

COUNCIL ASSESSMENT REPORT

Panel Reference	2018HCC015
DA Number	DA2011/0617.02
Local Government Area	Newcastle
Approved Development	<p>The original approval provided for the following:</p> <p>Demolition of buildings, construction of a mixed use development comprising of 628m² of ground floor retail, 252 residential apartments within an 18-storey tower and 8-storey tower, five levels of basement car parking for 238 vehicles</p> <p>The approved scheme has been modified twice.</p>
Notice of Determination	<p>22 May 2013 deferred commencement consent was issued.</p> <p>20 January 2014 the deferred condition was satisfied and the consent became operational.</p>
Modified Development Description	Modify the approved floor layouts to amend the apartment mix resulting in 180 apartments, 480m ² of retail space and 207 vehicles.
Street Address	<p>386 King Street and 509 Hunter Street Newcastle.</p> <p>The site was previously described legally as Lots 1 & 2 in DP744887, Lot 1 in DP175319 and Lot 100 in DP785019.</p> <p>On 2 November 2016, the land was consolidated into one title and is currently known as Lot 1 in DP1225220.</p>
Applicant/Owner	GWH Build
Date of Modification lodgement	19 April 2018
Number of Submissions	Three
Recommendation	Approval subject to minor changes to conditions.
Regional Development Criteria	In accordance with Clause 21 of <i>State Environmental Planning Policy (State and Regional Development) 2011</i> , as the development exceeded the \$20m threshold in 2012, the Joint Regional Planning Panel (JRPP) were the determining authority. The subject modification is significant and the proposed works exceed \$30m.
List of All Relevant Section 4.15 (1)(a) Matters	<p>Environmental planning instruments: s4.15(1)(a)(i)</p> <ul style="list-style-type: none"> • State Environmental Planning Policy (State and Regional Development) 2011 • 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

	<p>of Residential Flat Development</p> <ul style="list-style-type: none"> • State Environmental Planning Policy (Coastal Management) 2018 • Newcastle City Centre Local Environmental Plan 2008 <p>Development Control Plan: 4.15 (1)(a)(iii)</p> <ul style="list-style-type: none"> • Newcastle Development Control Plan (DCP) 2005 • Newcastle Development Control Plan (DCP) 2012 • Section 94A Development Contributions Plan 2009
List all documents submitted with this report for the Panel's consideration	<p>Appendix A - Plans and Elevations</p> <p>Appendix B - Conditions of Consent</p> <p>Appendix C - UDCG combined comments with response</p> <p>Appendix D - SEPP65 and ADG compliance table and unit mix</p>
Report prepared by	Newcastle City Council
Report date	11 October 2018

Summary of s4.15 matters

Yes

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

Legislative clauses requiring consent authority satisfaction

No

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?

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

**Not
Applicable**

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?

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

In 2010 an approval was granted for a large scheme on the subject site, involving a Seniors Housing development proposal and mixed-use development. This scheme was the subject of a special design process which involved the establishment of a Design Integrity Panel and correspondence with the Director General regarding achieving design excellence. At the time of the approval, the land was zoned B3 Commercial Core and provided for a height limit of 60m, with a Floor Space Ratio of 7:1. The scheme was approved on the basis that the Seniors Housing was a commercial element.

In 2011, a revised scheme was submitted (the subject of this modification), which proposed a development of similar bulk and scale but was primarily for residential use. The scheme was approved under the Newcastle City Centre Local Environmental Plan 2008 through a savings provision clause, despite the decision occurring in 2012 when the current Newcastle Local Environment Plan 2012 was in force.

The scheme was supported on the basis that it reflected many of the elements of the 2010 approval which achieved design excellence. The JRPP approved the scheme with a condition of deferred commencement based on receiving written support and confirmation from the Director General, that the proposal achieved Design Excellence.

This was received, and the consent became operational on the 20 January 2014. The buildings on the site were demolished and the site was prepared for construction.

In 2014, the proposal was modified to present a modular pod method of construction, which proposed an additional storey. This additional level was not supported, and the approved scheme resulted in one additional residential unit.

In 2016, the scheme was modified to revert to the original form of construction. A new level was added in the tower element, while retaining the approved height, and the mix of residential units changed. A total of nine residential units were added to the scheme.

In September 2017, the current applicant proceeded to meet with Council's Urban Design Consultative Group (UDCG) at a pre-DA meeting to consider several changes to the development. Modifications to the scheme were made in accordance with their recommendations and comments and this application was submitted to Council on 19 April 2018.

The application seeks consent to modify the original approval by:

- Changing the mix of units and reducing the total number from 252 to 180
- Reducing the area of the basement
- Modifying the podium level resident recreational facilities
- Reducing the commercial floor space from 628m² to 465m²
- Increasing the floor to ceiling height of the units and therefore removing one storey in the Central Tower
- Increasing the height of the King Street Tower
- Modifying the roof top element of the central tower to provide a rooftop recreational area

The proposal was placed on public exhibition for a period of 14 days in accordance with the *Environmental Planning and Assessment Act 1979* (EP&A Act), *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation), Newcastle Development Control Plan 2012. Three submissions were received during the notification period, two with objections and one in support.

The application was not required to be referred to any external government agency pursuant to the provisions of s4.46 of EP&A Act and State Environmental Planning Policy (Infrastructure) 2007.

The key issues raised in the assessment relate to whether:

- the development as proposed to be modified is substantially the same as that originally approved;
- the visual impact of the modified scheme is acceptable;
- the internal layout of the units meet SEPP65 and the ADG;
- the development still meets design excellence;
- the development will have impacts on traffic;
- the proposal is in the public interest.

The application, as proposed to be modified, is recommended for approval. The development will provide a more positive built form in the context of the area and future development of Newcastle's CBD, provides for a more suitable use and layout in the context of the site, and assists the marketability of the units. Importantly, it is considered that the scheme has been demonstrated to be substantially the same development as that originally approved.

The development is to be determined by the JRPP pursuant to Section 2.15 of the EP&A Act, because the proposal involves a Section 4.55(2) modification to an approved development for which the JRPP was the consent authority. The cost of the original development was \$36 million.

1. BACKGROUND

The site has been the subject of a long history of development options and planning controls, spanning a 10 year time frame. The site has passed through numerous design options relating to the relevant economic climate.

The decisions made in the past have resonated into the modern scheme as proposed. The proposal seeks consent to modify the development as originally approved in 2013.

This application has been the subject of two previous minor modifications. The current approved scheme was considered, in some respect, relative to a previous scheme.

These applications are summarised below.

DA2007/0814 – Seniors ILU and mixed use

The site was the subject of a previous development application (DA2007/0814) for:

'erection of a mixed commercial/residential building complex incorporating two levels of commercial and retail space, an 18-storey tower and an 11-storey tower comprising a total of 150 independent living units and four levels of carparking for 182 vehicles'

The application was lodged in 2007 and subsequently approved in 2010. The type and mix of residential accommodation in the previous proposal was aimed primarily at retirement housing.

The design of the previous proposal was amended on several occasions and was independently assessed by a Design Integrity Panel. The application was ultimately recommended for approval despite the development exceeding the maximum building height, FSR and boundary setback controls at the time. The following conclusion from the officer's assessment report to the Development Applications Committee of Council outlines the reasons for supporting the previous proposal, despite the numerical variations sought:

'The proposal exceeds the building height guidelines under the former City West Element of the Newcastle DCP 2005, that applied at the time of DA lodgement, however the proposal does comply with the present height limit under the Newcastle City Centre LEP (NCCLEP) 2008 and therefore it is considered reasonable for Council to accept the increased height proposed. The proposal exceeds the maximum FSR for the site under the former City West Element of the Newcastle DCP 2005 that applied at the time of DA lodgement, but also exceeds the FSR under the new Newcastle City Centre LEP (NCCLEP) 2008. However the FSR of the proposal has been critically reviewed by an independent Design Integrity Panel and is considered to be acceptable on the merits of the case, given that the proposal is otherwise satisfactory including providing for satisfactory boundary setbacks. It is therefore considered that despite the numerical non-compliance with the height, FSR and boundary setback provisions of the Newcastle DCP 2005 that the proposal does not represent an overdevelopment of the site.'

DA 2011/0617 – Mixed Use proposal residential and commercial

In 2011, a new application was made to Council following the approval of DA2007/0814 which sought consent for a similar development. The height, bulk and scale of the development was similar to the previously approved development but with a significant increase in residential accommodation (ie 252 affordable housing units (mostly studios) replacing 150 larger units for retirees). The application also offered a significantly greater number of car parking spaces than previously provided (238 spaces increased from 182).

At the time of lodgement, the Newcastle City Centre Local Environmental Plan 2008 was in force. This instrument was repealed in 2012, prior to the determination of this application, with the proposal benefitting from the savings provisions within the 2012 LEP.

Under the 2008 LEP, the site was zoned B3 Commercial Core. Residential flat buildings were only permissible in this zone when they were part of a mixed-use development, with the proportion of residential use being defined by the FSR control which penalised the maximum permissible density allowable through a formula that was focused on prioritising commercial uses. A wholly commercial use would benefit from a 7:1 FSR, whereas a non-commercial use would be limited to a FSR of 3.5:1.

The maximum permissible FSR for the approved scheme was calculated at 3.64:1, whereas the development was approved at 4.74:1.

The maximum height for the site was mapped as 60m. The approved building was 58.2m high. An architectural roof feature, provided pursuant to the 2008 LEP, was approved, which included a spire up to 60.2m.

The proposal was approved by the JRPP on 22 May 2013 by way of a deferred commencement consent. The deferred commencement condition related to minor design changes requested by the Director-General that were required at the podium level. This detail was provided and satisfied on 20 January 2014 and the consent became operational.

Demolition of the structures on the site has since been undertaken and the land consolidated into one title.

Modification 1

An application was approved on 1 October 2014, which modified the scheme pursuant to Section 96(1A) of the EP&A Act. The modification proposed an alternative form of construction for the tower element, which relied on pre-manufactured pods of a specific size, with an additional storey on the tower. The scheme was approved without the additional level. A re-organisation of the unit mix and layout resulted in one additional residential unit.

The internal height was slightly increased, but remained within the approved parapet height. The FSR remained relatively similar to that approved, estimated to be 4.78:1.

