

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

Panel Reference	2018HCC003DA
DA Number	DA2016/00654.03
Local Government Area	Newcastle
Approved Development	Demolition of buildings, erection of 14 storey seniors housing development with 60 bed aged care facility, 74 seniors living units, two levels of parking (91 cars), ground floor retail space and associated site works
Notice of Determination	7 December 2016
Modified Development Description	Demolition of buildings, erection of 14 storey seniors housing development with 60 bed aged care facility, 76 seniors living units, two levels of parking (97 cars), ground floor retail space and associated site works
Street Address	Lots 6 & 7 DP95174 and Lot 8 DP95173 500 King Street Newcastle West
Applicant/Owner	RSL Lifecare c/o TSA Management
Date of DA lodgement	21 December 2017
Number of Submissions	Nil
Recommendation	Approval
Regional Development Criteria	The development is to be determined by the Joint Regional Planning Panel (JRPP) pursuant to Section 2.15 of the <i>Environmental Planning and Assessment Act 1979</i> , as the proposal involves a modification to an approved development for which the JRPP was the consent authority. The cost of the original development was \$44,002,639 and the subject application has been lodged as a Section 4.55(2) modification.
List of All Relevant Section 4.15 (1)(a) Matters	Environmental planning instruments: s4.15(1)(a)(i) <ul style="list-style-type: none"> • State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 • 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 (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy No. 55 - Remediation of Land • State Environmental Planning Policy No. 65 - Design

	Quality of Residential Flat Development <ul style="list-style-type: none"> • State Environmental Planning Policy (Coastal Management) 2018 • Newcastle Local Environmental Plan 2012 Development Control Plan: s4.15(1)(a)(i) <ul style="list-style-type: none"> • Newcastle Development Control Plan 2012 • Section 94A Development Contributions Plan 2009
List all documents submitted with this report for the panel's consideration	Appendix A - Amendments to conditions of consent Appendix B - Documents submitted with the application Appendix C - Section 94E direction
Report by	Newcastle City Council
Report date	17 May 2018

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **No**
(Has been addressed in the body of the assessment report)
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not Applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions? **No**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **No**
Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

Development application No.2016-00654.03 has been lodged with Council, seeking modifications to the development consent granted by Council on 7 December 2016, for:

Demolition of buildings, erection of 14 storey seniors housing development with 60 bed aged care facility, 74 seniors living units, two levels of parking (91 cars), ground floor retail space and associated site works.

The proposed modification would result in the following amended development description:

Demolition of buildings, erection of 14 storey seniors housing development with 60 bed aged care facility, 76 seniors living units, two levels of parking (97 cars), ground floor retail space and associated site works.

The modification proposal was placed on public exhibition for a period of 14 days from 9 January 2018 in accordance with the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, *Environmental Planning and Assessment Regulation 2000 (EP&A Regulation)* and Section 8 of Newcastle Development Control Plan 2012. No submissions were received during the notification period.

The key issues raised in the assessment of the Section 4.55 modification relate to the:

- Provision of Seniors Housing by a 'Social Housing Provider' and Section 7.12 contributions; and
- Compliance with the relevant planning controls.

The application is recommended for approval, as the proposed modified development will provide additional residential accommodation in the City Centre and will generate positive economic and social benefits. The proposed development will assist in the renewal of the western part of the City Centre.

The development is to be determined by the Joint Regional Planning Panel (JRPP) pursuant to Section 2.15 of the *Environmental Planning and Assessment Act 1979*, as the proposal involves a modification to an approved development for which the JRPP was the consent authority. The cost of the original development was \$44,002,639 and the subject application has been lodged as a Section 4.55(2) modification.

1. INTRODUCTION

This report provides a detailed overview of the modified development proposal for the construction of a seniors housing development at 500 King Street Newcastle West. The development application is reported to the Hunter and Central Coast Joint Regional Planning Panel in accordance with Section 2.15 of the *Environmental Planning and Assessment Act 1979*, as the proposal involves a modification to an approved development for which the JRPP was the consent authority. The cost of the original development was \$44,002,639 and the subject application has been lodged as a Section 4.55(2) modification.

The original approval was determined by the JRPP on 24 November 2016 (JRPP Ref No.2016HCC044DA).

2. SITE DESCRIPTION

The site has an area of approximately 2,628m² and is generally flat and rectangular in shape. The site is known as 500 King Street Newcastle West, (also known as 745 Hunter Street Newcastle West) and comprises Lots 6 and 7 in DP95174 and Lot 8 in DP 95173. The site has a frontage to King Street of 59 metres, however, the frontage is to a 'service road' section of King Street. For clarity in the report, the service road is referred to as 'Little King Street'.

There are a variety of different land uses in the general vicinity of the site, being predominantly commercial. Birdwood Park is located to the south of the site, across Little King Street. To the north of the site is a 13 storey short and long-term rental accommodation facility known as the 'Pinnacle' Building, an unidentified commercial building and a row of three two-storey terraces.

Adjoining the site to the east is the heritage-listed Army Drill Hall, being a one-storey to two-storey brick and weatherboard building. The site to the west has an approval for an eight-storey 'Holiday Inn' hotel (Development Application No.2016/00746 and HCC0048).



Figure 1: Aerial view of the site

3. PROPOSAL

On 7 December 2016, conditional consent was granted to carry out the following development on the subject property:

Demolition of buildings, erection of 14 storey seniors housing development with 60 bed aged care facility, 74 seniors living units, two levels of parking (91 cars), ground floor retail space and associated site works.

