

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

Panel Reference	2018/HCC026
DA Number	2018/00354
Local Government Area	CITY OF NEWCASTLE
Approved Development	Development Application for a Mixed Use Development incorporating Retail Premises, Shop Top Housing, Car Parking and Associated Works
Street Address	147, 151, 153 Hunter Street; 98, 100, 102, 104, 108, 110 King Street; 15, 21, 31, 33 Wolfe Street and 14 Thorn Street (Lot 1 DP 84634, Lot 500 DP 879162, Lot 1 DP 718456, Lot 100 DP 810457, Lot 1 DP 735255, Lot A DP 89504, Lot 1 DP 84577, Lot 1 DP 195975, Lot B DP 89504, Lot 1 DP 122380, Lot 1 DP 122381, Lot 10 DP 1043870)
Applicant/Owner	Iris Land Pty Ltd
Number of Submissions	7
Recommendation	Approval
Regional Development Criteria (Schedule 4A of the Act)	The proposal is listed within Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011, being general development over \$30 million.
List of All Relevant 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 (Urban Renewal) 2010 • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Coastal Management) 2018 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy No. 55 - Remediation of Land • State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development • Newcastle Local Environmental Plan 2012 <p>Development Control Plan: s4.15(1)(a)(iii)</p> <ul style="list-style-type: none"> • Newcastle Development Control Plan 2012 • Section 94A Development Contributions Plan 2009
List all documents submitted with this report for the panel's consideration	<p>Appendix A: Recommended conditions of consent</p> <p>Appendix B: List of current/final submitted plans and documentation.</p> <p>Appendix C: Architectural Drawing Package for the Precinct (Block 2)</p> <p>Appendix D: Clause 4.6 Report - Height of Buildings</p> <p>Appendix E: Heritage Response (City Plan Heritage)</p>

	Appendix F: LEP Height Changes East & West, North & South Appendix G: Heritage Assessments – GML Heritage
Report by	TCG Planning on behalf of City of Newcastle (CN)
Report date	14 February 2019

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 / No**Legislative clauses requiring consent authority satisfaction**

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report?

Yes / No

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

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Yes / No**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S94EF)?

**Yes / No / Not
Applicable**

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

Conditions**Yes / No**

Have draft conditions been provided to the applicant for comment?

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

Assessment Report and Recommendation

Executive Summary

Proposed Development

This development application is the second stage of proposed works within 'Block 2' of a Concept Development for the redevelopment of four city blocks located at the eastern end of the Newcastle City Centre. Block 2 comprises properties identified as 147, 151, 153 Hunter Street; 98, 100, 102, 104, 108, 110 King Street; 15, 21, 31, 33 Wolfe Street and 14 Thorn Street. The subject site comprises the city block surrounded by Hunter Street (northern frontage), Wolfe Street (western frontage), King Street (southern frontage) and Thorn Street (eastern frontage), but excludes the site located at No. 106 King Street.

A Concept Approval exists for the four city blocks (Development Consent DA-2017/00701, issued in January 2018), which approved building envelopes and height, indicative land use mix and floor space allocation, however this does not grant consent for any works. A new revised Concept Development Application (DA-2017/00701.01) has been submitted by the applicant (Iris Land Pty Ltd) and has been assessed concurrent to this Stage 2 Development Application and is the subject of a separate report to the JRPP. The development that is the subject of this Development Application for the Stage 2 works reflects the new revised Concept Development Application.

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

- Construction of multi-storey buildings ranging from 3 to 8 storeys in height, with retail and commercial uses at ground and mezzanine levels and residential apartments above;
- Retention and adaptive use of Lyrique Theatre and Masonic Hall, for retail and commercial uses at ground and mezzanine levels and residential apartments above;
- Retention of heritage facades of former Royal Exchange Hotel and Soul Pattinson Chemist on Hunter Street;
- Retention of the terrace buildings on King Street for multi dwelling housing;
- 121 dwellings and 1,510m² of retail and commercial space;
- A floor space ratio (FSR) of 3.55:1;
- Basement car parking;
- A mid-block pedestrian connection linking Wolfe Street and Thorn Street; and
- Removal of two (2) trees located within the south-eastern portion of the site, at the rear of existing building at No.98-102 King Street.

Referral to Joint Regional Planning Panel

The proposal is referred to the Joint Regional Planning Panel for determination pursuant to Part 4 'Regionally Significant Development' of *State Environmental Planning Policy (State and Regional Development) 2011* as the proposal is listed within Schedule 7 of the SEPP, being general development over \$30 million.

Permissibility

The applicable planning instrument is *Newcastle Local Environmental Plan 2012* (NLEP 2012) under which the subject site is zoned B4 Mixed Use. The proposed uses, which are defined as shop top housing, residential flat buildings and commercial premises, are permissible with consent within the B4 zone. The proposal is integrated development pursuant to the *Mine Subsidence Compensation Act 1961*. The applicant intends to obtain a separate Activity Approval pursuant to Section 91 of the *Water Management Act 2000* prior to the issuing of a Construction Certificate.

Consultation

The development application was publicly exhibited in a newspaper notice, placed online on CN's webpage, and notified by letter to adjoining and nearby properties, with the exhibition

period extending from 18 June to 2 July 2018. One (1) submission was received specifically referencing both DAs (i.e. the modification application and the Stage 2 DA). A total of six (6) submissions were received specifically referencing the Stage 2 DA. The main issues raised in the submissions were building heights, heritage impacts including retention of heritage facades, scale of the development, overshadowing, parking and construction impacts, hours of construction, the existence of a right of carriageway, scale of plans and the length of the exhibition period.

The application was also referred to the following external authorities: Subsidence Advisory NSW (as Integrated Development referral authority), Roads and Maritime Services, Office of Environment and Heritage, NSW Police, Ausgrid, [PE1] and the Local Aboriginal Land Council.

Key Issues

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

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

The applicant has submitted a Variation Statement pursuant to Clause 4.6 in support of a request to vary Clause 4.3 'Height of Buildings' for the Stage 2 development application. An assessment of this statement confirms that the provisions of clause 4.6 of Newcastle Local Environmental Plan 2012 have been satisfied and the variation to the height is considered to be justified.

The application is also accompanied by a Preliminary Site Investigation prepared by Douglas Partners which concludes that *"the site is considered to be suitable for the proposed residential / commercial development from a contamination perspective, subject to additional confirmation investigation and appropriate remediation and validation (where required) once buildings have been demolished."* It is therefore considered that the provisions of Clause 7(a) and (b) of SEPP 55 have been met.

Under Clause 7.5(5) of NLEP 2012 the NSW Government Architect (as a delegate of the Director General) has granted an exemption to the requirement for a design competition, subject to the implementation of alternative design excellence process. The nominated design review panel is CN's Urban Design Consultative Group (UDCG) which has considered the design on six occasions, including prior to lodgement of the application. It is therefore considered that the alternative design process has been followed.

Recommendation

That the Joint Regional Planning Panel grant consent to DA-2018/00354, subject to the conditions contained in **Appendix A**.