Modification 2

On 10 May 2016 a second modification application was approved by Council as a Section 4.55(1A) modification, which reverted the method of construction to its original form, altered the internal layout of the development and increased the parking provision. An additional nine residential units were approved in the scheme. Although the heights remained unaffected, the FSR was increased to 4.84:1.

The Table below provides a summary of the progression of the three applications.

DA2011/0617 Approved 22 May 2013	DA2011/0617/02 Approved 1 October 2014	DA2011/0617.01 Approved 10 May 2016
<p>Description:</p> <p>Demolition of existing buildings, construction of a mixed-use development with ground floor retail, 17 levels residential units and basement parking</p>	<p>Description:</p> <ol style="list-style-type: none"> 1) Amend method of construction resulting in a slight increase in height 2) Minor change to building footprint 3) Redesign of basement, car parking levels and podium level 4) Increase of residential units (10 additional) 5) Provision of ramp to the Hunter Street level 6) Introduction of direct access to main tower from King Street 	<p>Description:</p> <p>Modification to internal building layout and increasing the number of residential units by nine to a total of 262 (originally approved number of units). The proposed Section 96 does not seek to increase the (approved) height of the building.</p> <p>Revert back to original method of construction</p>
<p>Main Tower: 17 storeys of residential, starting at RL 12.075m AHD</p> <p>King St Tower: eight storeys (residential)</p> <p>Hunter St Building: two storeys (residential)</p> <p>Five Levels of parking (two Basement)</p> <p>Ground floor retail:</p> <ul style="list-style-type: none"> - 536m² to King Street - 92m² to Hunter Street <p>252 apartments</p> <ul style="list-style-type: none"> - Studio –145 - One-Bedroom – 79 - TwoBedroom – 28 	<p>Main Tower as approved: 17 storeys of residential starting at lower RL & one unit gained</p> <p>King St Tower: eight storeys (residential)</p> <p>Hunter St Building: two storeys (residential)</p> <p>Five Levels of parking</p> <p>Ground floor retail:</p> <ul style="list-style-type: none"> - 372.8m² to King Street - 92m² to Hunter Street <p>253 apartments</p> <ul style="list-style-type: none"> - Studio – information unavailable - One-Bedroom – information unavailable - Two-Bedroom – information unavailable 	<p>Main Tower: 18 storeys of residential starting at lower RL</p> <p>King St Tower: eight storeys (residential)</p> <p>Hunter St Building: two storeys (residential)</p> <p>Five Levels of parking</p> <p>Ground floor retail:</p> <ul style="list-style-type: none"> - 372.8m² to King Street - 92m² to Hunter Street <p>262 apartments:</p> <ul style="list-style-type: none"> - Studio –73 - 1 Bedroom – 146 - 2 Bedroom – 43

<p>Community facilities:</p> <ul style="list-style-type: none"> - Heated pool - Gym - Outdoor area - Internal communal area - Terrace 	<p>Community facilities:</p> <ul style="list-style-type: none"> - Heated pool - Gym - Outdoor area - Internal communal area - Terrace 	<p>Community facilities:</p> <ul style="list-style-type: none"> - Heated pool - Gym - Outdoor area - Internal communal area - Terrace
<p>Parking</p> <p>Total: 241</p> <p>Residential: 191</p> <p>Visitors: 50</p> <p>Bicycles: 262</p> <p>Motorcycles: 24</p> <p>Commercial: Not specified</p>	<p>Parking</p> <p>Total: 235</p> <p>Residential: 196</p> <p>Visitors: 39</p> <p>Bicycles: 262 (Class 2) 29 (Class 3)</p> <p>Motorcycles: 12</p> <p>Commercial: Not specified</p>	<p>Parking</p> <p>Total: 241</p> <p>Residential: 202</p> <p>Visitors: 39</p> <p>Bicycles: 262 residents/5 visitors</p> <p>Motorcycles: 12</p> <p>Shared BC/MC: 13</p> <p>Commercial: Not specified</p>
<p>Height Permissible – 60m</p> <p>Height approved – 60.2m (including skillion roof elements to provide visual interest and considered architectural roof features)</p> <p>FSR Permissible: 3.64:1</p> <p>FSR Approved: 4.74:1</p>	<p>Height Permissible – 60m</p> <p>Height approved – 58.2m to parapet 61.0m (including skillion roof elements to provide visual interest and considered architectural roof features)</p> <p>FSR Permissible: 3.64:1</p> <p>FSR – approximately 4.78:1</p>	<p>Height Permissible – 60m</p> <p>Height approved – 58.2m to parapet 61.0m (including skillion roof elements to provide visual interest and considered architectural roof features)</p> <p>FSR Permissible: 3.64:1</p> <p>FSR Approved: 4.84:1</p>

2. PROPOSED MODIFICATIONS

The proposal involves modifications to the consent for the mixed use development issued in respect of DA2011/0617, which was approved for the construction of a mixed retail/residential complex consisting of 252 apartments, 628m² of retail space and associated car parking for 241 vehicles.

The modifications do not rely on the previous two modifications and are proposed and detailed relative to the original development consent.

In summary, the proposed modifications to the design include:

- Amendment to the number and mix of units that results in a reduction from 252 to 180 residential units,
- Reduction in ground floor commercial space from 628m² to 440m²,
- Adjustment to basement footprint to facilitate sewer relocation works, and
- Reduction of car parking spaces provided, from 241 spaces to 236 spaces overall.

The applicants' submission further details the following changes in their submission report:

- *“Change in external aesthetic and material expression,*
- *Replace lightweight panel system with a predominately concrete cladding and construction system, coupled with additional glazing and non-combustible aluminium timber look elements,*
- *Relocation of communal facilities on Level 3,*
- *Reduction in number of residential floors to main tower (from 17 to 16 levels)*
- *Standard floor to ceiling heights have increased from the approved 2.4m to 2.7 for habitable rooms,*
- *Building envelope remains predominately the same except for the provision of an additional level on the top floor where a rooftop communal open space has been introduced, and*
- *Replacement of pre-fabricated pod-type housing system proposed for the norther façade of the King Street building with traditional construction systems including concrete, glass and light weight non-combustible cementitious cladding systems.”*

Detailed Description of Unit changes:

The most notable change is the alteration to floor levels. The habitable room distances between floor to ceiling have been increased to 2.7m and the detailed engineering of distributing services through the development result in some alterations. The levels remain similar to that approved and the scheme does not increase in the overall height of the building when measured from the ground to the ceiling of the upper most residential unit.

The mix of units has been altered:

King Street Tower:

The approved tower comprised of eight levels. Within each level a range of 6-8 studio apartments were provided off the central corridor to the north. 3-4 x one-bedroom apartments and 1 x two-bedroom apartment are provided to the south.

The modifications retain the same footprint; however the apartments are replaced with one-bedroom and three-bedroom apartments on all levels. The eighth storey provides for 4 x three-bedroom apartments and 1 x two-bedroom apartment.

Hunter Street Podium:

Above the ground level retail and foyer, the approved scheme provided 3 x studio apartments, a one-bedroom apartment and 3 x two-storey one-bedroom apartments. The upper storey provided for a pool and gymnasium.

The proposed modifications include 5 x two-bedroom apartments; three of which are provided over two levels and 1 x three-bedroom apartment over two levels. The pool and gym are removed in the proposed modification.

Central Tower:

The approved central tower comprises of 17 levels of residential accommodation starting at RL12.075m AHD. Level 1 is comprised of community areas, a studio apartment, 4 x one-bedroom apartments and 1 x two-bedroom apartment. The remaining 16 levels provided 1 x studio apartment on each level, 6 x one-bedroom apartments and 2 x two-bedroom apartments.

The proposed modification provides for 16 levels of residential accommodation, starting at RL 12.530m AHD. Level 1 retains community facilities, 2 x one-bedroom apartments and 3 x two-bedroom apartments. Levels 2 – 16 comprise of a range of one-bedroom, two-bedroom and three-bedroom apartments. A rooftop area for open space has been proposed.

Table 1 - Comparison of approved and modified

	King Street Tower		Hunter Street Podium		Central Tower	
	<i>Approved</i>	<i>Proposed</i>	<i>Approved</i>	<i>Proposed</i>	<i>Approved</i>	<i>Proposed</i>
<i>Studio</i>	61	-	3	-	17	-
<i>One-bedroom</i>	27	30	4	-	100	38
<i>Two-bedroom</i>	8	39	-	5	33	39
<i>Three-bedroom</i>	-	4	-	1	-	24
Total	96	73	7	6	150	101

Figures 1 and 2 below provide a comparison between configurations for typical levels of the building, as approved and as proposed to be modified.