The applicant has identified the following key modifications proposed:

- *Ground floor level retail reconfiguration, to create a self contained retail premises.*
- *Relocation of plant room, creating two additional units and associated parking. This will result in the total number of seniors living units increasing from 74 to 76.*
- *Reconfiguration of community centre on level 13.*
- *Reconfiguration of internal corridors.*
- *Amendments to external screening.*
- *Changes to balconies, including a new balcony over Little King Street.*
- *Facade modifications, flags, awnings and amendment to street wall (100mm) to meet BCA hand rail requirements.*

Refer to **Appendix B** for a copy of the floor plans and elevations of the proposal.

4. PLANNING ASSESSMENT

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

4.1.1 Section 4.5 – Joint Regional Planning Panels

The development application is reported to the Hunter and Central Coast Joint Regional Planning Panel in accordance with Section 2.15 of the *Environmental Planning and Assessment Act 1979*, as the proposal involves a modification to an approved development for which the JRPP was the consent authority. The cost of the original development was \$44,002,639 and the subject application has been lodged as a Section 4.55(2) modification.

4.1.2 Section 4.46 – Integrated Development

Conditional approval from Subsidence Advisory NSW was received by the applicant on 26 May 2016, prior to the lodgement of the original application.

4.1.3 Section 4.15(1) Evaluation

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, as detailed hereunder.

4.1.3.1 *the provisions of any environmental planning instrument*

State Environmental Planning Policy (State and Regional Development) 2011

This policy sets out the functions of regional panels in determining applications for regional development. Clause 20 of the SEPP requires the Joint Regional Planning Panel to be the determining authority for development included in Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011. This includes applications for development over \$30 million in value.

The trigger for modification applications to be referred to the Hunter and Central Coast Joint Regional Planning Panel for determination is Section 2.15 of the *Environmental Planning and Assessment Act 1979*.

State Environmental Planning Policy (Urban Renewal) 2010

The modified proposal remains acceptable having regard to this policy.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

The ISEPP was introduced to facilitate the delivery of infrastructure across the State by improving regulatory certainty and efficiency.

Schedule 3 of ISEPP, relates to traffic generating development and requires certain applications to be referred to the RTA (now known as the RMS).

The original proposal was considered to be '*traffic generating development*', however, a response was not received from the RMS in relation to the proposal.

Due to the nature of the modification, which does not significantly amend the proposal in relation to traffic impacts, the modification was considered to not require a referral to the RMS.

The permissibility of the proposal was facilitated through the ISEPP. Division 10 of the ISEPP allows the development of *'health service facilities'* on land in a prescribed zone. The site is zoned B3 Commercial Core under Newcastle Local Environmental Plan 2012 and is listed as a prescribed zoned in the ISEPP.

The definition of a *'health service facility'* includes a hospital and this is important as it validates the permissibility of the proposed development on the site. As discussed below, State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP SH) allows seniors housing and aged care facilities on land zoned for urban purposes where such uses including dwelling houses, residential flat buildings and hospitals are permitted. As hospitals are permitted on the site under the ISEPP, the proposed development falls under the requirements of SEPP SH and the proposed development is thereby permissible.

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP SH)

The development is proposed under the provisions of SEPP SH. The proposed development is permissible under the provisions of SEPP SH on land zoned primarily for urban purposes that allows hospitals (ie hospitals are permissible in accordance with ISEPP). It is noted that the development is not proposed on land which would require a site compatibility certificate under Clause 24 of SEPP SH.

SEPP SH allows for several types of housing for seniors including the proposed *'self-contained dwellings'* and *'residential care facilities'*.

'Self-contained dwellings' are defined in Clause 13 of SEPP SH as:

'a self-contained dwelling is a dwelling or part of a building (other than a hostel), whether attached to another dwelling or not, housing seniors or people with a disability, where private facilities for significant cooking, sleeping and washing are included in the dwelling or part of the building, but where clothes washing facilities or other facilities for use in connection with the dwelling or part of the building may be provided on a shared basis.'

In this Policy, serviced self-care housing is seniors housing that consists of self-contained dwellings where the following services are available on the site: meals, cleaning services, personal care, nursing care.'

'Residential care facilities' are defined in Clause 11 of SEPP SH as:

'residential accommodation for seniors or people with a disability that includes:
 (a) *meals and cleaning services, and*
 (b) *personal care or nursing care, or both, and*
 (c) *appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care,*
not being a dwelling, hostel, hospital or psychiatric facility.'

The modified proposal remains acceptable having regard to the requirements of SEPP SH. Matters of note in relation to the modification are detailed below:

Applicable Clause	Discussion
Clause 19 - Use of seniors housing in commercial zones	The proposal satisfies this clause, in that the ground floor use fronting the street is identified as retail premises.
Clause 26 - Location and access to facilities	The modified proposal remains acceptable having regard to this clause.
Clause 28 - Water and sewer	The modified proposal remains acceptable having regard to this clause.
Clause 29 - Consent authority to consider certain site compatibility criteria for development applications to which clause 24 does not apply	The modified proposal remains acceptable having regard to this clause.
Clause 30 - Site analysis	The modified proposal remains acceptable having regard to this clause.
Clause 33 - Neighbourhood amenity and streetscape	The modified proposal remains acceptable having regard to this clause.
Clause 34 - Visual and acoustic privacy	The modified proposal remains acceptable having regard to this clause.
Clause 35 - Solar access and design for climate	The proposal is generally acceptable in relation to solar access considerations, which have been discussed in further detail in this assessment report.
Clause 36 - Stormwater	The proposal is satisfactory in relation to stormwater management.
Clause 37 - Crime prevention	The proposal is satisfactory in relation to crime prevention considerations.
Clause 38 - Accessibility	The application is acceptable in this regard, subject to further details being considered at the Construction Certificate stage.
Clause 39 - Waste management	The proposal remains satisfactory in relation to waste management.
Clause 40 - Development standards—minimum sizes and building height	<p>This clause specifies development standards, as discussed below:</p> <ul style="list-style-type: none"> • Site size - The site meets the minimum requirement of 1,000 square metres. • Site frontage - The site meets the minimum site frontage of 20 metres, when measured at the building line. • Height in zones where residential flat buildings are not permitted - The site is not within a residential zone and this clause therefore does not apply.
Clause 41 - Standards for hostels and self-contained	This clause specifies that a consent authority must not consent to a development application for the purpose of a self-contained dwelling unless the proposed development complies

