: Building Conservation and Retention Plan (TKD Architects)

Appendix E: Building Separation Plan (SJB Architects);

Appendix F: Massing Diagrams (SJB Architects)

Appendix G: indicative Photomontages