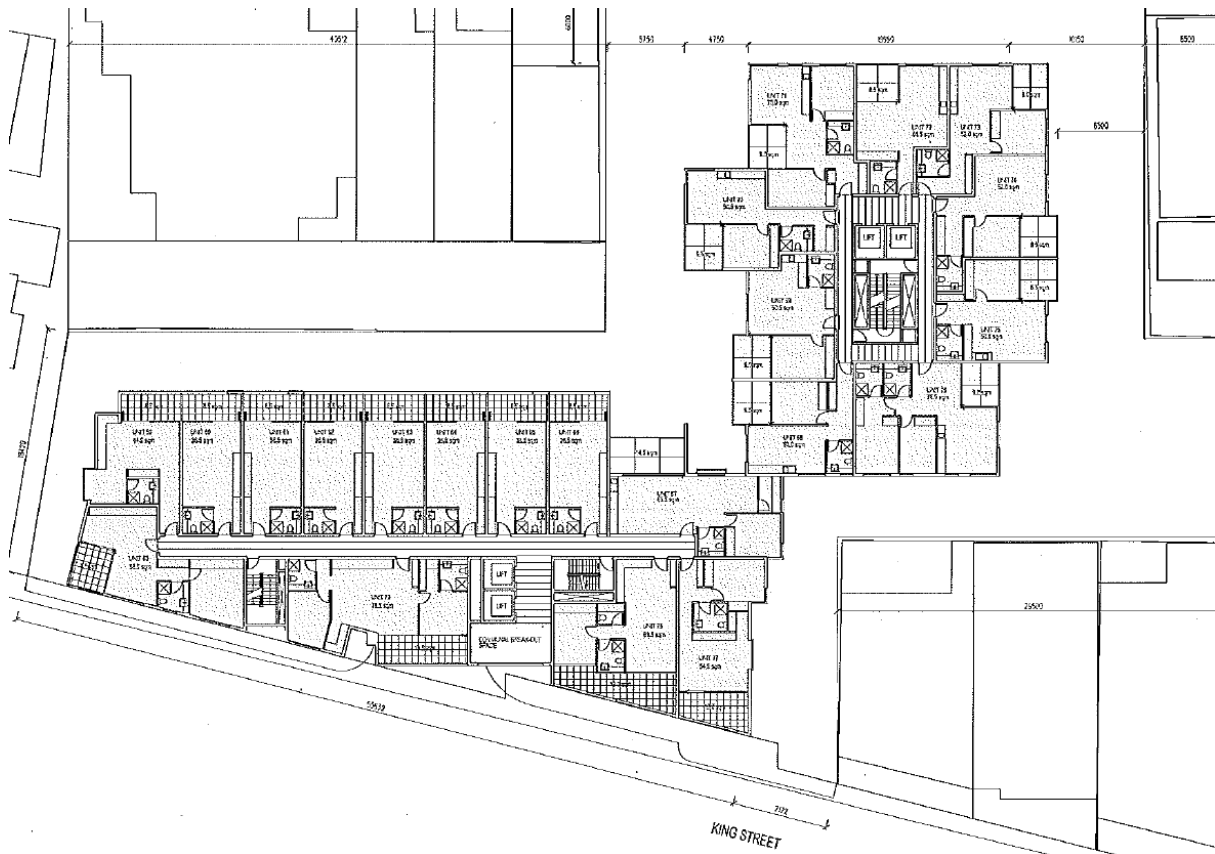


Figure 1 - Approved typical level at RL 17.775m AHD

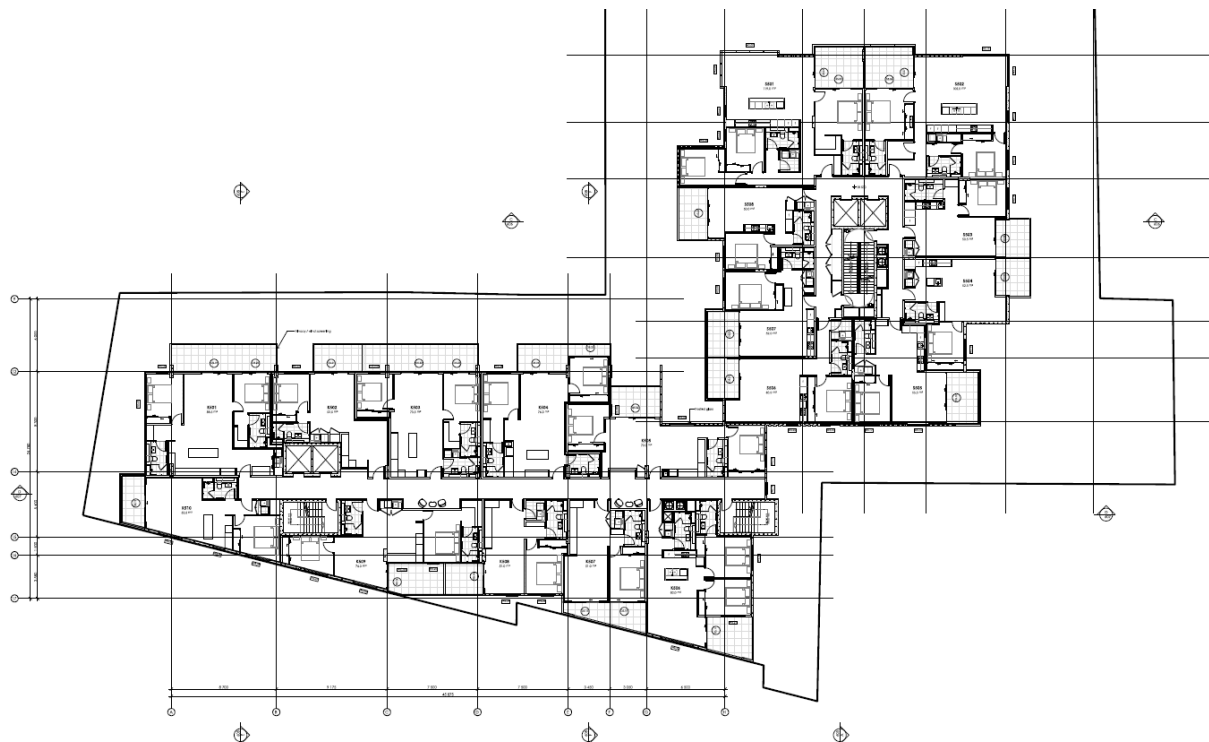


Figure 2 - Proposed modification for typical level at RL 18.530m AHD

Detailed Changes to Basement 2:

The excavation footprint for the basement levels have been reduced in area. This reduction has resulted in the basement being set in from the western boundary by a distance of approximately 10m and a small 7m wide protrusion on the east being

removed. The basement was approved to follow the angle of King Street, which is proposed to be removed and altered to form a square angle with the west excavation.

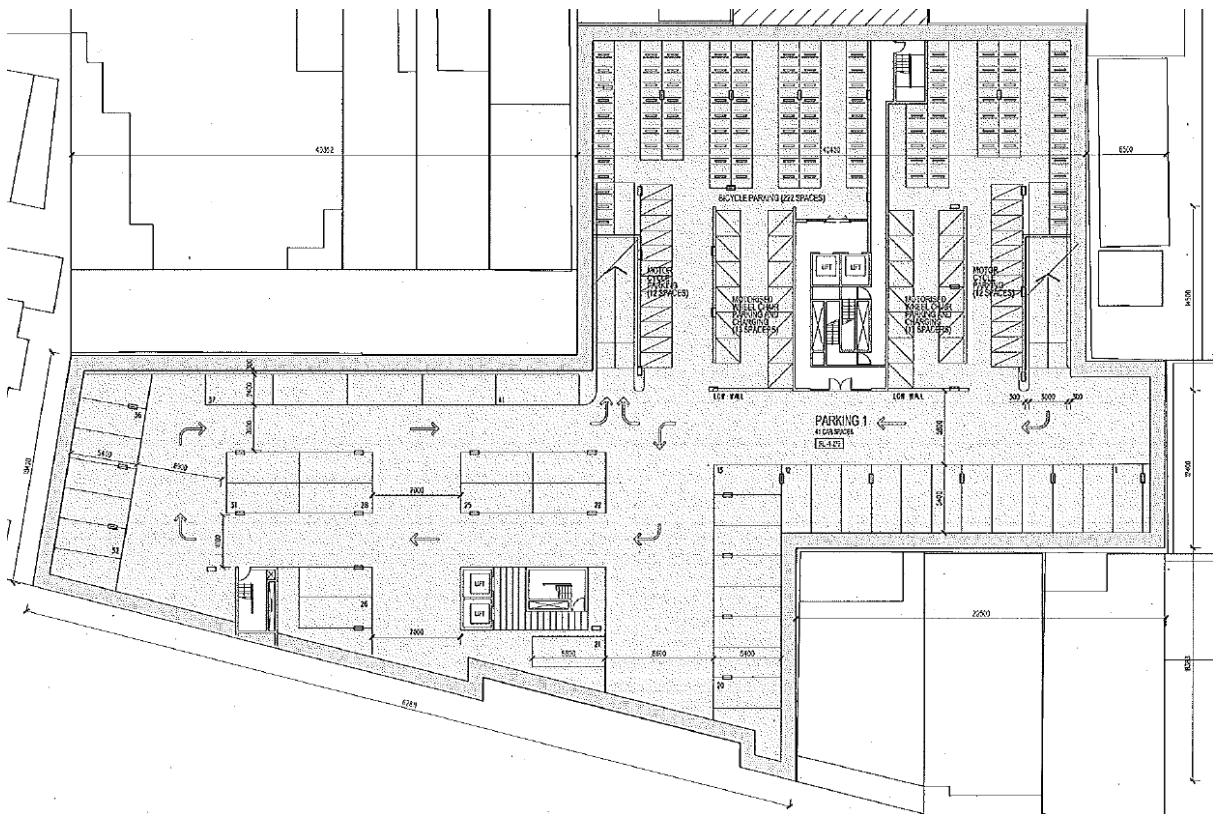
The lift core for the tower remains in place, whereas the King Street tower lift core has been relocated to the west side of the basement and a new fire stair added to the east.

All parking spaces have been reorganised, with access via a dual access ramp from the basement level above.

The total number of car parking spaces provided on this level, which provides 61 car spaces, has been reduced by one space. All bicycle spaces, motorcycle and motorised wheelchair parking spaces have been relocated to a range of private storage cages located at the ends of select car spaces.

The basement has been lowered by 245mm from -1.275m AHD to -1.520m AHD.

Figures 3 and 4 below provide a comparison between configurations for basement levels of the building, as approved and as proposed to be modified.