dwelling	<p>with the standards specified in Schedule 3 for such development.</p> <p>The original application included an Access Report which addresses the proposals compliance with these standards in detail. A condition has been included in the consent to ensure that these standards are adopted as part of the development.</p>
Clause 45 - Vertical villages	The applicant has not requested the additional floor space ratio that can be afforded by this clause.
<p>Clause 48 - Standards that cannot be used to refuse development consent for residential care facilities</p> <p>Clause 50 - Standards that cannot be used to refuse development consent for self-contained dwellings</p>	<p>As part of the original application, the applicant has stated:</p> <p><i>'Clauses 48 and 50 set out standards which cannot be used as grounds to refuse development consent, for RCFs and self-contained dwellings respectively. Many of these standards relate to lower-scale seniors housing developments, and do not have relevance to a high-density multi-storey development, as proposed. Accordingly, the proposal does not rely on compliance with these clauses.'</i></p> <p>It is noted that these clauses place limitations on the ability for a consent authority to refuse applications on certain grounds. However, the application has been recommended for approval.</p>
Clause 55 - Residential care facilities for seniors required to have fire sprinkler systems	The modified proposal remains acceptable having regard to this clause.

As detailed in the above table, it is considered that the proposal is satisfactory having regard to the provisions of SEPP SH.

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

The BASIX SEPP applies to buildings that are defined as 'BASIX affected development', being "development that involves the erection (but not the relocation) of a BASIX affected building," (ie contains one or more dwelling).

Accordingly the provisions of the BASIX SEPP apply to the development proposal. The applicant submitted an amended BASIX Certificate, which lists the commitments to achieve appropriate building sustainability for the modified development. An existing condition is included on the original development consent requiring that such commitments be fulfilled.

State Environmental Planning Policy No.55 (Remediation of Land)

The modified proposal remains acceptable having regard to this policy.

State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP 65)

This policy applies to the development of new residential flat buildings and aims to improve the quality of residential flat development. Clause 28(2) of SEPP 65 requires the consent authority to take into consideration the advice of a Design Review Panel, the design quality of the development when evaluated in accordance with the design quality principles and the Apartment Design Guide.

A SEPP 65 Statement for the modified proposal has been submitted with the application, which addresses the nine design quality principles.

Council has an independent Urban Design Consultative Group (UDCG), who provided comments on the modified application, with extracts of the main points provided below. The modified proposal was considered by the UDCG on one occasion, 21 March 2018.

The comments made are detailed below:

1. Context and Neighbourhood Character

The changing nature of the surrounding area of Newcastle West was previously noted by the Group, with a number of approvals recently gained for redevelopment of nearby sites, some of which take up the opportunities of substantially greater heights and densities under the current controls. In addition to this, the Heavy rail line has been terminated nearby at Hannell Street Wickham, and a new light rail service is proposed to connect from this point for the short trip east to the original city centre.

The presence of Birdwood Park opposite the site also represents a significant opportunity for substantially enhancing the currently rather poor ambience of the area, as outlined in the DCP. For this to occur, it is essential that easy and safe pedestrian access can be achieved across Little King Street to the Park. The relationship of the proposed facility with the heritage listed Drill Hall to its immediate eastern side remains of importance, as does activation of the walkway between the subject building's eastern façade and the western wall of the Drill hall.

2. Built Form and Scale

The Group previously noted that the built form of the proposal was considered to be well-resolved and likely to contribute quite positively to the area.

The changes proposed to the approved design involve:

- adding an additional two self-contained dwellings to the upper floor;*
- addition of a viewing balcony over Little King Street, accessed off the communal space of the Aged Care Facility that overlooks Birdwood Park;*
- some modifications of the Ground floor retail area to permit its self-contained operation;*
- some reconfiguration of internal corridors*
- some adjustment of external screening*
- Minor facade modifications including flags, awnings and amendment of 100mm to street wall height*

3. Density

The Group was previously advised that proposed FSR was within the maximum nominated in the controls, and the density of the proposal was considered appropriate. The revised proposal converts what was previously plant room space to two self-contained dwellings, with minimal changes to the building

envelope, but increasing the numeric FSR marginally. The Group considered that there are no adverse impacts arising from this change.

4. Sustainability

The Group again noted that as a long term owner of the facility, RSL Lifecare were very well placed to invest in optimal plant and equipment in respect to water efficiency and energy efficiency, as operational savings will be achieved by the owner over a protracted period.

5. Landscape

No revised landscape plan was provided to the Group for the s96, and it was noted that changes proposed to several of the external privacy screens occur adjacent to approved landscape planter beds. At A3 scale it was not possible to determine whether proposed screens are likely to interfere with the canopy of larger trees proposed for the corners of the trellised areas, but in any case, given the relatively narrow width of the planter provided for the six larger trees (2 trees proposed for Terrace 08 and 4 to trees for Terrace 05) it was suggested that there is more than enough room on the terraces for the perimeter garden bed to be widened in plan in the location of each of the trees to provide them with greater soil volume, and therefore some opportunity of achieving the canopy spreads indicated. (Note also ADG nominated minimum soil volumes).

It was recommended that the “bend” in the walkway on the eastern side of the site be softened with a curve in the path, and further landscaping to create a less abrupt change in direction in the area of the proposed sub-station.