1. Site and Locality Description

(a) Wider 'Newcastle East End' Concept Plan Site

The land applying to the overall approved 'Newcastle East End' Concept Plan site is located between the Hunter Street Mall and the Christ Church Cathedral, and is bounded by Perkins and Newcomen Streets. The Concept Plan site comprises the majority of the buildings across four (4) city blocks, between Perkins, Hunter, Newcomen and King Streets, as shown in **Figure 1**. The total area of the site is 1.66ha and stretches approximately 280m in length east to west along Hunter Street and approximately 90m in depth along Thorn Street. The current development application (DA 2018/00354) pertains only to part of this land being **Block 2 only of the Concept Plan (referred to as 'Stage 2')**, which is bounded by Hunter Street (north), Wolfe Street (west), Thorn Street (east) and King Street (south).

(b) Description of Block 2

The following development exists on the 'Stage 2/Block 2' site:

- 151 Hunter Street: former Soul Pattinson building (two storey), occupied by retail and commercial uses. Identified as a contributory heritage element.
- 153 Hunter Street (corner Wolfe Street): five storey former Duke of Kent Hotel building occupied by retail and commercial uses. Building facade is identified as a contributory heritage element. Prior to its construction, the site was occupied by the former Royal Exchange Hotel.
- Former Lyrique Theatre/Masonic Hall buildings (currently vacant) which extend from Wolfe Street to Thorn Street. Listed as heritage items in Newcastle Local Environmental Plan 2012.
- 15-21 Wolfe Street: two storey commercial/retail building irregular in shape and has frontage to Hunter, Wolfe and Thorn Streets. Previously connected to and used in conjunction with Lyrique Theatre.
- 98-102 King Street (corner Thorn Street): two storey terrace building. Incorporated in the same heritage listing as the Lyrique Theatre/Masonic Hall buildings.
- 104, 108 and 110 King Street: Two storey terraces occupied by residences (No. 104 and 108) and commercial use (No. 110). Identified as a contributory heritage element. No. 106 is also a terrace house attached to these properties but is not included within the subject land.

Description of Surrounding Locality

- North - Development along the northern side of the Hunter Street Mall is a mix of two (2), three (3) and four (4) storey buildings with retail at ground and typically commercial office space above.
- West – The Stage 2 site is bounded by the approved Stage 1 development to the west of Wolfe Street which is under construction and comprises shop top housing development of up to 8 storeys. This development was approved pursuant DA-2017/00700 in January 2018.
- South - The southern boundary of the site is King Street. On the opposite side of King Street, between Newcomen and Wolfe Streets, is Cathedral Park and the Christ Church Cathedral. The presentation to King Street at this point is dominated by an elevated footpath, large sandstone retaining walls and steeply rising topography. The Cathedral Park and the Cathedral location enjoy views north towards the harbour over the site.
- East – The future Stage 3 development, as referenced in the Concept Application, will be located to the east of the site across Thorn Street, and will comprise shop top housing development of up to 8 storeys. The Stage 2 site is also bounded to the east by the existing multi-storey carpark (owned by CN) located to the south of Laing Street.

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



2. Background

Original Newcastle East End Staged Concept Proposal: Development Consent DA-2015/10182 (Now Surrendered)

A concept development application (No. 2015/10182) for four city blocks was lodged by UrbanGrowth NSW land holdings (the former owner of the land, together with GPT). The Concept Proposal was approved by the Hunter & Central Coast Joint Regional Planning Panel (JRPP) subject to conditions on 28 April 2016. The Concept DA was submitted in accordance with (then) Section 83B of the *Environmental Planning and Assessment Act 1979*, now Section 4.22.

The Concept development application granted consent for building envelopes and height, indicative land use mix and floor space allocation, however, did not comprise any physical works. The Concept Approval required separate future development applications within the approved seven (7) stages of the development.

Development Consent DA-2017/00701: New/Revised Concept Plan for Newcastle East End

The land was subsequently acquired by Iris Land Pty Ltd who lodged a Development Application (DA-2017/00701) to replace the above approved Staged Concept Approval, which was surrendered. The Concept Proposal was approved by the JRPP subject to conditions on 21 December 2017 and a Development Consent was issued on 2 January 2018.

Development Consent for Stage 1 Works (DA-2017/00700)

A DA for (the revised) Stage 1 (comprising the city block bounded by Hunter, Perkins, King and Wolfe Streets) was submitted at the same time as the 2017 Concept DA and was consistent with that revised Staged Concept DA. A separate assessment report on the Stage 1 DA was considered at the same meeting of the JRPP as the Staged Concept DA (on 21 December 2017) and was approved. A Development Consent was issued on 4 January 2018. Works have commenced.

S4.55 Modification DA-2017/00700.01: Amendment to Stage 1

An application to modify Development Consent DA-2017/00700 pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* to amend aspects of Block 1 was approved by CN on 6 February 2019. This modification granted consent to minor amendments to apartment layouts; an increase in apartment numbers from 225 to 227; reconfiguration of retail tenancies; alterations to materials; increase in the roof level of Building C to accommodate construction requirements (with no increase in the maximum overall height); alteration to the footprint of the basement; and other minor changes to signage, loading docks, carparking, substation and fire egress. No change to the Concept Approval was required.

Current s4.55 Modification DA-2017/00701.01: Amendment to Stage 2/Block 2 of Concept Plan

An application to modify Development Consent DA-2017/00701 pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* to amend aspects of Block 2 only was submitted at the same time as DA-2018/00354 for the Stage 2 works. A separate assessment report on the Concept Modification has been prepared for consideration by the JRPP.

Current Development Application for Stage 2 Works (DA-2018/00354)

The current report relates to the DA for Stage 2 (being 'Block 2' comprising the city block bounded by Hunter, Wolfe, King and Thorn Streets). This application, which is the subject of the current report to the JRPP, is to be considered concurrently with the application to modify the Concept DA (DA-2017/00701.01, as referenced above) to ensure consistency.

The initial assessment of the Stage 2 application (and of the originally-submitted Concept DA, refer above) identified unacceptable issues. CN requested the applicant to address a range of matters for both applications in a letter dated 9 October 2018. The applicant provided an amended Stage 2 DA design on 20 December 2018. Amended and supplementary information for the Concept application (consistent with the amended Stage 2 DA) was also submitted on 16 January 2019. The information in this report reflects the amended documentation submitted for the Stage 2 application^[PE2]. The amended design was not renotified as the revised design resulted in less impact than the originally-submitted proposal (refer next page of report for description of changes).

Pre-lodgement Meeting(s)

A preliminary design of the development was presented to CN staff in February 2018 at an informal pre-application meeting. The Stage 2 DA has been the subject of an alternative design excellence process (refer later section of this report).

3. Project Description

Development Application (No. 2017/00354) seeks consent for Stage 2 of the 'Newcastle East End' Staged Concept Plan comprising 'Block 2' for the following works (summary list below):

- Construction of multi-storey buildings ranging from 3 to 8 storeys in height, with retail and commercial uses at ground and mezzanine levels and residential apartments above;
- Retention and adaptive use of Lyrique Theatre and Masonic Hall, for retail and commercial uses at ground and mezzanine levels and residential apartments above;
- Retention of heritage facades of former Royal Exchange Hotel and Soul Pattinson Chemist on Hunter Street;
- Retention of the terrace buildings on King Street for multi dwelling housing;
- 121 dwellings and 1,510m² of retail and commercial space;
- A floor space ratio (FSR) of 3.55:1;
- Basement car parking;
- A mid-block pedestrian connection linking Wolfe Street and Thorn Street; and
- Removal of two (2) trees located within the south-eastern portion of the site, at the rear of existing building at No.98-102 King Street.