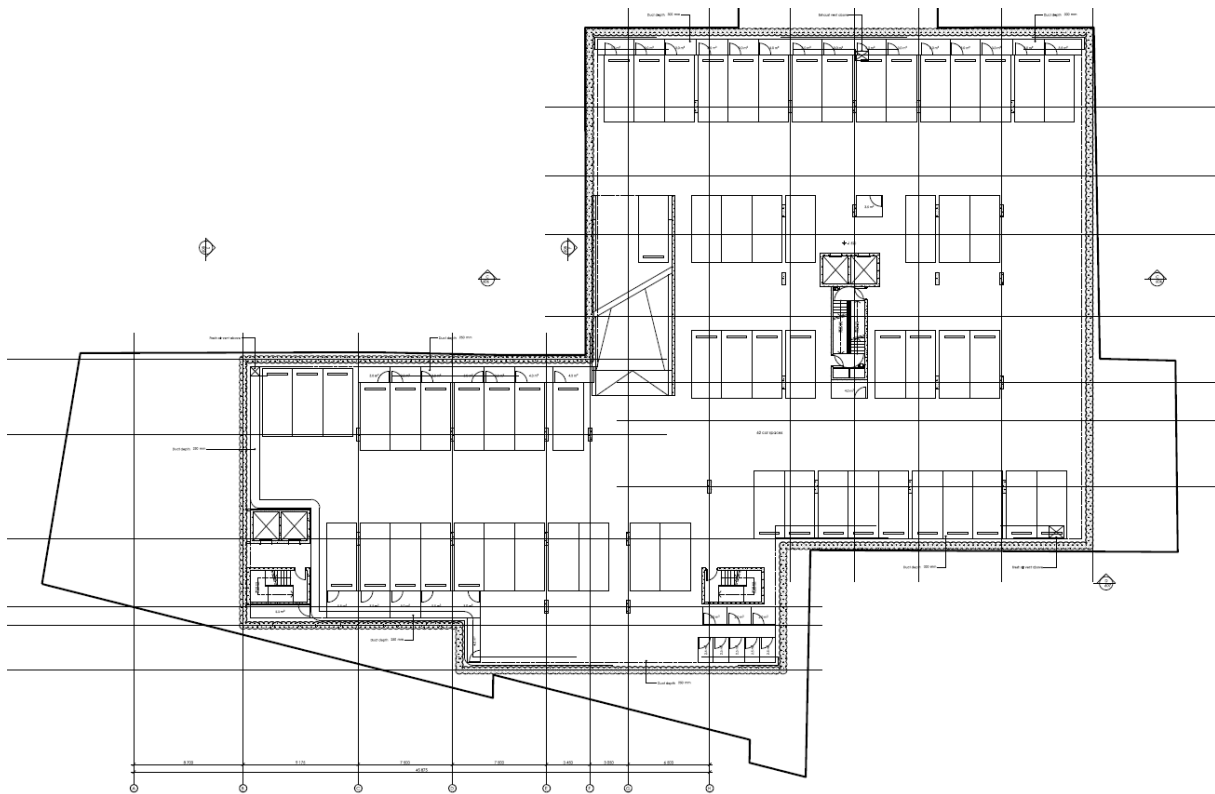


Figure 4 - Proposed modification to basement level

Basement 1: Is lowered by 170mm from the approved RL 1.350m AHD to RL 1.180m AHD and has been reorganised, within the reduced basement footprint as described above. The space provides a large storage area for garbage, waste and other associated primary services and infrastructure at this level.

The additional infrastructure and reduced footprint have resulted in the reduction of 13 spaces on this level from 68 to 55 car parking spaces.

King Street Ground:

The construction footprint remains unaltered. The inclusion of plant, equipment and services required for the development has resulted in the building footprint being reduced in terms of usable areas.

The retail space on the Hunter Street frontage remains at the approved RL of 3.1m AHD. The reception area has been replaced with a foyer for the residential apartments. The retail space has been reduced in area from 152m² to 138.5m².

The King Street frontage retains the main vehicle accessway and right of way. The 509m² of retail space has been reduced to 301.5m². The foyer to the apartments has increased in area. The floor level is reduced in height from 3.975m AHD to 3.880m AHD.

Central to this level is the approved 45 car parking spaces which have been reduced to 30 spaces. The additional area is utilised for storage and circulation space.

Figures 5 and 6 below provide a comparison between commercial spaces, as approved and as proposed to be modified.



Figure 5 - approved ground level highlighting commercial space

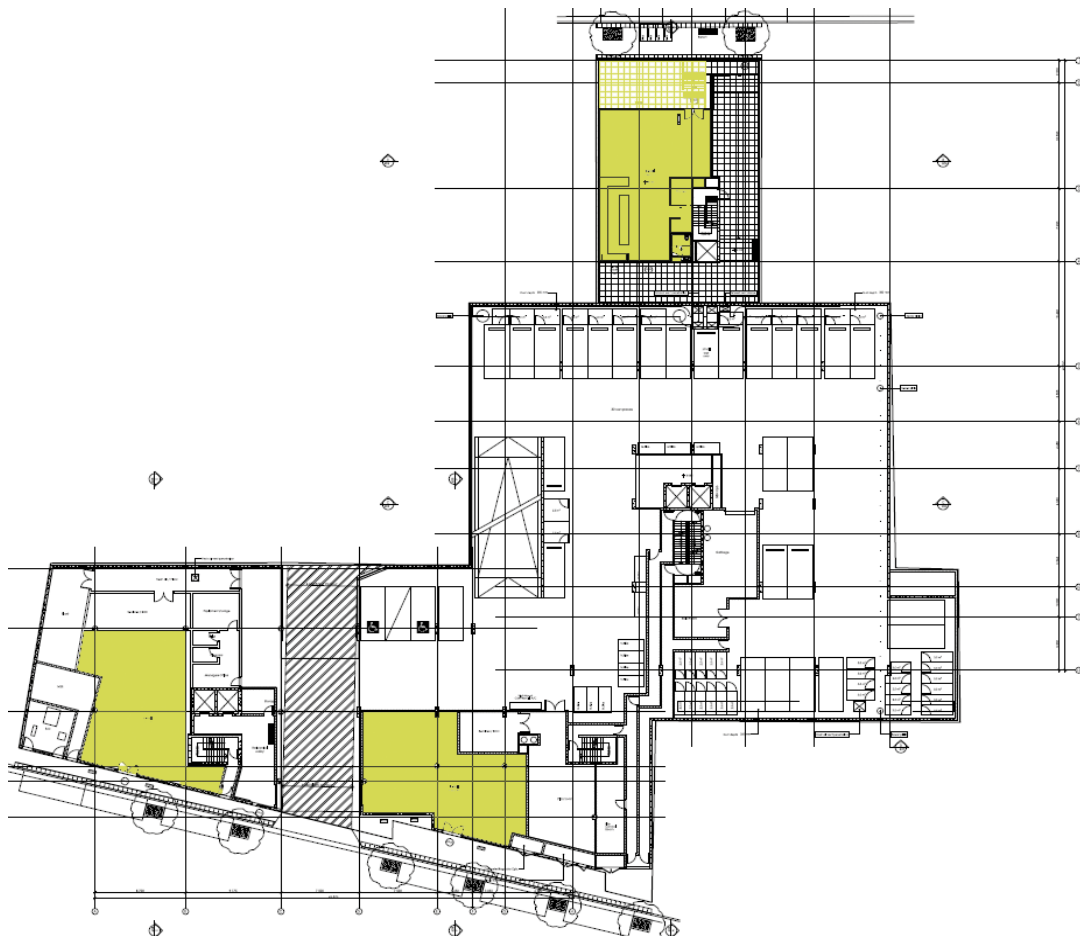


Figure 6 - Image identifying the modified floor areas of commercial space as proposed to be modified

Height changes:

The height of the proposed modifications has slightly increased to cater for the increase in floor-to-ceiling height to each level, which is exacerbated over the height of the two towers. A summary of these changes is below:

Based on King St GL 3.88m	Approved	Proposed
Top floor ceiling height	56.375m	57.55m (+1.175m)
Roof top communal area - ceiling height		60.55m
Skillion roof – architectural roof feature	60.2m	61.15m (+0.95m)
Lift overrun	Not on DA plans	62.47m
Floor to floor height (difference over 16 floors = 2.4m)	2.875m	3m
Floor to ceiling heights habitable rooms	2.4m	2.7m

King St Tower

Based on King St GL 3.88m	Approved	Proposed
Top floor ceiling height	28.14m	29.65m (ie +1.51m)
Lift overrun	Not on DA plans	31.35
Plate heights (difference over eight floors = 1m)	2.875m	3m
Floor to ceiling heights habitable rooms (difference over eight storeys = 1.2m)	2.4m	2.7m

Figure 7 below provides a comparison between the upper levels of the building, as approved and as proposed to be modified.

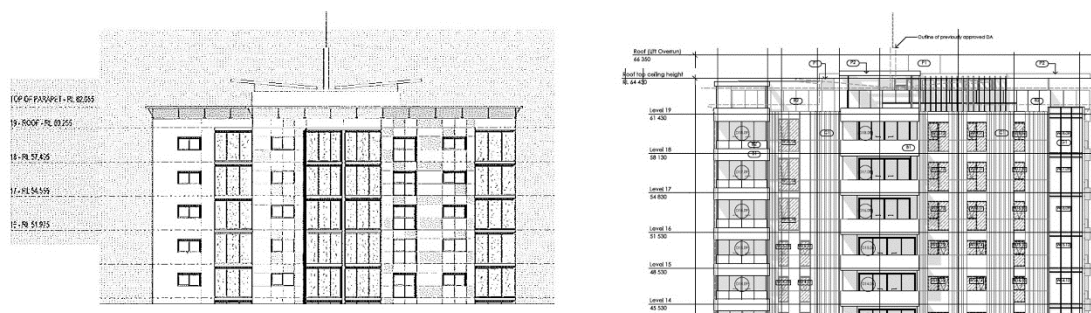


Figure 7 - Side by Side comparison of upper most level of the Central Tower from the approved to the current modification

3. SITE DESCRIPTION

The development site is an irregular shaped lot located between Hunter and King Streets Newcastle, being Lot 1 DP1225220 (refer to figure 8 below). The site has a total area of 3,436m² and has street frontages of 15.86m to Hunter Street and 62.8m to King Street.

A two-storey vacant commercial building adjoins the site to the east (at the Hunter Street frontage). A private open carpark is located to the rear of this commercial building, accessed via Hunter Street.

A 4m right of way, extending from King Street, provides access through the site to the rear of the commercial buildings at 513 to 529 Hunter Street, which are located to the west of the development site. The King Street frontage of the site also includes a car park located between the 4m right of way and the neighbouring two-storey building at the corner of King Street and Union Street. Three commercial buildings (two-storey and three-storey), located at 368-374 King Street, adjoin the development site in the south-eastern corner.



Figure 8 - Subject Site

4. CONSULTATION

The original application was notified for 30 days in the newspaper and by post to neighbouring properties, pursuant to the requirements of the public participation Development Control Plan provisions. The extended time was due to the proposed demolition of a building within a heritage conservation area.

The modification application was notified for a period of 14 days in the newspaper and to neighbouring properties.

Three submissions were received, raising the following objections and comments on the proposed modifications:

Awabakal Local Aboriginal Land Council (ALALC)

The site is located in proximity to a large number of sensitive sites, based on previous recordings in the area. The ALALC recommend that a full investigative study and excavation of the subsoil be undertaken.