6. Amenity

No changed amenity conditions are likely to arise from the s96 changes.

7. Safety

The previously approved design of the proposal was generally considered to offer a safe environment. It was noted however that at least until the proposed pedestrian laneway at the eastern side of the site is connected through to Hunter Street, it may be necessary to limit after-hours access to the rear of the Drill Hall site. It is also important to provide good casual surveillance of the walkway.

8. Housing Diversity and Social Interaction

The proposal was considered to offer a positive contribution to the social needs of the city.

9. Aesthetics

The Group previously responded positively to the design of the proposal, The proposed s96 changes are unlikely to significantly impact the building's aesthetics.

Amendments Required to Achieve Design Quality

The only amendments that were suggested to the approved proposal, related to providing securing to the pedestrian lane, and limiting the area of clear glazing in balustrades. The single recommended minor amendment now arising from the s96 proposal, relates to provision of adequate soil volumes for the six larger landscape trees on Terrace 08 and Terrace 06.

Summary Recommendation

The Group supported the s96 changes proposed, subject to the minor adjustment to the landscaping soil volumes to support proposed on-structure plantings.

Following the comments made in relation to landscaping, the applicant's Landscape Architect subsequently reviewed the proposed soil volumes of the subject planters and has confirmed that they will be sufficient for the intended purpose.

The amended final design satisfactorily addresses the UDCG's recommendations for amenity.

Apartment Design Guide (ADG) - Key "Rule of Thumb" Numerical Compliances

The ADG provides benchmarks and guidelines for the design and assessment of residential apartment development. The following table contains an assessment of the development against key controls of the ADG.

1. Separation Distances

"Minimum separation distances for buildings are:

- *up to four storeys/12 metres*
- *12 metres between habitable rooms/balconies*
- *9 metres between habitable/balconies and non-habitable rooms*
- *6 metres between non-habitable rooms"*

- *five to eight storeys/25 metres*
- *18 metres between habitable rooms/balconies*
- *12 metres between habitable/balconies and non-habitable rooms*
- *9 metres between non-habitable rooms"*

- *nine storeys and above (over 25m):*
- *24m between habitable rooms/balconies*
- *18m between habitable rooms and non-habitable rooms*
- *12m between non-habitable rooms"*

Comment

There are no significant amendments to the approved separation distances for the development.

2. Size of Units

Apartments are required to have the following minimum internal areas:

- *studio apartment 35m²*
 - *1 bedroom apartment 50m²*
 - *2 bedroom apartment 70m²*
 - *3 bedroom apartment 95m²*
- Additional bathrooms increase the internal area by 5m².*

Comment

The proposed apartments comply with this requirement.

3. Unit Configuration

'Rule of thumb'	Officer comment
<i>"Provide primary balconies for all apartments with a minimum depth of 2 metres for 1-2 bedroom and 2.4 metres for 3 bedrooms."</i>	Complies.
<i>"in mixed use buildings: 3.3 metre minimum for ground floor retail or commercial and for first floor residential, retail or commercial to promote future flexibility of use"</i>	The floor to ceiling height is not proposed to be amended.
<i>"Measured from finished floor level to finished ceiling level, minimum ceiling heights are 2.7m for habitable rooms"</i>	Complies.
<i>"The back of a kitchen should be no more than 8 metres from a window."</i>	The additional units comply with this requirement.
<i>The width of cross-over or cross-through apartments over 15 metres deep should be 4 metres or greater to avoid deep narrow apartment layouts"</i>	Complies.
<i>"Every habitable room must have a windows in an external wall with a total minimum glass area of not less than 10% of the floor area of the room"</i>	The modified proposal remains acceptable.

4. Solar Access

Living rooms and private open spaces for at least 70 percent of apartments in a development should receive a minimum of two hours direct sunlight between 9 am and 3 pm in mid-winter."

"A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter."

The applicant has advised:

'The approved DA proposal had 62.5% of the apartments receiving at least 2 hours of sunlight to the living rooms & private open spaces between 9am & 3pm on June 21st, with 12.5% receiving 0.5 hours, & 25% receiving none of the desired sunlight.'

The amended proposal, with an extra 2 apartment units proposed on Level 13 (with one north-facing extra unit receiving the desired solar access levels, & one extra south facing unit not receiving desired solar access), will generally revise the above percentages to 63.1% (min. 2 hours); 11.8% (min. 0.5 hours); & 25.1% (less than 0.5 hours) respectively. This therefore results in no significant or substantial alteration from that originally approved, & is considered generally justified for the previously outlined reason in the approved SoEE.'

Comment

It is considered that the proposal remains acceptable in relation to solar access.

5. Storage

"In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:

*1 bedroom apartments 6m³
2 bedroom apartments 8m³
3 bedroom apartments 10m³*

At least 50% of the required storage is to be located within the apartment"

Comment

The modified proposal remains acceptable.

6. Natural Ventilation

"At least 60% of apartments are naturally cross ventilated"

"Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line"

The applicant has advised:

'The approved DA proposal generally had all 100% of apartment units receiving natural cross-ventilation, due to the internal planning arrangement & natural air-flow scenarios.

The amended proposal submitted for the S96, will maintain the 100% cross-ventilation provision, as identical floor plans are now extended up on the corners, from the levels below to the new Level 13 layout, with the middle Level 13 units also being similar in layout.

Therefore, no alteration from the approved proposal with respect to ventilation is proposed.'

Comment

The modified proposal remains acceptable.

7. Private Open Space

*"1 bedroom apartments 8m² with 2m minimum depth
2 bedroom apartments 10m² with 2m minimum depth
3 bedroom apartments 12m² with 2.4m minimum depth"*

Comment

The apartments comply with this requirement.