Note: The Stage 2 Works DA that is the subject of this assessment report is *inconsistent* with aspects of the approved Staged Concept Approval (DA-2017/00701). However, the Stage 2 DA *does* conform with the lodged modified Staged Concept DA which has been considered simultaneously, as detailed in the separate report for DA-2017/00701.01.

It is noted that the Stage 2 development has been the subject of revision since the submission of the DA and the briefing of the JRPP in November 2018. Such changes were made in response to issues raised following the assessment of the application. The key changes, which have been incorporated since lodgement of the Stage 2 application, are:

- An increase in the setbacks of the additions above the Masonic Hall/Lyrique Theatre for levels 5 and 6, removal of the balcony cantilever above the masonic facade and a reduction in the Level 7 footprint (from 702m² to 353m²);
- Reduction in the height (by 3.635m) of the additions to the former Royal Exchange to align with the existing decorative corner element of this building;
- A reduction in the height of the facade screening above the Soul Pattinson heritage facade (by 2.275m);
- A reduction in FSR from 3.75:1 to 3.55:1;
- A reduction in residential GFA from 11,545m² to 10,833m², with no change in retail/commercial GFA;
- A reduction in the number of dwellings from 129 to 121;
- A reduction in the number of carparking spaces from 143 to 137;
- An increase in the amount of communal open space (from 233m² to 299m²) achieved through the provision of a rooftop space on the Masonic/Lyrique Theatre building.

Table 1 below summarises provides a summary of the key development data for the Stage 2 development:

Table 1: Stage 2 Key Development Data (Source: SJB)

Element	Proposed Stage 2 Development
Dwellings	121
GFA Residential	10,833m ² (including 196m ² of surplus parking)
GFA Retail	1,510m ²
GFA Ground Level Waste/storage and surplus carparking	611m ²
GFA Total	12,954m ²
FSR	3.55:1 (including surplus carparking)
No. Storeys	Northern Building – 8 storeys (with rooftop communal open space) Southern Building – 7 storeys King Street Terraces – 3 storeys
Carparking	137 spaces
Motorbike Parking	8 spaces
Communal Open Space	299m ² plus 409m ² landscaped space. Total 19% of site.
Dwelling Mix	<p>Apartments^[PE3]:</p> <p>37 x 1 bedroom</p> <p>75 x 2 bedroom</p> <p>4 x 3 bedroom</p> <p>Multi dwelling:</p> <p>2 x 2 bedroom (+ media room)</p> <p>3 x 3 bedroom</p>
Adaptable Dwellings	12 dwellings (10%)

The key documents and plans of the proposed concept development are provided at **Appendix C to G**.

Design Excellence Process

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

On 7 March 2017, the NSW Government Architect (as a delegate of the Director General) granted an exemption to the requirement for a design competition subject to the implementation of alternative design excellence process in accordance with the Director General's Design Excellence Strategy. This exemption is applicable to each future stage of the four blocks of the precinct/Concept DA Area. Emailed advice from the NSW Government Architect dated 24 April 2018 confirms that the exemption for a design competition will continue for Stage 2.

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

Six (6) design meetings in respect to the Stage 2 application have been held with CN's UDCG on 27 September 2017, 19 October 2017, 16 November 2017, 11 December 2017, 20 February 2018 and 16 August 2018^[PE4]. The first five meetings comprised design excellence reviews, with the final meeting being post lodgement of the development application. It is therefore considered that the alternative design process has been followed, and is a sound approach to the overall site planning of Block 2. This is confirmed by the comments/notes of the UDCG meeting held on 16 August 2018:

"Newcastle East End Stage 2 has been the subject of extended design development with the UDCG Panel providing Design Excellence Review. At the completion of design development the proposal was assessed as being well considered and was strongly supported. The current Development Application formalises the incorporation of recommendations by the panel in the proposed development."

4. Consultation

DA-2017/00701.01 (relating to modification to the staged development concept) and DA-2018/00354 (relating to stage 2 works for block 2) were exhibited concurrently. The proposed developments were publicly exhibited in a newspaper notice, placed online on CN's webpage, and notified by letter to adjoining and nearby properties, with the exhibition period extending from 18 June to 2 July 2018. One (1) submission was received specifically referencing both DAs (i.e. the modification application and the Stage 2 DA). A total of six (6) submissions were received specifically referencing the Stage 2 DA, the majority of which mainly object to height exceedance. As both developments were advertised concurrently, it is noted that there could have been some confusion between the applications. Hence all the matters raised in the Concept DA and Stage 2 DA submissions are summarised in this report.

Impacts to 106 King Street (Doctors Surgery) – issues raised over three separate letters

- This property is flanked by the subject development. Inadequate information provided by the applicant (and scale at 1:500) to assess visual or physical impact on surrounds, including 106 King Street.
- Construction hours of work: Construction Management Plan for Stage 2 specifies Saturday 7am to 2pm as hours of work. This is inconsistent with the conditions of consent for Stage 1 - condition D2 (Saturday 8am to 1pm), which should be imposed. The EPA Guidelines specify 8am to 1pm for normal construction and 9am to 1pm for blasting works on a Saturday.
- Right of way at rear linking with Wolfe Street should not be utilised (essential for fire egress route, used for 41 years of ownership). States that the applicant has no right to utilise the right of way as part of the development, as shown on the exhibited plans.
- Amenity (Sunlight and Privacy): objects to increase in bulk and scale of the Lyrique Theatre building, including extension to rear boundary, increase in height by an additional 3 levels and proposed bedrooms facing rear courtyard of Doctors Surgery, which will 'box in' rear courtyard and detrimentally impact sunlight, privacy and amenity.

- Access: Footpath should remain available and clear of obstructions to Hunter/Scott Street for the construction phase and beyond, for patients visiting surgery, including standing space and access for ambulances.
- Noise: potential adverse effects on clinical examination of patients.
- Heritage: extensions to rear of terraces should not exceed existing height.

National Trust of Australia (Hunter Regional Committee)

- Strongly oppose proposed height of 31m on a site that has a maximum height of 24m. Newcastle Inner City Residents Association campaigned to achieve lower building heights that respected topography and urban design principles.
- Most of the retained heritage fabric is facadism and is not supported.

Building Heights exceed NLEP 2012

- The proposed height greatly exceeds the maximum building height specified in NLEP 2012. The development should not exceed existing height controls, in general and also in the context of the development's siting within the East End [Heritage] Precinct.
- Exceedance of NLEP 2012 height controls not justified.
- As the Stage 2 proposal has not been reviewed expressly by a design panel, pursuant to Clause 7.5(6), it is not clear if the 10% height bonus (pursuant to the Statement of Support 5.4.2) should apply.
- The design excellence criteria have not been satisfied and hence the argument for a 10% height bonus should not be applied.
- Even if the 10% bonus is applied, the height exceeds that indicated in NLEP 2012 and the existing heights were carefully considered to protect unique qualities of site and location in front of the Cathedral.
- Council should be consistent in upholding height restrictions. Incremental creep (and 10% bonus) will be used as precedent for future developments.

Car Parking and Traffic

- Proposed car parking does not meet Newcastle Development Control Plan 2012 standards, with a deficit of 69 spaces proposed.
- Approval of demolition of the David Jones car park has reduced available car parking.

Exhibition Process

- Two weeks is insufficient time for the public to review exhibited documents and provide a submission.