Comment: The original application includes a condition of consent which will remain in place if this modification is supported. The applicant advised that as works have commenced on the scheme, this condition is being attended to, with confirmation received from the Office of Environment and Heritage. A procedure based around ‘*unexpected finds*’ is in place.

Cooks Hill Community Group

All existing traffic will be directed as a left turn onto King Street leading to traffic congestion flowing into Cooks Hill.

Comment: Council’s consulting traffic engineer reviewed the proposal and provided additional commentary to the supporting traffic report on updated figures and numbers. In conclusion, it is considered that the scheme will have less impact than that currently approved. Additionally, it is noted that the development will not create an impact on any nearby intersections sufficient to warrant modification or upgrades.

The traffic assessment utilised data from a 2005 and 2015 report, which is out of date and irrelevant.

Comment: The data utilised was noted by the applicant as being comparison data and that the report correctly identifies the growth rate. Both the applicant and Council’s engineer note that the light rail will begin to result in less traffic congestion in the City.

Deficit of 25 visitor spaces.

Comment: The deficit is reported and assessed as being reasonable in the circumstance. Importantly, the deficit is unlikely to create an impact on the local road network.

Exceeds height limit which will have negative impact on the visual catchment of Cooks Hill Conservation Area and cause overshadowing to residences of Gibson Street and South side of King Street.

Comment: The report considers the height variation and material change, including overshadowing in detail. The scheme has been reviewed significantly by the UDCG and retained their support. The development as modified will offer an improved visual element to the approved scheme providing for a more contemporary and suitable addition in the skyline.

The height of the tower will be visible from the surrounding suburbs, nevertheless, the intent of the structure has been approved and this modification will improve the impact.

Resident

In support of this modification, having objected to the previous modification.

5. REFERRALS

The site is located in a proclaimed Mine Subsidence District. Subsidence Advisory NSW has provided conditional approval to the modified scheme.

Council Engineer

Council's engineer's reviewed the modification and provided conditions for approval to the modifications as proposed.

Urban Design Consultative Group

The UDCG has been involved in the design of this development since inception. Their comments were sought regarding the current modification from as early as September 2017 prior to significant changes being made. The scheme was largely resolved as per their comments and was presented a second time prior to lodgement on 21 March 2018.

The application was presented a final time on 16 May 2018 and the Group noted:

"The further design development of the s96 design has progressed to a level at which the previously raised concerns are considered to have been satisfied. The roof top landscape design requires further design development and additional standard information as outlined in the ADG. Providing that this is submitted to the satisfaction of the relevant Council officers, the Group considers the application could be supported."

The applicant has responded to the final comments of the Group in the amended documentation.

The UDCG noted that the scheme related very closely to the approved development and that the main changes were the internal arrangement of the residential units and floor to ceiling heights, which resulted in removal of one level in the central tower. The main addition related to the roof top alterations and activation.

The UDCG's combined minutes and responses from the applicant to each are provided as an appendix to this report. The key matters are discussed below:

Roof Top Treatment / Landscaping

The UDCG's comments on the rooftop element were accommodated in the design. Specifically, the built form has been set back from the edges, the corners of the roof made recessive and the materials to be more sympathetic to the design.

The Group commented:

“Some further attention is needed to the living landscaping to ensure the attractive, leafy impressions provided in the landscape documentation approximate what will be achieved in reality.”

The UDCG's comments were based on the understanding of early design proofs that the roof top area will be a leafy garden. The applicant has responded with additional detail in the landscape design for the roof. The scheme is amended to provide a series of smaller break out areas based on hard landscaping and a scattering of potted plants. The roof top would be a harsh environment and it is not intended or suitable to as an area for deep soil plantings. While the area has the potential to provide additional plantings, the amended detail in June 2018 amendments would be satisfactory and suitable in creating a useable outdoor space.

Figure 9 below shows proposed podium area landscaping.



Figure 9 - extract of podium area landscaping proposal following UDCG minutes and comments

It was additionally noted that the Apartment Design Guide (ADG) requires soil volumes to be provided. The modified plans have provided this:

	ADG requirement	Proposed	Complies
Roof Top			
Turf	200mm	300mm	Yes
Pots	N/A	450mm-900mm	n/a
Podium			
Turf	200mm	300mm	Yes
Pots	N/A	450mm-900mm	n/a
Shrubs	500mm	600mm – 1m	Yes

Given the extent of hardscaping on the roof, provision for furniture storage is required. It is noted that the additional detail demonstrates that the spaces are enclosed and secure and the furniture can be secured in place or moved inside if required.

Separation Distances

The UDCG noted that:

“{there was} very small separation distances between balconies at the internal corner interface with balconies in the tower block result in unacceptable privacy impacts. Note that in the approved scheme there was significantly greater separation between apartment balconies, and the balcony to the communal spaces had projecting blade walls, - although these too were barely adequate”

The original approval created a privacy concern regarding the separation distances of the typical units between the intersection of the King Street and Central Tower. The modified version improves the situation in that the blade wall has been extended to the north facing unit of the King Street tower protecting inter-looking from the neighbouring units facing west and a frosted glass window has been provided to the north facing living room of the King Street unit.

The relationship between the units at this intersection continues to not be ideal. The modifications provide additional privacy screening between the units, however, the addition of frosted glass and extended blade walls to the King Street Unit is provided at a loss of amenity to the future occupiers, reducing the outlook and solar access.

These units represent an established and difficult ‘*pinch point*’ to overcome. A range of possible solutions and arrangements are able to be undertaken in an attempt to resolve the relationship between these three units, however, without significant design changes these would not be resolved. The situation remains improved and the UDCG notes:

“The relationships between apartments and their balconies in the corner junction between the two towers have been improved, with the outcome providing privacy levels that could be considered to be acceptable though not ideal.”

Figure 10 below demonstrates modifications to screens between units.

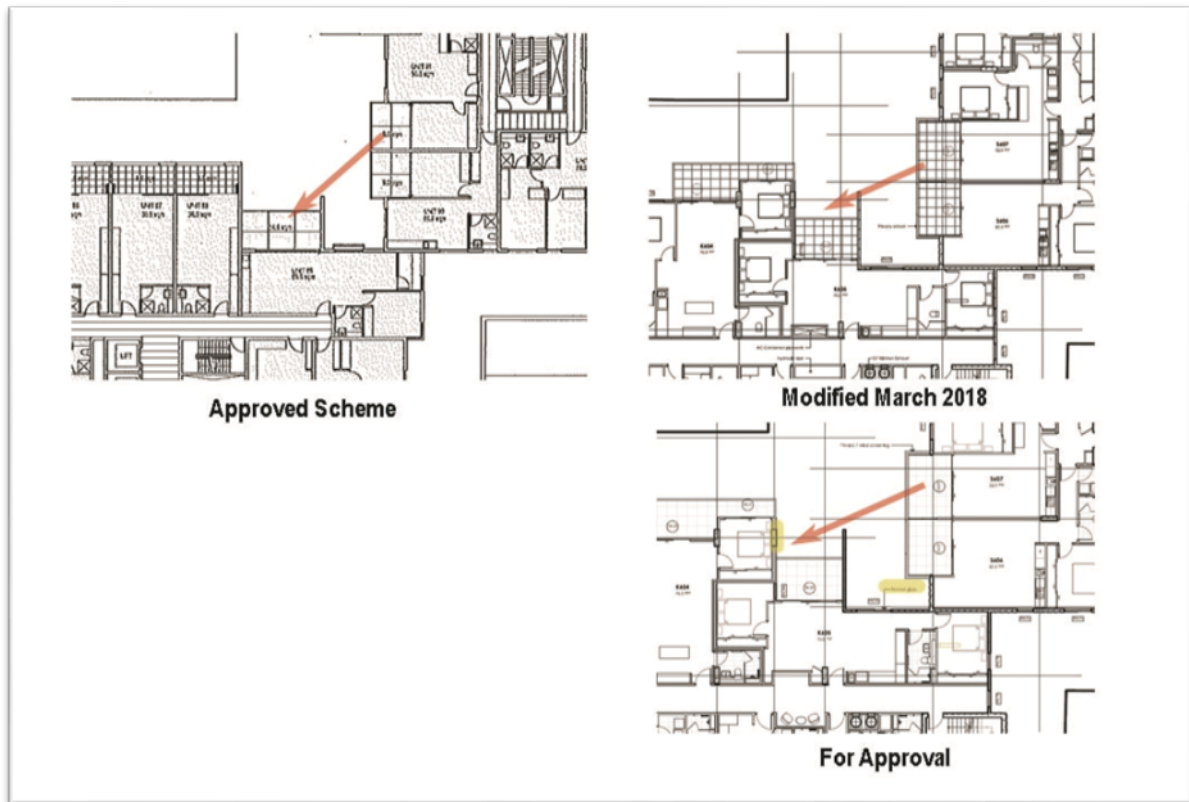


Figure 10 - diagram demonstrating modifications to screens between units

Corridors

The UDCG commented that the approved scheme provided a natural light-filled arrangement around the lift corridors within the King Street Tower. This has been removed and a dark corridor provided in response. The May amendments included a window to the east of the corridor to allow for natural light and ventilation and included some seating areas mid-way, which the Group noted was a distance away from the natural light. The Group preferred to see:

“the glazing be detailed to allow an external aspect from the corridor”.

June 2018 amendments provided a second seating area on the eastern side of the corridor. The applicant notes that the change in unit mix for this part of the scheme removes the smaller studio apartments and provides a larger unit that is more family orientated, which would rely less on the open space areas of the corridors. This comment and modifications are considered to be acceptable.

Entry Lobby

The UDCG responded to the March 2018 Scheme:

“The enclosure of the entry lobby has achieved a more comfortable entry to the tower. If there is not a fire separation issue, the Entry space could be made more interesting and could relate better with the retail space opposite across the driveway, if the Entry wall closer to the driveway was glazed.”

The applicant has revised the scheme to provide glazing on either side of the driveway.

Balconies of Central Tower

The UDCG required the addition of balcony screens to protect from high winds, ideally from level 6 and above. The applicant has provided these to level 10 and above.

Access from Hunter Street

The UDCG would prefer to see a solution that improves the amenity and functionality of the tower block accessibility from Hunter Street, as only a single lift has been provided from Hunter Street and the stair access enclosed. The applicant responded in the meeting to which the UDCG noted compliance, but recorded that:

“it represents a lost opportunity for providing a more relaxed and user-friendly pedestrian experience moving between Hunter Street and the remainder of the development.”