8. Communal and Public Open Space

"communal landscaping 25% of the site"

"communal open space receives 50% direct sunlight in mid-winter"

Comment

No significant amendments are proposed to the communal facilities, being a terrace on Level 2 adjacent to the communal living areas for the residential care facility and a terrace adjacent to the community facility on Level 13.

The proposal remains acceptable in this regard.

9. Deep Soil Zones

"15% of the site as deep soil on sites greater than 1,500m²"

Comment

The proposed landscaping is located on podium levels, and accordingly is not considered to be 'deep soil' landscaping. However, the proposal is acceptable noting the constraints of the site and the style of the development, ie a senior's housing development in a city centre location.

10. Common Circulation Spaces

"the maximum number of apartments off a circulation core to a single level is eight"

Comment

The maximum number of apartments off a circulation core is eight.

Concluding Comment

The proposal is acceptable having regard to SEPP 65, taking into consideration the comments received from the UDCG and the design criteria in the Apartment Design Guide.

Other State Environmental Planning Policies

The proposal is not contrary to the provisions of any other relevant State Environmental Planning Policies.

Regional Environmental Plan

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

Clause 1.3 – Land to which Plan applies

NLEP 2012 applies to land identified upon the 'Land Application Map'. The subject development occurs within this area.

Clause 2.3 Land Use Table - Zoning

The site is zoned B3 Commercial Core under NLEP 2012. The proposed development is defined as seniors housing and commercial premises (retail) under NLEP 2012. Retail premises are permissible in the zone. The permissibility of the seniors housing is discussed in accordance with the SEPP SH, which prevails to the extent of any inconsistency with NLEP 2012.

The development meets the objectives of the zone as it will encourage employment opportunities in an accessible location, will maximise public transport patronage and will assist in strengthening the role of the Newcastle City Centre as a regional business centre for the Hunter region.

Clause 4.3 Height of Buildings

The Height of Buildings Map has a maximum height limit for the site of 90m. The proposed development has a maximum height of 47.92m, which complies with this requirement.

Clause 4.4 Floor Space Ratio

The maximum floor space ratio for the site is 8:1. The proposed development has a floor space ratio of 4.99:1, which complies with this requirement.

However, Clause 7.10 of NLEP 2012 prevails over this clause.

Clause 5.5 Development within the Coastal Zone

The proposed modifications do not result in any additional impacts having regard to the coastal zone considerations. Accordingly, it is considered that the modified proposal remains acceptable.

Clause 5.10 Heritage Conservation

The site is not heritage listed for its cultural heritage significance in Schedule 5, Part 1 of NLEP 2012 and it is not an identified archaeological site. However, it is located within a Heritage Conservation Area and located in the vicinity of adjoining heritage items.

The proposed modifications do not result in any additional heritage or archaeological impacts. Accordingly, it is considered that the modified proposal remains acceptable.

Clause 6.1 Acid Sulfate Soils

The proposed modifications do not result in any additional impacts. Accordingly, it is considered that the modified proposal remains acceptable.

Clause 6.2 Earthworks

The proposed modifications do not result in any additional impacts. Accordingly, it is considered that the modified proposal remains acceptable.

Part 7 Newcastle City Centre

The site is located within the Newcastle City Centre. There are a number of requirements and objectives for development within the City Centre, which includes promoting the economic revitalisation of the City Centre, facilitating design excellence and protecting the natural and cultural heritage of Newcastle. The modified development will meet the objectives of Part 7 of NLEP 2012.

Clause 7.3 Minimum Building Street Frontage

The modified proposal remains acceptable having regard to this clause.

Clause 7.4 Building Separation

The modified proposal remains acceptable having regard to this clause.

Clause 7.5 Design Excellence

The modified proposal was reviewed by Newcastle City Council's Urban Design Consultative Group (UDCG) on 21 March 2018. The UDCG are supportive of the modified application, as discussed under the comments on SEPP 65.

The modified development meets the design excellence criteria of NLEP 2012 and is of a high standard of architectural quality. The development will improve the quality and amenity of the public domain through street activation and does not significantly impact on any view corridors identified in Newcastle Development Control Plan 2012. The development has adequately addressed heritage issues, streetscape constraints, circulation requirements and has an acceptable bulk and mass and articulation. The proposal is acceptable having regard to environmental impacts and the principles of ecologically sustainable development.

An Architectural Design Statement has been submitted with the modified application that addresses the design principles that have been used to formulate the development.

The proposal is not required to undertake an architectural design competition in accordance with this clause.

Clause 7.6 Active Street Frontages in Zone B3 Commercial Core

The modified design of the development remains acceptable having regard to the requirements of this clause.

Clause 7.7 Residential flat buildings in Zone B3 Commercial Core

The modified design of the development remains acceptable having regard to the requirements of this clause, which states:

"Development consent must not be granted to a residential flat building on land in Zone B3 Commercial Core unless it is a component of a mixed use development involving a permitted non-residential use."

The ground floor of the proposed building is identified as a type of commercial premises, which is a permissible use in the zone.

Clause 7.9 Height of Buildings

The site is not identified in 'Area A' or 'Area B' on the Height of Buildings map and accordingly this clause does not apply.

Clause 7.10 Floor space ratio for certain development in Area A

The subject site is located within 'Area A' as shown on the Floor Space Ratio Map. In 'Area A' the maximum FSR for a building other than a commercial building on land with a site area of 1,500 square metres or more is reduced. In this instance, being a site with an FSR control of 6:1 (or greater), the resulting maximum FSR is 5:1.

The proposal complies as it has a FSR of 4.99:1.

4.1.3.2 provisions of any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority

Draft State Environmental Planning Policy (Coastal Management) 2018

State Environmental Planning Policy (Coastal Management) 2018 was made on 23 March 2018, and supersedes previous policies including SEPP71, SEPP14 and the

coastal zone clause in NLEP 2012. As this application was lodged prior to the commencement of this policy, in accordance with the savings provisions, this SEPP does not apply to the proposal.