5. Referrals

Approval Authorities- Integrated Development

The Stage 2 development is identified as 'Integrated Development' pursuant to Section 4.46 of the EP&A Act 1979 on the following basis:

Coal Mine Subsidence Compensation Act 2017: The site is located within a Mine Subsidence District and specifically within a Category B area where geotechnical investigation is required and where there is a high likelihood of coal seam grouting being required for high rise buildings and large footprint structures. Section 4.46 of the EPA Act 1979 identifies development as 'integrated' where approval is required under section 22 of the *Coal Mine Subsidence Compensation Act 2017* to alter or erect improvements within a mine subsidence district or to subdivide therein. The integrated development application was referred to Subsidence Advisory NSW which issued General Terms of Approval. Refer also to Section 6 later in this report with heading 'Mine Subsidence'.

Water Management Act 2000: The proposed excavations on the site will extend below the water table and dewatering will be required during construction (ie. which require an Activity Approval pursuant to Section 91 of the *Water Management Act 2000*). The applicant advised that separate approval will be obtained under the *Water Management Act* and accordingly did not seek to obtain approval on an 'integrated development' basis with respect to the

requirements of the Department of Primary Industries (Office of Water). Any consent which is issued should be conditioned to require the obtaining of an Activity Approval pursuant to Section 91 of the *Water Management Act 2000* prior to the issuing of a Construction Certificate.

Heritage Act 1977: The Stage 2 site is located within the Newcastle City Centre Heritage Conservation Area, however, none of the buildings are listed on the State Heritage Register. Therefore, the Stage 2 application is not 'integrated development'. While not being an 'approval' body, the application was referred to the Office of Environment and Heritage, with their response summarised in **Table 2**.

Roads Act 1993: Development is integrated where approval is required under Section 138 of the *Roads Act 1993* to erect a structure/carry out work over a public road or to connect a road (whether public or private) to a classified road. The subject site does not have frontage to a classified road. Further, Section 4.46(3) of the EP&A Act excludes from the integrated development regime, developments requiring consent under Section 138 of the *Roads Act 1993*, if both development consent of council and approval of the same council is required. On this basis the Stage 2 proposal is not 'integrated development' pursuant to the *Roads Act 1993*. While not being an 'approval' body, the application was however required to be referred to Roads and Maritime Services under State Environmental Planning Policy (Infrastructure) 2007, with the response summarised in **Table 2**.

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

Table 2 - Summary of External Referrals	
Agency/Reason/Date	Response
Roads and Maritime Services 3 August 2018 No statutory approval role Referral under <i>SEPP (Infrastructure) 2007</i> , Clause 104, Schedule 3 is <u>not</u> required as the development is not of a size/scale that triggers referral. Therefore comments provided are advisory.	<p><i>Roads and Maritime Services response: Roads and Maritime has reviewed the information provided and raises no objection to or requirements for the proposed (development).</i></p> <p><i>Advice to Council: Roads and Maritime recommends that the following matters should be considered by Council in determining this development:</i></p> <ul style="list-style-type: none"> <i>Roads and Maritime has no proposal that requires any part of the property.</i> <i>Council should ensure that appropriate traffic measures are in place during the construction phase of the project to minimise the impacts of construction vehicles on traffic efficiency and road safety within the vicinity.</i> <i>Council should have consideration for appropriate sight line distances in accordance with the relevant Australian Standards (i.e. AS2890:1:2004) and should be satisfied that the location of the proposed driveway promotes safe vehicle movements.</i> <i>Council should ensure that the applicant is aware of the potential for road traffic noise to impact on development on the site. In this regard, the developer, not Roads and Maritime, is responsible for providing noise attenuation measures in accordance with the NSW Road Noise Policy 2011, prepared by the department previously known as the Department of Environment, Climate Change and Water. If the external noise criteria cannot feasibly or reasonably be met, Roads and Maritime recommends that Council apply internal noise objectives for all habitable rooms with windows that comply with the Building Code of Australia.</i>
NSW Police Force Undated	<p><i>"The applicant has provided a thorough CPTED assessment and have included and covered previous comments made by police. Police have no issues with the application as long as these principles are enforced during the development".</i> Police have requested:</p> <ul style="list-style-type: none"> <i>the commercial premises be limited to Monday to Sunday 6am – 7pm;</i> <i>the development must maintain a CCTV system on the premises</i> <i>the LA10 noise level emitted from the premise shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz -8kHz inclusive) by more than 5dB between 07:00AM and 12:00 Midnight at the boundary of any affected residence</i> <i>the LA10 noise level emitted from the licensed premise shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz -8kHz</i>

Table 2 - Summary of External Referrals	
Agency/Reason/Date	Response
	<p>inclusive) by more than 5dB between 07:00AM and 12:00 Midnight at the boundary of any affected residence.</p> <ul style="list-style-type: none"> Notwithstanding compliance with the above, the noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 7:00am.
<p>Ausgrid</p> <p>15 June 2018</p> <p>SEPP (Infrastructure) 2007 Clause 45(2)</p> <p>No statutory approval role</p>	<p>Ausgrid requires that due consideration be given to the compatibility of proposed development with existing Ausgrid's infrastructure, particularly in relation to risks of electrocution, fire risks, Electric & Magnetic Fields (EMFs), noise, visual amenity and other matters that may impact on Ausgrid or the development.</p> <p>Ausgrid has Live Underground Electrical assets present at the site described in your notification. Assets must be positively located and identified prior to commencing work. Isolation will be required if work is within clearances detailed in Workcover Document – Work near Underground Assets</p> <p>Ausgrid has been informed of a recent incident which occurred on a related construction site. It was reported that a live cable was severed and left exposed for a period of time before sparking altered a construction worker of the fault....procedures must be implemented to ensure all underground cables are isolated during demolition / construction in the vicinity.</p> <p>All alterations / augmentation to Ausgrid's assets will be carried out as constestable works. Staging and development should consider operational assets and customers, realistic final maximum demands, substations, triplex feeder decommissioning, cable routes, temporary electrical supplies, and integration/impact with other infrastructure projects and 3rd party developments (eg. Newcastle Light Rail).</p> <p>Ausgrid's strong recommendation is that the Developer's electrical professional engage with Ausgrid to collaboratively develop an electrical masterplan which sets out a staged approach to achieve the above requirements for the development as a whole. Given the sensitive and heritage nature of the project, utility infrastructure complexities and limited opportunities for substation sties, it is envisaged that an innovative approach requiring development of non standard solutions may be needed in some cases.</p>
<p>NSW Office of Environment and Heritage</p> <p>(Heritage Branch)</p> <p>16 July 2018</p> <p>No Statutory approval role</p>	<p>It is particularly concerning that contrary to the comments provided to the Newcastle City Council by the Approvals Committee of the Heritage Council of NSW, the building envelope of the Stage 2 development has been increased such that the views from the foreshore footpath, the Wharf Road and Queens Wharf Ferry Jetty to the Cathedral will be lost/diminished. In addition, increment in the building envelope further encroaches on the views from the Cathedral Park towards north and northwest, such that the views to the water is significantly lost. It is strongly recommended that the significant views to and from the state listed cathedral are maintained such that the landmark qualities and extraordinary setting of the cathedral is retained.</p> <p>Stage 1 of the Newcastle East End Project was the subject of previous historical archaeological assessment submitted under a section s140 excavation permit approved 21 December 2017 (2017/s140/33). The Historical Archaeological Assessment for Stage 2 has concluded the site is unlikely to retain archaeological evidence associated with the convict settlement of Newcastle which is likely to be of state heritage significance. The physical evidence anticipated within the site includes evidence which post dates the mid-1840s. The site's archaeological potential ranges from low to moderate across the site. In two areas an existing basement and carpark are likely to have already impacted much of the archaeological resources in those select areas.</p> <p>The Assessment also recommends it would be appropriate to apply a suitable sampling strategy where the level of preservation of the archaeological resources which extends across the project area proves to be extensively intact. The assessment recommends a public information/dissemination program which should run concurrently with the archaeological investigation. It also recommends an Interpretation Plan be prepared for the site which includes the results of the detailed archaeological salvage program.</p> <p>Recommended conditions for inclusion in the DA are provided to ensure appropriate and considered management of its archaeological resources.</p>
Subsidence Advisory NSW	General Terms of Approval Issued (Mine Subsidence Compensation Act 1961).