The applicant has not responded to this comment. It is considered that the modifications do not improve or detract from the situation that was previously approved. While the comments of the UDCG are noted and concurred with, this would be a desirable modification and detail should be provided in a form that would provide additional detail to the treatment of this entry to ensure the existing situation is at least enhanced.

Landscaping

The UDCG noted that the ADG requires soil volumes to be provided.

Social Interaction and Housing Diversity

The UDCG were supportive of the proposed unit mix. The applicant offered to investigate the opportunities to allow intercom activation between apartments.

Aesthetics

The UDCG were supportive of the latest modifications regarding the change in façade treatment:

“The changes to the façade are considered to be positive in relation to the scale and context of the building. Breaking up the building vertically so that it relates to the height of Worth Place and incorporating materials of similar colour and quality to that of New Space assists in relating the building to its context. The balcony treatment is visually interesting and provides a suitable balance of maintaining privacy and revealing the view.”

“The aesthetics of the proposed development have been further improved by a better integration of the roof elements with the remainder of the building. The net result is a significant improvement of the aesthetics of the previously approved tower.”

6. PLANNING ASSESSMENT

6.1. Environmental Planning and Assessment Act 1979 (EP&A Act)

Section 4.5 – Consent Authority

The development is to be determined by the JRPP pursuant to Section 2.15 of the *Environmental Planning and Assessment Act 1979*, as the proposal involves a Section 4.55(2) modification to an approved development for which the JRPP is the consent authority. The cost of the original development was \$36 million.

Section 4.55 – Modification of Consents

(2)(a) – Substantially the same development

Whether modifications proposed will result in changes to a development that may render the scheme, so different that it would not be substantially the same as originally approved, has been discussed in the courts consistently, with the latest decision being issued in May 2018.

From as far back as 1992 Stein J discusses in *Vacik Pty Ltd v Penrith City Council* that the development, as modified, needs to demonstrate that the modified scheme would be essentially or materially the same essence as that originally approved.

By 1999 a two-part test was derived by Bignold J in *Moto Projects No 2 Pty Limited v North Sydney Council* [1999] 106 LGERA 298 (*Moto*). This test involved a qualitative and quantitative assessment to assist in distinguishing the essence, which has been consistently used since, with the latest decision in May 2018 involving Moore in *Trinvas Pty Ltd v The Council of the City of Sydney* [2018] NSWLEC 77.

The applicant provided a brief discussion on the matter, which were summarised into four points. It is considered that these points do not provide any substantial evidence or argument that would satisfy this assessment. In fact, the concluding points provide comments associated with the evaluation of the environmental impacts, being a matter that is considered separate from this discussion. Nevertheless, the applicant has placed considerable effort throughout the report, discussing the numerical and non-numerical variances of the scheme, which strongly support this discussion.

The following therefore considers the scheme in this regard:

Quantitative Assessment

Residential Use

The largest numerical aspect that is represented in this scheme is the reduction in unit numbers. Having approval for 252 apartments, the reduction to 180 appears significant. However, it is imperative to understand that the residential floor area remains largely unaffected and the mix of unit types proposed are designed within the same functional space. The modified scheme will result in less population on the site, however, the essence of the development remains substantially the same in that a number of residential units are proposed within the same building envelope.

Retail Use

The reduction in floor space of the ground level retail spaces from 628m² to 440m² affects the Floor Space Ratio permissible on the site relative to the original planning instrument – the Newcastle City Centre Local Environmental Plan 2008. In summary, the retail spaces retain a reasonable presence at ground level and occupy a similar functional space and therefore would be, in essence, substantially the same.

Car Parking

The car parking provided on site is proposed to be reduced from 241 to 236. This represents a surplus of car parking spaces relative to the requirements of the Newcastle Development Control Plan 2012.

Floor Space Ratio

The proposal was approved under the Newcastle City Centre Local Environmental Plan 2008. The FSR promoted commercial uses with a 7:1 ratio. This was reduced to as low as 3.5:1 for non-commercial uses. The approved scheme was calculated as being proportioned as a 96% to 4% ratio resulting in the maximum permissible FSR being calculated as 3.64:1 as below:

$$\begin{aligned} & ((\text{NFSR} \times \text{N} / 100) + (\text{SFSR} \times \text{S} / 100)) : 1 \\ & ((3.5 \times 96 / 100) + (7 \times 4 / 100)) : 1 \\ & 3.36 + 0.28 : 1 \\ & = 3.64 : 1 \end{aligned}$$

The approved development has a calculated gross floor area of 16,283.5m², equating to an FSR of 4.74:1, which was approved to be 30% above the maximum allowable FSR for the site.

Council supported the variation pursuant to Clause 28 of the Newcastle Local City Centre Environmental Plan 2008 (equivalent to clause 4.6 variation in the Newcastle Local Environmental Plan 2012) on the grounds that:

- The development represented a similar bulk and scale of the previously approved Seniors Housing scheme which exhibited design excellence guided by the Design Integrity Panel,
- The scheme represented a bulk and scale similar to the previously approved scheme (for seniors housing) which proposed a much larger density,
- The FSR in the Draft Newcastle Urban Renewal Strategy was nominating the site to be 5:1, and
- The need for this site to revitalise the CBD and changing nature of the area.

The modified scheme results in a surplus of car parking. The modified gross floor area is 16,796m², equating to an FSR of 4.88:1, which is well above the maximum allowable FSR for the proposal representing a 36% variation.

$$\begin{aligned} & ((\text{NFSR} \times \text{N} / 100) + (\text{SFSR} \times \text{S} / 100)) : 1 \\ & ((3.5 \times 98 / 100) + (7 \times 2 / 100)) : 1 \\ & 3.43 + 0.14 : 1 \\ & 3.57 : 1 \end{aligned}$$

The reasons relied upon for the clause 28 variation to the development standard remain consistent in the current controls. In fact, the FSR of 5:1 recommended for this site has since been adopted and applies to the land. The true intent of the FSR provision was to invigorate the CBD in promoting large scale commercial development in this location. The modification does not alter the scheme and the approved objectives of the zone in the current instrument has lessened the requirement for commercial uses, with the zoning of the site changed from B3 Commercial Core to B4 Mixed Use.

Height

The modifications increase the height of the two tower elements. The central tower is increased only to provide for roof top activation. The decorative skillion roof and spire are removed, and a contemporary light-weight addition added. The residential units do not exceed the height of what was previously approved. The activation of this roof space for residents of the building would not render the scheme so different that it would not be substantially the same.

Figure 11 below shows parts of the proposed development that extend beyond that originally approved..

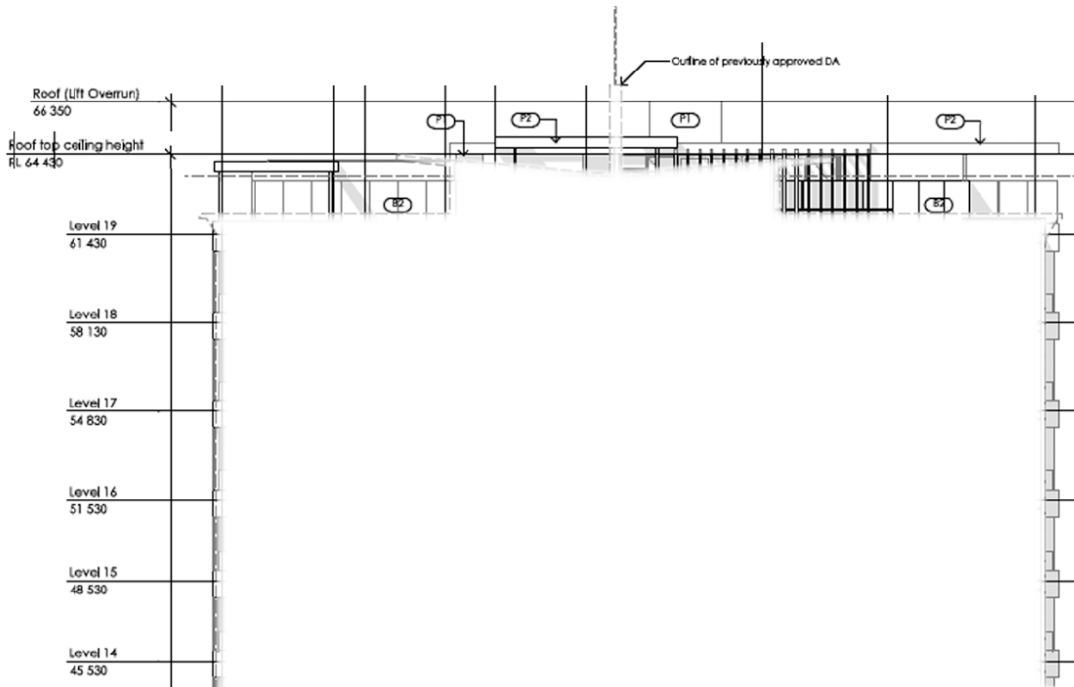


Figure 11 - area shown outside of approved envelope

The residential unit's ceiling height for the King Street tower is increased in height by 1.175m. This has not resulted in additional residential floor space and is substantially the same.

The roof top is proposed to be activated and the proposed lift overrun was not considered in the original approval. The use of the roof top remains exclusive to the residents and remains substantially the same development.

Qualitative Assessment

Visual Bulk and Scale

The scheme as modified is largely contained within the approved development envelope. It is best described as being a residential development constructed within two distinct towers over a ground level and basement car park, services and commercial uses.

The materials and method of construction affect the external appearance relative to the shell only of the building. The scheme is substantially the same development in this respect.

Commercial Uses

The ground floor commercial spaces have been slightly reduced in area. This space continues to represent spaces on the ground level fronting King Street and Hunter Street.

Traffic

The scheme remains unaltered in this respect providing 5 levels of car parking accessed from King Street. The right-of-way servicing the rear of the properties on Hunter Street remains in place.

Social

The apartment mix is proposed to be modified resulting in less units and less bedrooms. The scheme will provide for a different residential market.

Summary Conclusions

Numerically, the scheme appears much different, providing significantly less bedrooms, a reduction in retail areas and an increase in overall GFA. Additionally, a new level is provided on the roof top which exceeds the height limit. However, the numbers are exacerbated by the sheer size of the development in that a slight modification to one level can be multiplied by the total 27 stories of residential development. Importantly, the residential floor space remains largely unaffected and the upper levels of the building footprint are unaltered.