For the purposes of this assessment, this SEPP is considered to be a draft policy. In this regard the proposal is considered to be acceptable having regard to the considerations of this draft SEPP.

4.1.3.3 *any development control plan (and section 7.11 or 7.12 plan)*

The modified proposal remains acceptable having regard to the Newcastle Development Control 2012 (DCP) provisions. The main planning requirements of relevance to the modified proposal are discussed in detail below.

Note: the proposal has been considered in accordance with now repealed DCP sections, noting the transitional provisions of the new Sections which state:

Any development application lodged but not determined prior to this section coming into effect will be determined as though the provisions of this section did not apply.

3.05 - Residential Flat Buildings

This section does not contain specific controls, but rather refers to SEPP 65. The proposal has been considered in accordance with SEPP 65, as detailed in this report.

3.08 - Seniors Housing

This section does not contain specific controls, but rather refers to SEPP SH. The proposal has been considered in accordance with SEPP SH, as detailed in this report.

3.10 - Commercial Uses

This section requires that the ground level be activated through the provision of retail or business premises, avoiding the use of solid walls that would affect visual connections. The proposal complies with these requirements.

The activation of the street frontages remains generally consistent with the original approved plans

4.01 - Flood Management

The modified proposal remains satisfactory having regard to this section.

4.03 - Mine Subsidence

The modified proposal remains satisfactory having regard to this section.

4.04 - Safety and Security

The modified proposal remains satisfactory having regard to this section.

4.05 - Social Impact

The modified proposal remains satisfactory having regard to this section.

5.01 - Soil Management

The modified proposal remains satisfactory having regard to this section.

5.02 - Land Contamination

The modified proposal remains satisfactory having regard to this section.

5.04 - Aboriginal Heritage

The modified proposal remains satisfactory having regard to this section.

5.05 and 5.07 - Heritage Items and Heritage Conservation Areas

As previously stated under clause 5.10 of NLEP 2012, the site is not heritage listed for its cultural heritage significance in Schedule 5, Part 1 of NLEP 2012 and it is not an identified archaeological site. However, it is located within a Heritage Conservation Area and located in the vicinity of adjoining heritage items.

It is considered that the modified proposal is acceptable having regard to the controls contained in the DCP relating to heritage.

5.06 - Archaeological Management

The modified proposal remains satisfactory having regard to this section.

6.01 - Newcastle City Centre

The site is located in the 'West End' character area of the City Centre and is within the Birdwood Park key precinct. The 'Birdwood Park precinct' is identified as the western gateway to the Newcastle City Centre. The DCP identifies the following objectives for the precinct:

- Create a sense of arrival into the city centre from the western approach.
- Promote active street frontages.
- Promote a permeable street network in Birdwood Park precinct with well-connected easily accessible streets and lanes.
- Provide new public spaces and improve pedestrian amenity, particularly to Birdwood Park.
- Improve Birdwood Park with a strong built edge and protecting sunlight access.

The specific controls contained in the DCP are discussed below.

Criteria	Comment
A1 - Street Wall Heights	The amended street wall height RL18.29m remains acceptable, and proposes only a minor modification to the approved level of RL18.12m. The amended proposal remains acceptable.
A2 - Building Setbacks	The DCP requires a nil front setback for the street wall height. The amended proposal complies with this requirement. Side and rear setbacks can be built to the boundary below the street wall height. As detailed in the assessment, building separation has been considered in accordance with SEPP 65.
A3 - Building Separation	The subject site will not accommodate more than one building, and accordingly the provisions of this clause do not apply.
A4 - Building Depth and Bulk	The proposal remains acceptable.
A5 - Building Exteriors	The proposal adequately responds to the performance

	criteria of the DCP. The modified proposed materials and finishes have been considered by the UDCG.
A6 - Heritage Buildings	The amended proposal remains acceptable in this regard.
A7 - Awnings	The application provides awnings as required by the DCP.
A8- Design of Parking Structures	The amended proposal remains acceptable in this regard.
B1 - Access Network	The amended proposal remains acceptable in this regard.
B2 - Views and Vistas	The amended proposal remains acceptable in this regard.
B3 - Active Street Frontage	The modified plans are generally consistent with the original approval in relation to street activation. The amended proposal remains acceptable in this regard.
B4 - Addressing the street	The amended proposal remains acceptable in this regard.
B5 - Public Art	The amended proposal remains acceptable in this regard.
B6- Sun Access to Public Spaces	The amended proposal remains acceptable in this regard.
Key Precincts Birdwood Park Precinct	<p>The DCP identifies Birdwood Park and the surrounding sites as a '<i>key precinct</i>', acknowledging that the site is the western gateway to the city centre. The DCP encourages Little King Street to be a shared zone for cars and pedestrians and reinforces the need to maintain solar access to the park. A specific street wall height of 22 metres is identified for the development site, along with a pedestrian link to be established from Little King Street to Hunter Street on the eastern side of the '<i>Drill Hall</i>'.</p> <p>As noted above, the proposed modifications to the street wall height are considered to be minor. The pedestrian link remains an element of the proposal.</p> <p>The proposed amendments will not create any significant additional overshadowing impacts to Birdwood Park.</p>

7.01 - Building Design Criteria

The proposal is acceptable having regard to the requirements of this section. It is noted that these requirements overlap with criteria elsewhere within the DCP and SEPP 65.

7.02 - Landscape, Open Space and Visual Amenity

The proposal is identified as a '*category 3*' development. In this regard, a suitably qualified Landscape Architect has prepared the submitted landscape plan.

It is considered that the proposal is acceptable having regard to the requirements of this section. It is noted that these requirements overlap with criteria elsewhere within the DCP and SEPP 65.