Table 2 - Summary of External Referrals	
Agency/Reason/Date	Response
10 September 2018 s91 EP&A Act, 1979 Integrated Development	
Local Aboriginal Land Council - No statutory approval role	No response received.

Internal Referrals – CNOfficers

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

Environment Protection Officer (Planning and Regulatory), dated 14.6.2018

Contamination and Noise - Following remediation works being carried out, the site will be validated and the report submitted to CN and the Principal Certifying Authority. This method is supported along with the need for further sampling to be incorporated in the RAP.

The Acoustic Assessment identifies that the mechanical plant associated with the development has not been selected and thus no external noise emissions have been assessed. The acoustic consultant has recommended that a detailed assessment be carried out once the plant has been selected so that any potential acoustic treatments can be incorporated into the design of the building to ensure compliance with the relevant noise criteria. This will be addressed by an appropriate condition of consent. It is noted that bored piling will be used for the majority of onsite activities as this method results in lower noise and vibration impacts. It also noted that sheet piling may also be used on site, as this type of piling has the potential to produce adverse impacts. The acoustic consultant has identified mitigation measures such as the use of hoarding to provide acoustic attenuation to surrounding receivers. Acceptable, subject to conditions of consent.

Licensed Premises Reference Group of 27.8.18 and 30.7.18

Police were requested to provide a referral response, with specific advice regarding CCTV requirements^[GD5]. Requested commercial premises trading hours be restricted to 6am to 7pm Monday to Sunday and that noise levels meet specified criteria. The application does not seek approval for specific use of commercial tenancies and the requirement for CCTV and compliance with noise levels would be a requirement for future development applications. A recommended condition is provided regarding hours of operation of commercial premises consistent with the hours typically applied by Council.

Senior Development Officer (Engineering) dated 13.07.18 and 6.2.19

Flood Management and Stormwater Management

The proposed 3.3m AHD ground floor level is reasonable. Upgrading of the local street drainage work will be required following more detailed survey at the construction certificate stage. Acceptable subject to conditions of consent.

Development & Building Services Engineering Assessment 3.7.18 and 8.2.19

Vehicular Access, Traffic and Parking Issues – The parking provision is consistent with the Concept Approval requiring full compliance with resident parking, 25% of resident visitor parking and a reduced retail parking provision allowing for a percentage of parking to be accommodated in Council's King Street multi-level carpark. The residential parking provision of 117 spaces is surplus by 15 spaces. The parking provision for Stage 2 is acceptable. Conditions are provided in relation to the proposed loading /service area in Wolfe Street. The application does not detail the extent and nature of public domain works which are proposed.

A condition has been recommended requiring the full upgrade of the public domain across each frontage of the site.

Building Assessment Team Coordinator dated 12.7.18

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

Geospatial Information Services dated 7.7.18

House numbering provided and noted that the dedication and naming of the laneway will be required. No objections raised.

Environmental Health Officer dated 4.6.18

Further information will be required to assess compliance with the Australian Standards 4674-2004 Design, Construction & Fit-out of Food Premises and Chapter 3 Food Standards Code, Food Safety Standards before the development application can be released. The applicant has advised that compliance with food premises standards can be addressed in future applications for fit-outs, which is considered to be acceptable.

Heritage Independent Assessment

The application was referred to an independent heritage consultant (GML Heritage) who initially raised concern regarding the height of the buildings particularly above heritage items and the reduced setback of additions above heritage and contributory buildings. Amended plans were submitted, with GML Heritage concluding that *"the proposal is considered to comply with the general aims and objectives of the DCP, and includes conservation works to and revitalisation of the listed buildings and contributory items with significant public benefit.....The development (as amended) is considered, on balance, to be acceptable on heritage grounds subject to a number of detailed heritage conditions"*.

Urban Design Consultative Group

The Stage 2 development was referred to the Urban Design Consultative Group (UDCG) on 27 September 2017, 19 October 2017, 16 November 2017, 11 December 2017, 20 February 2018 and 16 August 2018. Comments made by the UDCG are included in the relevant parts of this report, with a summary of the most recent meeting of 16 August 2018 provided below. The UDCG was also involved in the alternative design process discussed in Section 3 of this report.

- The development was assessed as being well considered and was strongly supported.
- The total FSR, including additional car parking, remains below the 4:1 FSR allowable under the current zoning. Change in FSR associated with the reduction in commercial floor area and an increase in residential floor area, following resolution of floor areas within the original Masonic Hall are supported.
- Previous recommendations as to articulation of building exteriors have been positively responded to which include:

Central Arcade:

The amended treatment of the western entry to the cross-site arcade exposing the original external finish of the northern wall to the theatre behind a mezzanine balcony and suspended metal mesh vaults, is supported.

It is urged that there be further investigation of external paint colours to the Wolfe Street elevation of the former theatre as a basis for a new colour scheme.

The provision of passive surveillance of the arcade and Thorn Street has been implemented as recommended.

Royal Exchange Building

The setback of the additional storey heights behind the bevelled corner to Hunter and Thorn Street is supported.

Also supported is the treatment of the additional storeys above the Thorn Street elevation as a continuous recessed balcony with cantilevered roof above.

The treatment of the buildings at ground level is now supported particularly in the arcade and Thorn Street. The establishment of a signage policy [PE6] for commercial areas about the building exterior is acknowledged.

Amenity:

Design of balconies requires further consideration, to ensure that there is adequate privacy and wind protection for residents. In particular, for example the balustrades at lower levels with vertical metal panels would provide inadequate visual screening, and at upper levels generally the design appears to have been driven more by aesthetic than amenity considerations.

Roof Areas.

The Group recommends additional weather protection to roof top common areas including a canopy linking enclosed areas to the lift access area and glazed wind screens to outer walls.

Separation Distances:

The separation distances across the central court are considered to be acceptable on the basis of proposed screening of bedrooms facing to the courtyard, and the passive nature of the landscaped court.

Services:

Additional aspects of the application supported by the Group include garbage collection from Wolfe Street due to low slab heights in the basement carpark; retention of the mezzanine seating area to the theatre; and basement level fit-outs to the King Street Terraces.

The Group recommends future improvements to Wolfe Street to facilitate continuity of pedestrian movement between arcades in Stages 1 and 2.