The further exceedance to the FSR is generated by the '*averaging*' formula that formed part of the Newcastle City Centre Local Environmental Plan 2008 which, in combination with the surplus car parking, abnormally increases the value of the statistic.

Qualitatively, the scheme is clearly the same development.

In conclusion, having regard to the two measures, the scheme does represent and provide some reasonably substantial alterations, however, the numerical calculations are exacerbated by the multiplication aspect due to the size of the development. Overall, the development as proposed to be modified is still substantially the same development.

(2)(b) – Consultation with relevant approval body

The JRPP were the constituted approval body. The development as a substantial modification is being determined by the JRPP.

(2)(c) – Notification

The application was notified in accordance with Council's Development control Plan.

(2)(d) – Consideration of any submission

Three submissions were received. The matters raised in the submissions are considered in this report.

(3) – Consideration to 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.

(i) 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 application is submitted to the Hunter and Central Coast Joint Regional Planning Panel for determination as the development proposes a significant modification to the scheme that was previously determined by the JRPP.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

The modification reduces the number of units to 180. This is well below the threshold of 300 dwellings pursuant to clause 104 of the ISEPP. The proposal, as approved and modified, is not considered to be traffic generating development as per the ISEPP.

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

An amended the BASIX certificate has been provided in support of the proposed modifications.

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

The applicant identified in the original application that the site has been utilised for a commercial office building and no evidence has been found that would suggest otherwise. It is unlikely that the site would be contaminated.

Council's Environmental protection officers reviewed the information submitted with the original application and were satisfied that the site is not likely to be contaminated.

Conditions were imposed to control the removal of excavated materials, quality of imported fill and removal of potential hazardous demolition material. The site has since been cleared and the condition remains suitable for the construction process.

The proposed modifications do not alter this original advice.

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. 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 (ADG).

An assessment of the development was undertaken in conjunction with the UDCG. A detailed assessment of the proposed modifications against the nine design principles is appended to this report. A summary and assessment of the responses are provided in Section 4.

The ADG provides benchmarks and guidelines for the design and assessment of residential apartment development. The UDCG has had due consideration to the ADG in considering the scheme during the past meetings.

It is noted that the modified scheme offers significant improvements to the approved scheme. While the improvements are welcomed, it acknowledged that the previous scheme was designed for a different social and economic market. The development offered a large number of studio/bedsit apartments with communal spaces to support the likelihood of the growing demand of student accommodation. The reduction in units has therefore resulted in the opportunity to create much larger and useable self-contained spaces within each unit and have been designed to meet the ADG standards.

The limitations of responding to the existing building envelope and irregular site boundaries leads to some apartments with limited access to amenity, however, as a whole, the scheme meets the requirements of the ADG.

A detailed ADG checklist has been provided by the applicant in **Appendix D** to this report. A summary of the key aspects is provided in Table 2.

Table 2 - Apartment Design Guide Assessment

Apartment Design Guide			
<i>Objective</i>	<i>Design Criteria</i>	<i>Proposal</i>	<i>Compliance</i>
Building separation	Four Stories – 12m habitable rooms and balconies; 9m habitable and non-habitable; 6m non-habitable Eight Stories – 18m, 12m, 9m 9+ stories – 24m; 18m; 12m	For levels up to four stories there are two areas of non-compliance and a privacy screen has been added to cater for this. The 12m radius extends into neighbouring land. Presently these are not developed with residential uses.	One 'pinch point' is noted and discussed in Section 5. For apartments to 9 stories, there is a conflict between the 04 and 08 balconies. For the Central Tower, once the development reaches the 9 th storey, the separation distance from the nearby Worth Place tower to the east is met. It is understood that the windows of this are non-habitable, however, this scheme ensures 24m separation is maintained.
Communal open space	25% of site (859sqm)	Podium and roof top	Approximately 1,200sqm is provided and Complies

Solar access	70% receive 2 hours; <15% receive no solar access	66%	Does not meet Criteria
Natural ventilation	60% are cross ventilated	62%	Meets Criteria
Ceiling heights	2.7m to habitable rooms, 2.4m for non-habitable	100%	Meets Criteria
Apartment size	1 bed – 50m2 2 bed – 70m2 3 bed- 90m2	Between 50 – 60.6m2 Between 70 – 115m2 Between 117 – 159sqm	Meets criteria
Room depth	Habitable rooms depth are < 2.5 x ceiling heights (6.75m) Open plan < 8m	21 apartments exceed the maximum 8m for open plan	The architect confirms the apartment habitable spaces are open plan and therefore 8m depth applies. 21 apartments exceed the 8m maximum.
Room design	Habitable room have window >10% room floor area Master bed 3m dimension 10m2 Bed 3m dimension 9m2 Living and dining width 3.6m for studio and 1 bed; 4m other	All habitable rooms have adequate windows Bedrooms meet and exceed standard 49 units do not meet the minimum width for living spaces	The assessment table reports that each of these units living areas vary in width and will comply at various parts of the space
Primary balconies	1 bed – 8m2; 2m deep 2 bed – 10m2; 2m deep 3 bed- 12m2; 2.4m deep	3 x 2bed Hunter Street units provide 7.5m2.	Minor shortfall based on the specifics design of the Hunter Street frontage.
Common circulation	Max apartments from circulation core is 8 – can be increased to 12 Maximum apartments sharing lift for central tower is 40	King Street Tower – 10 Central Tower – 8 Central Tower total units: 107	Two lifts are proposed. This aspect is discussed in section 5.
Storage	1 bed – 6m3 2 bed – 8m3 3 bed – 10m3		100%
Deep soil zones	7%	0%	The site is within a commercial setting and the ground level comprises of some commercial elements.

The site is located within the coastal zone. The original development was considered against the objectives of Clause 41 of the Newcastle City Centre Local Environmental Plan 2008, noting that the Newcastle City Centre Local Environmental Plan 2008 set aside SEPP 71 with respect to the Newcastle City Centre. The modifications do not affect the design that would otherwise impact upon the objectives of this policy. Specifically:

- (a) The site is located within an established urban environment that is a significant distance away from the coast to not cause detrimental impacts to the biophysical, hydrological and ecological environment of the coastal zone. A revised stormwater design has been submitted and reviewed in line with current policy and practices and the site is devoid of any vegetation,
- (b) The suitability of the development, its relationship with the surrounding area, and its impact on the natural environment has been considered by Council, the UDCG and the JRPP when originally approved and found to be acceptable. The modifications do not alter the scheme to create any additional impact in this regard,
- (c) The site is not within close proximity to a coastal lake,
- (d) The proposal does not detrimentally impact on biodiversity or ecosystems,
- (e) The proposal will not impact on existing public pedestrian access to and along the coastal foreshore,
- (f) It is recommended that a preliminary archaeological assessment be undertaken given the large extent of the site and the potential for relics to be found on the site. This remains as a condition of consent, and
- (g) The site is located a significant distance away from the surf zone.

Division 5 – General

The development is not within an area that would be affected by coastal hazards and would not be affected by coastal management programs.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The site is already cleared of vegetation and the modification does not result in any additional vegetation clearing.

Other State Environmental Planning Policies

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

Newcastle Local Environmental Plan 2012 (NLEP 2012)

At the time the development application was submitted, the Newcastle City Centre Local Environmental Plan 2008 (NCCLEP) applied. As of 15 June 2012, this LEP was repealed and the LGA-wide NLEP 2012 was gazetted. The savings provisions of NLEP 2012 means that NCCLEP 2008 applied to the development. The modification of that same application is to be considered against that same instrument and relevant items are addressed below.

Newcastle City Centre Local Environmental Plan 2008 (NCCLEP 2008)

Clause 11 - Land use zones and Land Use Table

The site was previously zoned B3 Commercial Core. The modifications do not affect the permissibility under this clause, namely the scheme still includes

“business premises, office premises, retail premises and residential flat buildings (but only as a component of mixed-use developments involving a permitted non-residential use)”.

Clause 21 - Height of buildings

NCCLEP 2008 nominated a maximum height limit of 60 metres. The approved scheme remained below this height limit at 58.2m. The skillion roof and spire were considered acceptable as an architectural roof element pursuant to clause 21.

The modification reduces the overall height of the roof feature but increases the height of the roof top in providing shelter for the residents utilising the roof space, that has been activated as part of this proposed modification.

The modified scheme therefore exceeds this height limit by 2.47m for the lift overrun. This is discussed previously in this report.

Clause 23 - Floor space ratio

The modified proposal increases the FSR variation pursuant to this clause. This is discussed previously in this report.

Clause 25 - Minimum building street frontage

A building within a B3 zone is to have at least one street frontage of 20 metres or more. The site has a 52.9 metre frontage to King Street and therefore complies.

Clause 26 - Car parking

This clause requires that any proposed development shall comply with Council's Development Control Plan 2005 in terms of the number of car parking spaces. The modified scheme provides a surplus of parking spaces for residents and a reduction in spaces for visitors. Council's consultant traffic engineer has reviewed this proposal and found this to be acceptable; see further assessment of Development Control Plan provisions.

Clause 27 - Building separation

NCCLEP 2008 requires that a building must be erected so that the distance from the building to any other building is not less than 24 metres at 45 metres or higher above ground level.

It was previously approved on the basis that:

“there are no other buildings, either within or adjoining the site that are 45 metres in height or higher. As such, the proposal complies within this clause. It is noted

that adjoining sites to the east and west are somewhat constrained (by size, width and/or depth) and are unlikely to achieve buildings with 45 metre heights in the future.”

The modification does not alter this building envelope.

Clause 28 - Exceptions to Development Standards

The approved scheme was based on a variation to the FSR pursuant to this clause. The modified scheme increases this variation. The development also now exceeds the height applicable at the time of assessment of the original Development Application. These aspects are considered in detail pursuant to section 4.55(2)(a) of the EP&A Act in Section 6 and where found to be acceptable.

Clause 36 - Design Excellence

The original approval invoked the requirement for an architectural design competition to be held as the building was over 48 meters in height.

The Director-General of the then NSW Department of Planning & Infrastructure agreed to waive the requirement for a design competition, being satisfied that the development achieved design excellence.