7.03 - Traffic, Parking and Access

The parking requirements of the DCP are outlined in the table below:

	Control	Requirement
Seniors Housing 'self-contained dwellings' (rates per SEPP SH)	0.5 car spaces for each bedroom where the development application is made by a person other than a social housing provider	76 (152 bedrooms)
Seniors Housing 'residential care facility' (rates per SEPP SH)	if at least the following is provided: (i) 1 parking space for each 10 beds in the residential care facility (or 1 parking space for each 15 beds if the facility provides care only for persons with dementia), and (ii) 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and (iii) 1 parking space suitable for an ambulance.	6 6 1
Retail component	1 space per 60m ² GFA	2.8
TOTAL		91.8

The proposal provides 97 car parking spaces and accordingly complies with the DCP requirements.

The DCP does not require the specific provision of motorbike and bicycle parking for the Seniors Housing component. The DCP requires the provision of three bicycle spaces for the proposed cafe. The proposal provides a bike store room near the entrance and nine motorcycle/scooter spaces. It is considered that this provision is appropriate.

7.04 - Movement Networks

The modified proposal remains satisfactory having regard to this section.

7.05 - Energy Efficiency

The application includes a revised BASIX certificate and, as discussed in the assessment, is acceptable in relation to solar access and provisions in SEPP 65.

7.06 Stormwater and 7.07 Water Efficiency

The proposal is satisfactory in relation to stormwater management.

7.08 - Waste Management

The modified proposal remains satisfactory having regard to this section.

7.10 - Street Awnings & Balconies

The DCP requires the provision of an awning on King Street, which has been provided as part of the application. The modified application includes the provision of a balcony over the road reserve.

The relevant conditions requiring approval for the awning in the road reserve are already imposed on the consent.

8.00 - Public Participation

The proposal was notified in accordance with this policy. The application was notified for a period of 14 days and no submissions were received.

Newcastle Section 94A Development Contribution Plan

The application attracts a Section 7.12 Contribution pursuant to section 4.17 of the *Environmental Planning and Assessment Act 1979* and the Newcastle Section 94A Development Contributions Plan.

The original development consent included a condition requiring a contribution of \$880,053.

The modification seeks to amend the condition requiring contributions, based on a Section 94E direction (see **Appendix C**). This exemption applies to Seniors Housing where made by a 'social housing provider'.

A 'social housing provider' is defined in SEPP SH as:

social housing provider means any of the following:

- (a) *the New South Wales Land and Housing Corporation,*
- (b) *the Department of Housing,*
- (c) *a community housing organisation registered with the Office of Community Housing of the Department of Housing,*
- (d) *the Aboriginal Housing Office,*
- (e) *a registered Aboriginal housing organisation within the meaning of the Aboriginal Housing Act 1998,*
- (f) *the Department of Ageing, Disability and Home Care,*
- (g) *a local government authority that provides affordable housing,*
- (h) *a not-for-profit organisation that is a direct provider of rental housing to tenants.*

The applicant has confirmed that RSL LifeCare is a Registered Charity/Not for profit organisation.

Contributions for the commercial tenancies would apply, and the applicant has provided a cost summary report for this element, which demonstrates an estimated cost of \$400,000. This component requires a 2% Section 94A contribution in accordance with the 'City Centre' requirements of the Contributions Plan (note that the application was determined prior to changes made to the Contributions Plan on 14 August 2017).

The relevant condition amendments are detailed at **Appendix A**.

4.1.4.4 Planning agreements

No planning agreements are relevant to the proposal.

4.1.4.5 The regulations (and other plans and policies)

The modified proposal remains satisfactory having regard to the Regulations.

4.1.4.6 Coastal management plan

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

4.1.3.7 *The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality*

The modified application remains acceptable. The site is located in the Newcastle City Centre in an area that is currently undergoing transformation. The development will have positive social and economic benefits. The modified proposal will increase the 'seniors housing' supply in the city centre, which provides ready access to public transport, employment and services.

4.1.3.8 *The suitability of the site for the development*

The site is suitable for the proposed development as it is located within an urban renewal precinct due to its location on the western edge of the city and close proximity to the Wickham Transport Interchange. The site has been identified for development of this scale and is not affected by significant environmental constraints.

4.1.3.9 *Any submissions made in accordance with this act or the regulations*

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

4.1.3.10 *The public interest*

The site is located in a key position and development of the site would be a significant improvement to the existing streetscape.

The development is in the public interest and it will allow for the orderly and economic development of the site. It will allow for the creation of seniors housing accommodation in a range of sizes and levels of care. The development will also create employment in an accessible location, which is well serviced by public transport.

5. CONCLUSION

The proposal is considered to be acceptable against the relevant heads of consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*.

6. RECOMMENDATION

A. That the description of the development be modified from:

Demolition of buildings, erection of 14 storey seniors housing development with 60 bed aged care facility, 74 seniors living units, two levels of parking (91 cars), ground floor retail space and associated site works.

to:

Demolition of buildings, erection of 14 storey seniors housing development with 60 bed aged care facility, 76 seniors living units, two levels of parking (97 cars), ground floor retail space and associated site works.