6. Strategic Context

Greater Newcastle Metropolitan Plan 2036

The Greater Newcastle Metropolitan Plan 2036 was launched on 17 September 2018 and comprises the first Metropolitan Plan for a non-capital city in Australia. The Plan outlines strategies for the delivery of services, infrastructure and development across the Greater Newcastle area. The Newcastle City Centre has been identified as a “catalyst area” within the Plan, with targets for provision of an additional 7,750 jobs and 4,000 dwellings in the City Centre proposed. Within this, the East End Precinct has been identified as a key site for development, with future development to:

- *Transform spaces for public open space, new shops and residential opportunities, and connecting the city to the waterfront.*
- *Retain and repurpose heritage buildings that contribute to character and history of the city centre.*
- *Continue to revitalise Hunter Street Mall.*

The Plan supports the aims outlined in the Hunter Regional Plan 2036 (see below) and will further guide the future development of local plans across the five Greater Newcastle Council areas. It is considered that the proposed Stage 2 development accords with the vision for the East End precinct through the adaptive reuse of heritage buildings, the provision of a cross site link and ground level retail spaces to reactivate the adjacent Hunter Street Mall.

Hunter Regional Plan 2036

The Hunter Regional Plan 2036 (released in November 2016) is a 20-year strategy guiding the future development of the Hunter area, including the Greater Newcastle area. The plan provides an overarching framework to guide the future development of the Hunter as a leading regional economy, with a focus on maintaining and enriching biodiversity, enhancing communities and providing a greater choice of housing and jobs. The Newcastle City Centre is identified as a ‘strategic centre’, with priorities including continued revitalisation; strengthened connections between the city and the waterfront; the improvement of civic spaces; provision of commercial floor space to assist with job growth; and provision of additional dwellings. The proposed Stage 2 development will accord with such directions

through the provision of both commercial and residential development in a location which will revitalise the East End and the public domain.

Local Planning Strategy (2015)

The Local Planning Strategy underpins Newcastle Local Environmental Plan 2012. The Strategy implements the land use directions from the Newcastle 2030 Community Strategic Plan and aims to guide the future growth and development of Newcastle up to 2030 and beyond. The proposed Stage 2 development is consistent with the objectives of the strategy as it will provide for safe and activated spaces in the East End.

Newcastle Urban Renewal Strategy^[GD7]

The Newcastle Urban Renewal Strategy (NURS) adopted in 2012 provide a framework and an implementation plan to support growth of Newcastle over a 25 year period. The place based initiatives of relevance to the current concept proposal include the reshaping of Hunter Street as a key destination within the city; the revitalising of Hunter Street Mall; and recognising Newcastle's heritage as an asset. The Hunter Street 'East End' is identified as being appropriate for 'boutique retail, entertainment, leisure and residential' development.

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

The original approved Concept Proposal (and revised Concept proposal DA-2017/00701.01 concurrently under assessment) incorporates a mix of retail and residential development which meets the desired outcomes of the strategy, with ground level retail spaces allowing for boutique retail and activation at street level and upper level residential increasing the population base to support local business. It is considered that both the Concept Proposal and this development application for Stage 2 accords with the framework of the strategy, subject to implementation of a process to ensure provision of public domain improvement, as recommended by the strategy. This report also address compliance of the proposal with the more detailed planning provisions which reflect the strategy recommendations and which are now contained in Newcastle LEP 2012 and Newcastle DCP 2012.

7. Section 4.15 Considerations

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

Draft SEPPs: A number of draft State Environmental Planning Policies or updates have been exhibited and are/or under consideration by the Department of Planning and Environment, however are not relevant to the application.

Draft Remediation of Land State Environmental Planning Policy

The proposed Remediation of Land SEPP is intended to repeal and replace *State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)*. The draft SEPP, which was exhibited from 25 January to 13 April 2018, is currently under consideration. The proposed SEPP seeks to provide a state-wide planning framework to guide the remediation of land, including: outlining provisions that require consent authorities to consider the potential for land to be contaminated when determining development applications; clearly lists remediation works that require development consent; and introducing certification and operational requirements for remediation works that may be carried out without development consent. Site contamination and remediation pertaining to the Stage 2 development has been considered in Section 6 of this report to the JRPP.

(a)(i) the provisions of any environmental planning instrument**State Environmental Planning Policy (State and Regional Development) 2011**

The development is not defined as 'state significant development' pursuant to clause 8 of this SEPP. The application, when originally lodged, was accompanied by a Capital Investment Value Report prepared by Altus Group dated 14 June 2017 which estimates the total project costs to be \$47,789,000 (exc.GST). The application is therefore referred to the Joint Regional Planning Panel for determination pursuant to Part 4 'Regionally Significant Development' of SEPP (State and Regional Development) 2011, as the proposal is listed within Schedule 7 of the SEPP, being general development over \$30 million.

In addition, the application is reported to the Panel in accordance with Clause 22 of the SEPP, as the proposal is part of a concept development application. The concept approval is the subject of a separate report to the JRPP.

State Environmental Planning Policy (Infrastructure) 2007

The provisions of the Infrastructure SEPP are not applicable as:

- Division 17 'Roads and Traffic' Subdivision 2 (Development in or adjacent to road corridors and road reservations): Clause 101 relates to 'Development with frontage to classified road' and subclause (2)(a) requires vehicular access to a road other than the classified road. However, the roads surrounding the subject site are not classified roads, with the RMS confirming that the nearest classified roads are Darby Street and King Street (west of Darby Street).
- Clause 102 does not apply as the traffic volumes along the roads adjacent to the subject site do not have an annual average daily traffic volume of more than 40,000 vehicles.
- Clause 104 requires development specified in Column 1 of the Table to Schedule 3 (Traffic generating development to be referred to the RMS). The proposed development for Stage 2 will contain 121 apartments and shops and commercial premises of 1,510m² which does not trigger the referral criteria of 300 dwellings and 2000m² respectively for development with access to any road.

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

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

The residential component of the development is a 'BASIX affected development' and the development application is accompanied by a revised BASIX Certificate (No. 994485M issued 11 February 2019 prepared by Outsource Ideas Pty Ltd) confirming the proposal meets the required water and energy targets to achieve appropriate building sustainability.

State Environmental Planning Policy 55 - Remediation of Land

A Report on Preliminary Site Investigation (Contamination) has been prepared by Douglas Partners for Stage 2 (May 2018) in accordance with Condition 59 of the Concept Approval. Douglas Partners note the existence of a number of potentially contaminating land uses having regard to historical land uses which included printers, a basket factory, watchmakers and other activities such as wells/cisterns/cess pits. However, Douglas Partners note that, "*while subsurface investigation was limited to accessible areas of the larger development outside the Stage 2 area (i.e. generally roads), there were generally no observations of gross contamination within the soil or groundwater at test locations, with the exception of inclusions such as slag, ash and bricks / concrete / porcelain / fibro fragments (potential asbestos containing materials) in filling*".

Douglas Partners outline that areas containing elevated contaminant concentrations that will remain on-site will need to be remediated / managed. The following works will need to be undertaken:

- All materials exceeding land use criteria are suitably remediated or managed on site;

- Appropriate remediation is conducted to address potential bonded asbestos and asbestos fill materials;
- Suitable treatment of groundwater prior to disposal or re-injection.