It is noteworthy that the JRPP determined to approve the original development as a deferred commencement consent on the basis that the Director-General provide written acceptance of the final scheme. This was received on 20 January 2014.

The proposed modifications have been undertaken in consultation with the UDCG since September 2017. The UDCG concluded that the modifications provided an improvement to the previously approved scheme.

The proposed modification is considered to be “*substantially the same development*” and the design quality is supported by the UDCG.

Clause 37 - Ground floors to buildings within Zoned B3 Commercial Core

Ground floor space in the two buildings fronting Hunter and King Streets contain retail floor space, a reception area, foyer and car park entrance. These areas are directly accessible from the street and will provide the required activation and surveillance of the pedestrian environments directly in front of the buildings. The modifications have not altered this requirement.

Clause 41 - Development within the coastal zone

This clause is updated pursuant to SEPP (Coastal Management) 2018. The modified proposal is considered to be satisfactory in this regard.

Clause 46 Heritage

A substantial submission and assessment was undertaken in the approval of the original application regarding the potential heritage impact that this development may have on the Newcastle City Centre Heritage Conservation Area.

Council's Heritage Officer advised that the UDCG was better placed to provide advice in relation to the actual design of the new development in terms of bulk, scale, massing and impact on streetscape.

The application was supported by a Heritage Impact Statement (HIS) which addressed the primary differences between the previous seniors housing scheme and the current approved scheme. The HIS concluded that there will be no further impact than the previously approved proposal.

The UDCG have actively reviewed and supported the proposed modifications. The new material design and modifications provides a contemporary addition to the area.

It is recommended that a preliminary archaeological assessment be undertaken given the large extent of the site and the potential for relics to be found. This was included in the schedule of conditions and remains applicable.

Clause 51 Acid Sulfate Soils

There is no known risk associated with Acid Sulfate Soils to the subject site or within 500 metres of the subject site.

(i) Any draft environmental planning instrument that is or has been placed on public exhibition

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

(ii) Any development control plan (and section 94 plan)

The relevant planning requirements to this modification are discussed relative to the previous Element references of Newcastle DCP 2005, however, consideration has been given to the Section references of Newcastle DCP 2012.

The following discussion relates to key aspects of the 2012 DCP.

Element 4.1 Parking and Access and Section 7.03 – Traffic, Parking and Access

The modified scheme substantially alters the mix of units, parking numbers and layout and the location and storage of other vehicles. Accordingly, a revised Traffic report was undertaken which was reviewed by Council's consulting traffic engineer. The following comments are made in terms of car parking, access and potential traffic impacts on the local road network.

2.0 Vehicular access

The proposed vehicular access to the on-site car parking is not altered by the S96 therefore no nexus exists to amend the approved conditions relating to this vehicular access.

3.0 Traffic Generation

Theoretically the reduction in of 82 units and 26 m2 GFA of retail floor space would result in a reduced traffic generation from the site of around 30 vtph. The

traffic report by NTPE has identified a reduction of 24 vtpd which is considered realistic based on NSW RMS traffic generation rates, unit types and numbers and retail floor space. However the reduction in parking on-site by only 5 spaces suggests the realistic traffic generation reduction that is likely to occur from the development is only likely to be in the order less than 5 vtpd. Notwithstanding this is still a small reduction in traffic generation from the site therefore it is reasonable to conclude when compared to the approved development the modified development will have a positive impact on the local road network by reducing peak traffic volumes on the road network. Therefore no nexus exists for upgrades to the local and state road network as a result of this modification.

4.0 Parking

The reduction in units, the revised mix of units and the reduced retail floor area is likely to change the peak parking demand for the site. However in considering whether the modification is acceptable with a reduced on-site parking supply, nexus is determined by comparison of the provided parking against the parking requirement of Newcastle DCP 2012. With a total of 68 - 1 bedroom units, 83 x 2 bedroom units and 29 - 3 bedroom units the residential parking supply required of the development is calculated as follows;

$$68 \times 0.6 + 83 \times 0.9 + 29 \times 1.4 = 157 \text{ spaces.}$$

Visitor car parking is calculated as $1 + (180 - 3)/5 = 37$ spaces.

Retail parking is calculated as:- $440 / 60 = 8$ spaces.

Therefore the total on-site car parking required by the DCP is - $157 + 37 + 8 = 202$ car spaces.

It is therefore concluded sufficient on-site car parking being 236 car parking spaces is provided within the development.

The mix of parking proposed is however not compliant with the DCP with the proposal providing only 12 visitor car parks and providing an excess of resident car parking.

Council has been providing visitor car parking concessions for the large residential developments in the Newcastle CBD for the following reasons;

1. Given the current on-street parking constraints in the CBD particularly in regard to the lack of long -term public parking, the provision of additional residential parking within these developments will take pressure off the existing non restricted on-street parking in the inner city residential areas.
2. Reducing the visitor parking requirement to achieve additional resident parking is considered acceptable as visitor parking can be accommodated within existing time restricted on-street parking both during and after business hours.
3. In many large developments visitor parking is typically used as overflow resident parking rather than its specific purpose for visitors.
3. Reducing the amount of visitor car parking may force visitors to consider their trip making mode and perhaps increase the use of public transport in the area; and

4. There is opportunity after business hours for the retail / commercial parking to be utilised by visitors i.e shared parking use.

Council has typically allowed reductions of between 75 % and 50 % depending on the scale and location of the development. With this development within the city centre area with excellent access to public transport and being a large development the concession of 70 % proposed falls within the range of previous approvals in the area. Overall no objection is raised to the supply and split of on-site car parking proposed in the development.

Sufficient motorcycle parking and bicycle storage is provided within the development to meet the Newcastle DCP requirements.

Council does not currently require car wash bays in residential developments therefore no objection is raised to the removal of the wash bay from the development.

5.0 Alternate Transport Modes.

With a reduction in residents and shoppers within the development the proposal will not adversely impact on alternate transport mode infrastructure and services when compared to the approved development.

6.0 Recommendation

It is considered that the S96 could be supported with the following condition amendments based on original approval dated 20 January 2014.

Condition 17 can be deleted.

Condition 20a is to be amended to require provision of 236 car parks including 12 visitor bays, 180 class 2 bicycle spaces and 5 class bicycle spaces as well as 12 motorcycle spaces.

Condition 41 needs to be amended to refer to the current Council design details i.e. A1300 instead of A374.

Condition 78 needs to be amended to refer to 12 visitor car parks.'

Element 4.3 and Section 4.01 Flood Management

The subject site is affected by the 1 in 100 year flood event. Council's flood engineer reviewed the modified scheme and noted that the ground floor of the retail area of Hunter Street is above the 3.1m AHD freeboard level. Flooding does not affect the site from King Street.

Element 4.5 Water Management, Section 7.06 Stormwater and Section 7.07 Water Efficiency

The application was supported, with a Stormwater Management Plan and an Erosion and Sediment Control Plan. The modifications have provided an opportunity to revise these plans. They have been reviewed by Council engineers and found to be satisfactory in regard to applying relevant policies, as follows:

'A new stormwater management system is proposed for the development site. The new system involves roofwater collected and drained to detention tank located on the ground floor. The tank has a total capacity of approximately 90m³ (compared to 86.5m³ in the earlier proposal) including 25m³ available for landscape watering onsite. Site discharge will be controlled by an orifice plate in the tank to mimic pre-development flow. Tank discharge will be piped to a new kerb inlet pit in Hunter Street with a new 375 mm diameter pipe connecting to the existing kerb inlet pit to the west of the site.'

Minor modifications are proposed to the conditions of consent to address the above assessment.

Newcastle Section 94A Development Contributions Plan

The approved scheme attracted S94A contribution relative to the contributions plan at the time of assessment. The cost of works is not reported to have changed from that approved and the contribution rate is not required or requested to be amended.

(iii) Planning agreements

No planning agreements are relevant to the proposal.

(iv) The regulations (and other plans and policies)

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act 1997* and *Regulation 2000*.

The proposed scheme can meet the requirements of the Building Code of Australia.

(b) The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Character

The character, bulk and scale of the proposal have been discussed in this report, in the context of SEPP 65 and the ADG. The proposal is considered to be acceptable in this regard having received support from the UDCG for the modified scheme.

Traffic and Parking

The proposal results in less unit numbers and alters the parking provision mix. Council's consulting traffic engineer reviewed the modified proposal and concluded the impact to be less than that originally approved.

Social Impact

The development has altered the unit mix based on the current economic climate and likely social provision from that which was considered in the original development approval. The unit mix provides for larger unit sizes that would provide for a range of suitable dwellings in close proximity to the developing city centre.

The original scheme provided a large number of studio/bedsit apartments aimed at students. These have been removed from the scheme and provided through a range

of two-bed apartments with dual bathrooms. It is likely that the scheme will still be able to provide for the lower end of the affordability market in this regard.

The proposed modification will generally have a positive social impact when compared to the approved scheme.

Overshadowing

The proposal results in the additional level for the roof top garden. The additional structures are set back from the roof edges and will not affect or create additional overshadowing impacts from that approved.

Acoustic Impacts

Acoustic impacts during construction are expected. The modified scheme does not alter the delivery of the project during the construction in one stage. There will be construction impacts associated with the development, however, the modifications do not substantially affect those that have been previously assessed.

(c) The suitability of the site for the development

The application modifies the scheme to provide for larger unit sizes and a lower number of units. The larger proportion of residential to commercial relates better to the current zone objectives of the B4 Mixed Use zone than the planning scheme which the development was originally approved under. The B4 Mixed Use zone relates to the current and recent growth of the Newcastle CBD, and the modified development considers and reflects the changes to the city. The introduction of a tall tower in this location will not appear out of place, although it is likely to remain prominent given that the height controls in the locality have been lowered to 45m.

The site is suitable for the proposed development.

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

The application was notified and advertised in accordance to the EP&A Act and EP&A Regulation and three submissions were received, which have been discussed in this report.

(e) The public interest

The development is in the public interest and will allow for the orderly and economic development of the site.

6. 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*.

7. RECOMMENDATION

That the Hunter and Central Coast JRPP approve the revised scheme and consent to the modification DA2011/0617.02 at 386 King Street and 509 Hunter Street

Newcastle, pursuant to Section 4.16 of the EP&A Act and subject to the conditions in **Appendix B**.