B. THAT the Hunter and Central Coast JRPP, as the consent authority, determine to grant a modified development consent to DA2016/00654.03 (2018HCC003) for

*'Demolition of buildings, erection of 14 storey seniors housing development with 60 bed aged care facility, 76 seniors living units, two levels of parking (97 cars), ground floor retail space and associated site works' at 500 King Street Newcastle West, pursuant to Section 4.55 of the *Environmental Planning and Assessment Act 1979* subject to the modified conditions in **Appendix A**.*

APPENDIX A - Amendments to consent conditions

Amendment to Condition 2

Existing Condition:

- The development is to be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

Plan No / Supporting Document	Reference / Version	Prepared by	Dated
Site Plan	A44 Rev A	EJE Architecture	May 2016
Floor Plans	A45-52 Rev A	EJE Architecture	May 2016
Elevation Plans	A53-57 Rev A	EJE Architecture	May 2016
Section Plans	A58-63 Rev A	EJE Architecture	May 2016
Material Palette Plan	A80 Rev A	EJE Architecture	May 2016
Landscape Design Report and Plans	L01-L08 Rev C	Terras Landscape Architects	9 June 2016
Erosion and Sediment Control Plan	C02DA Rev A	Northrop	13 May 2016
Stormwater Management and Levels Plan Ground Floor	C03DA Rev A	Northrop	13 May 2016
Statement of Environmental Effects	N-01629	City Plan Services	June 2016
Remedial Action Plan		Regional Geotechnical Solutions	28 October 2016
Noise Impact Assessment		Reverb	May 2016
Acid Sulfate Soil Assessment		Regional Geotechnical Solutions	14 April 2016

In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

Proposed Condition:

2. The development is to be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.

Plan No / Supporting Document	Reference / Version	Prepared by	Dated
Site Plan	A44 Rev A	EJE Architecture	May 2016
Floor Plans	A45-52 Rev C	EJE Architecture	December 2017
Elevation Plans	A54-57 Rev C	EJE Architecture	December 2017
Section Plans	A58 Rev C	EJE Architecture	December 2017
Material Palette Plan	A80 Rev C	EJE Architecture	December 2017
Landscape Design Report and Plans	L01-L08 Rev C	Terras Landscape Architects	9 June 2016
Level 4 - Landscape works	WD L04	Terras Landscape Architects	9 February 2018
Erosion and Sediment Control Plan	C02DA Rev A	Northrop	13 May 2016
Stormwater Management and Levels Plan Ground Floor	C03DA Rev A	Northrop	13 May 2016
Statement of Environmental Effects	N-01629	City Plan Services	June 2016
Remedial Action Plan		Regional Geotechnical Solutions	28 October 2016
Noise Impact Assessment		Reverb	May 2016
Acid Sulfate Soil Assessment		Regional Geotechnical Solutions	14 April 2016

In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

Amendment to Condition 3**Existing Condition:**

3. A total monetary contribution of \$880,053 is to be paid to Council, pursuant to Section 94A of the *Environmental Planning and Assessment Act 1979*, such contribution to be payable prior to the issue of a Construction Certificate in respect of the proposed development.

Note:

- a) This condition is imposed in accordance with the provisions of *The City of Newcastle S94A Development Contributions Plan 2009* (updated version operational from 15 March 2011). A copy of the plan may be inspected at Council's Customer Enquiry Centre, ground floor of the City Administration Centre, 282 King Street Newcastle 8.30 am to 5.00 pm, excluding public holidays.
- b) The City of Newcastle S94A Development Contributions Plan 2009 permits deferred or periodic payment of levies in certain circumstances. A formal modification of this condition will be required to enter into a deferred or periodic payment arrangement. Refer to the s94A Development Contributions Plan 2009.
- c) The amount of contribution payable under this condition has been calculated on the basis of the current rate as at the date of consent and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of Statistics (ABS). The CPI index rate is expected to rise at regular intervals and therefore the actual contribution payable is indexed and recalculated at the CPI rate applicable on the day of payment.

CPI quarterly figures are released by the ABS on a date after the indexation quarter and as a guide, these approximate dates are provided below. Indexation quarters from the ABS are as follows:

Indexation quarters	Approx release date
September	Late October
December	Late January
March	Late April
June	Late July

Any party intending to act on this consent should contact Council's Customer Enquiry Centre for determination of the indexed amount of contribution on the date of payment.

Proposed Condition:

A total monetary contribution of \$8,000 is to be paid to Council, pursuant to Section 94A of the *Environmental Planning and Assessment Act 1979*, such contribution to be payable prior to the issue of a Construction Certificate in respect of the proposed development.

Note:

- a) This condition is imposed in accordance with the provisions of *The City of Newcastle S94A Development Contributions Plan 2009* (updated version operational from 15 March 2011). A copy of the plan may be inspected at Council's Customer Enquiry Centre, ground floor of the City Administration Centre, 282 King Street Newcastle 8.30 am to 5.00 pm, excluding public holidays.
- b) The City of Newcastle S94A Development Contributions Plan 2009 permits deferred or periodic payment of levies in certain circumstances. A formal modification of this condition will be required to enter into a deferred or periodic payment arrangement. Refer to the s94A Development Contributions Plan 2009.
- c) The amount of contribution payable under this condition has been calculated on the basis of the current rate as at the date of consent and is based on the most recent quarterly Consumer Price Index (CPI) release made available by the Australian Bureau of Statistics (ABS). The CPI index rate is expected to rise at regular intervals and therefore the actual contribution payable is indexed and recalculated at the CPI rate applicable on the day of payment.

CPI quarterly figures are released by the ABS on a date after the indexation quarter and as a guide, these approximate dates are provided below. Indexation quarters from the ABS are as follows:

Indexation quarters	Approx release date
September	Late October
December	Late January
March	Late April
June	Late July

Any party intending to act on this consent should contact Council's Customer Enquiry Centre for determination of the indexed amount of contribution on the date of payment.

New condition

111A

For 10 years from the date of the issue of the Occupation Certificate the '*Seniors Housing*' component of the development is to be managed by a Social Housing Provider, as defined by State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

A relevant restriction is to be registered, before the date of the issue of the Occupation Certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the *Conveyancing Act 1919*.

Amendments to Advice L

Note: Street numbering to be updated in accordance with amended plans.