Further investigations are recommended by Douglas Partners, following site demolition and prior to construction, specifically in relation to internal floor and basement areas of existing buildings; additional subsurface investigations to further investigate the presence of underground storage tanks (USTs); and additional ground water investigations. In addition, Douglas Partners recommend additional subsurface investigation to further assess waste classification across the site, and possible presence of USTs and additional groundwater investigation to assess the groundwater quality and requirements for treatment during dewatering. Douglas Partners conclude that *“the site is considered to be suitable for the proposed residential / commercial development from a contamination perspective, subject to additional confirmation investigation and appropriate remediation and validation (where required) once buildings have been demolished.”*

In accordance with Condition 60 of the Concept Approval a Remedial Action Plan, prepared by Douglas Partners in May 2018, has also been submitted. CN's Regulatory Services Unit has reviewed this RAP and advise:

“While the RAP addresses the potential contamination at the subject site, Section 7 recommends that additional investigation will be required to fully characterise the site, as access to all sampling points was restricted due to the presence of the existing buildings. The additional investigation is to include:

- *Inspection of the exposed site surface following removal of concrete slabs;*
- *Excavation of a minimum of 11 additional test pits / bores across the site (minimum sampling density based on site area in accordance with NSW EPA Sampling Design Guidelines) to at least 0.25 m into bedrock (approximately 2 to 4 m depth). Bores would be drilled within the remaining building footprint to confirm contaminant concentrations and requirements for remediation (if any);*
- *Logging of the soil profile to confirm the variability of filling across the site, depth to natural soils and observations of potential contamination (including demolition waste, staining or odours);*
- *Collection of regular soil samples for laboratory testing purposes;*
- *Laboratory analysis for asbestos identification, chemical contaminant concentrations, leachability characteristics, (contaminants of concern plus ENM suite (where considered feasible) and ASS);*
- *Drilling and installation of groundwater wells immediately up-gradient and within the Stage 2 development area to confirm water quality and requirements for the disposal / discharge of water during construction dewatering;*
- *Interpretation of the results and confirmation of remediation requirements for the site, waste classification of materials, re-use options where feasible and requirements for treatment / management of ASS (if identified); and*
- *Assessment of the feasibility for on-site management of contaminated soils (where considered).*

The existing RAP proposes to address the potential petroleum infrastructure, hydrocarbon and asbestos contaminated soils on site by excavating the contaminated affected areas and disposing the material to a licenced facility that can lawfully accept this waste. Following

remediation works being carried out, the site will be validated and the report submitted to Council and the Principal Certifying Authority. The RSU supports this method along with the need for further sampling to be incorporated in the RAP and will address the above by appropriate conditions of consent."

Provisions of SEPP 55 and Conclusion

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

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

The Preliminary Site Investigation prepared by Douglas Partners confirms that the investigations conducted were limited to accessible areas of the site prior to demolition and accordingly the report recommends that further investigation be conducted following demolition. However, the level of investigation was sufficient to enable Douglas Partners to conclude that *"the site is considered to be suitable for the proposed residential / commercial development from a contamination perspective, subject to additional confirmation investigation and appropriate remediation and validation (where required) once buildings have been demolished."*

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

State Environmental Planning Policy (Coastal Management) 2018

SEPP (Coastal Management) 2018 came into effect on 23 March 2018 and replaces the *Coastal Protection Act 1979*. The Coastal Management SEPP aims to protect, manage and preserve natural, cultural, recreational and economic attributes of the NSW coast and marine area and applies to land the whole or any part of which is identified within the 'coastal zone'. The subject lands are located within the 'Coastal Use Area' and the 'Coastal Environmental Area' as illustrated on the relevant online SEPP maps. Clauses 13 and 14 considerations under the SEPP apply to the development. However, as the subject development is located within a well-established, densely urbanised setting, there are no likely impacts to the coastal environment, especially with regards to maintaining public access, views and amenity. It is therefore considered that the proposal is not inconsistent with the Coastal Management SEPP.

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

State Environmental Planning Policy (SEPP) (Vegetation in Non-Rural Areas) 2017 aims to protect the biodiversity values and preserve the amenity of trees and other vegetation in non-rural areas of the State. The SEPP works in conjunction with *Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016* to provide a framework for the regulation of native vegetation clearing in NSW. The SEPP commenced on 25 August 2017 and applies to land within the Newcastle local government area, including land zoned B4 Mixed Use. The SEPP applies to clearing of:

1. Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a developer requires an approval from the Native Vegetation Panel (as per the Local Land Services Amendment Act 2016); and/or
2. Vegetation below the BOS threshold where a developer requires a permit from CN if that vegetation is identified in the council's development control plan.

Notwithstanding this, according to Part 3 of the SEPP, CN may issue a permit to a landholder to clear vegetation if the vegetation does not form part of a heritage item or heritage conservation area and it is not part of an Aboriginal object or Aboriginal place of heritage significance.

The development application seeks consent for the removal of a Camphor Laurel tree and an Olea (Olive) tree located at the rear of No. 98-102 King Street. As these trees are located within a heritage conservation area, the Stage 2 development application seeks consent for their removal^[PE8]. The removal of these trees is supported.

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

The proposal includes the development of a mixed-use development which comprises ground level and mezzanine retail and commercial uses, with residential levels above, to which the provisions of SEPP 65 apply. The application is accompanied by a revised SEPP 65 Design Statement and Design Excellence Design Statement prepared by CKDs Architecture dated 7.2.19. This report contains the architect's design statement, identifies the design principles of the Stage 2 development, addresses the design quality principles of SEPP 65 and confirms the manner in which detailed design for Stage 2 will comply with the design criteria and design guidance of the Apartment Design Guide (ADG). A Design Verification Statement is also provided by Stuart Campbell of CKDS Architecture.

Clause 28(2) of SEPP 65 requires that a consent authority take into consideration the 'Apartment Design Guide', prepared by the Department of Planning and Environment in 2015. The following discussion confirms whether the proposed apartments within the development (ie. 116 apartments^[GD9]) will comply with the key Design Criteria and Guidance contained in Part 3 (Siting the Development - Visual Privacy) and Part 4 (Amenity) of the ADG. SEPP 65 does not apply to the terraces (multi unit housing) fronting King Street, with this type of development considered under the provisions of Newcastle Development Control Plan 2012, in section 7 of this report [Section 4.15(1)(a)(iii) evaluation].

Communal Open Space:

Objective 3D-1 requires that communal open space have a minimum area equal to 25% of the site and should achieve 2 hours of sunlight between 9am and 3pm on June 21. Based on a site area of 3,648m², a total of 912m² of communal open space (COS) is required. The development provides a total of 708m² of communal open space/landscaped space distributed as follows:

- Roof top of Northern Building – 234m² of communal open space;
- Level 1 of Northern Building – 360m² of landscaped space;
- Level 6 of the Southern Building (Lyrique/Masonic) – 49m² of landscaped space;
- Level 7 of the Southern Building (Lyrique/Masonic) – 65m² of communal open space;

While not meeting the 25% recommended by the ADG it is considered that the quantity provided is adequate due to its city centre location and proximity to a range of public open space areas. Further, the through site link will provide an additional visual outlook and pedestrian link through the site.

While concern was initially expressed regarding the distribution of the communal open space and access by residents of both buildings it is considered that this has been adequately addressed through the submission of amended plans. Such amendments now provide a rooftop area on the southern building and provide a more functional layout on the rooftop of the northern building. While the separation of the COS on Level 7 of the southern building is not ideal, the limitations posed by the adaptive reuse of this heritage building are acknowledged and, on this basis, the configuration of COS is considered to be acceptable.

The Stage 2 development now proposes to incorporate a total of 65m² of useable communal open space on Levels 6 and 7 of the southern building, for the 27 apartments in this building.

In the northern building 234m² of useable communal open space is provided on the rooftop, for use by residents of 89 apartments. It is considered that this communal open space is adequately distributed throughout the site to meet the passive recreational requirements of residents of both buildings, with approximately 2.5m² of COS allocated per apartment in each building.

The Sun Studies prepared by CKDS Architecture (drawings DA-4008 – DA-4011) confirm that a minimum of 50% direct sunlight is provided to the principle useable part of the communal open space for a minimum of 2 hours between 9am and 3pm on June 21, thereby meeting Objective 3D-1 of the ADG.

Deep Soil Zones:

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

Visual Privacy:

The Northern Building contains 8 levels (Levels G to 8); the Lyrique/Masonic Building contains 2 levels for adaptive reuse, with five (5) residential levels above (at Levels 3-7); and that part of the Lyrique/Masonic building fronting King Street will contain 3-4 residential levels (at Levels 2-4 and part of Level 5).

Design Criteria 3F-1 of the ADG requires that for buildings of up to 12m (4 storeys), a minimum of 12m separation is required between habitable rooms and balconies; 18m for buildings of up to 25m (5-8 storeys); and 24m for buildings of over 25m (9+ storeys). Separation is provided between buildings within the site and to adjacent site as discussed in Table 3:

Table 3: Compliance with Separation Distances specified by Design Criteria 3F-1 of the Apartment Design Guide			
Building Interface	Separation Required by Design Criteria 3F-1 (combined distances)	Separation Proposed	Compliance
Northern Building across central courtyard	<ul style="list-style-type: none"> 12m required at Level 1 to Level 3. 18m required for Level 4 to Level 7. 	10.635m (secondary balcony - eastern wing to western wing) 12.0m (wall to wall eastern wing to western wing).	Does Not Comply – Variation Sought
Northern Building to Lyrique Masonic Building	<ul style="list-style-type: none"> 12m required at Levels 1 -3 - Northern Building to Lyrique Masonic commercial/residential. 18m required for Level 4-7 residential to residential). 	Levels 1 to 4: 9.0m to 14.23m Levels 5 to 7: 9.0m	Does Not Comply – Variation Sought
Separation to Terrace at No. 106 King Street (commercial property)	Interface at levels 3-4 of Lyrique/Masonic additions: <ul style="list-style-type: none"> 12m separation required (habitable to commercial) 	Zero setback proposed to boundary – which equates to approx. 9m separation provided (due to positioning of building on No. 106 King St).	Does Not Comply – Variation Sought
Separation to Building on Adjacent Sites	<ul style="list-style-type: none"> 12m required at Level 1 to Level 3. 18m required for Level 4 to Level 7. 24m required to rooftop communal open space 	Separation to building across Wolfe Street (to Block 1), King Street and Hunter Street is provided by the width of the road reserve. Separation across Thorn Street will be provided by	Complies

Table 3: Compliance with Separation Distances specified by Design Criteria 3F-1 of the Apartment Design Guide			
Building Interface	Separation Required by Design Criteria 3F-1 (combined distances)	Separation Proposed	Compliance
		the increased setback proposed to the Block 3 building as shown on the current modified Concept Plan.	

The following provides an assessment of the non-compliances with the separation distances, as identified in Table 3 above:

Northern Building across central courtyard:

The applicant has sought variation to the 12-18m separation distance, which is required between the eastern and western wings of the Northern building, on the following basis:

- The siting of the in-fill built form has been dictated by the need to retain significant heritage elements on site and the need to accommodate a functional east-west pedestrian link. The response has been the placement of the Northern Building around the perimeter of site to maximise street frontage.
- Privacy is provided by placing the living areas and the primary balconies of apartments within the northern building fronting Wolfe or Thorn Streets and orientating bedrooms towards the central space. Full height angled screening is provided to the internal facing elevations to avoid direct views between the bedroom of opposing apartments.

Comment: It is agreed that the Northern Building is appropriately positioned to maximise street address and to allow for retention of the heritage facade on the corner of Wolfe and Hunter Street and Soul Pattinson facade on Hunter Street. The orientation of bedrooms and secondary ('Juliet') balconies towards the central open space and living spaces/primary balconies to the street, together with louvred screening, is considered to be appropriate to address privacy concerns and to ensure that the design guidance of Objective 3F-1 of the ADG is met. On this basis, the variation to the separation distances provided between the 'wings' of the Northern Building is considered to be justified.

Northern Building to Lyriqu Masonic Building:

The applicant has sought variation to the 12-18m separation distance which is required between the Northern building and the Lyrique Masonic building for the following reasons:

- The east-west through-site pedestrian link, which is located between the new Northern Building and the Lyrique Masonic Building maximises exposure to this part of the building, which has historically been concealed.
- The additions above the Lyrique Masonic Building are orientated towards Wolfe and Thorn Streets, and the pedestrian link to allow for surveillance of this space and to provide a northerly aspect.
- Privacy is provided by orientating apartments in the northern buildings to Wolfe Street and not providing openings in the southern elevation facing the Lyrique Masonic building to eliminate direct views or overlooking between the apartments.

Comment: The separation distances, while less than that specified by Design Criteria 3F-1 of the ADG, are considered acceptable having regard to the unit orientation, balcony placement, window size/placement, location of blank walls, placement of operable louvres and provision of solid balustrades to selected apartments which directly overlook the central pedestrian link. Further, it is accepted that the design of the development has been largely driven by the need for the northern building to address all three street frontages, with the central landscaped spaces provided to reduce building depth. In addition, the arrangement of apartments in the southern building has been impacted by the siting of the existing heritage building and its relationship to the through site pedestrian link.

Separation to Terrace at No. 106 King Street:

The submission from this property owner raises concern that the proposed additions will 'box in' the rear courtyard and detrimentally impact sunlight, privacy and amenity. In response to this submission it is noted that:

- The proposed additions to the Lyrique Theatre/Masonic Hall have a direct interface with the building at No. 106 King Street at Levels 3 and 4 of the additions. There are no windows located in the southern wall of the additions at Levels 3 and 4 to allow for direct overlooking.
- Two bedroom windows will be located on the southern elevation of the additions at Levels 5 and 6, however such additions are offset from the rear of the doctor's surgery. The architectural plans note that the sill height of such windows will be 1600mm to prevent overlooking and a recommended condition of consent has been provided to reflect this.
- Further, to prevent potential overlooking from the communal open space which is located at Level 7, it is recommended that a condition be attached to any consent requiring the provision of screening on the southern boundary of this space.
- With respect to the scale of the additions to the Lyrique Theatre/Masonic building, it is noted that amended plans have been submitted which have reduced the footprint of the upper level of this building. Specifically, the setback of the upper level of the additions have increased from a zero setback to 3.95m, achieved by decreasing the floor area of this upper level by approximately 50%, from 702m² to 353m².
- Potential overshadowing impacts of the Lyrique/Masonic additions on the terrace at No. 106 King Street are discussed in the later sections of this report, with it being concluded that the existing building is significantly in shadow and the proposed additions will have minimal additional impact.

On this basis it is considered that any potential impacts associated with overshadowing and privacy are acceptable and/or can be mitigated. Therefore, the proposed setbacks/separation distances are considered to be reasonable, particularly having regard to the need to consider setbacks in the context of a site where retention of a heritage item is proposed.

Solar and Daylight Access:

Design Criteria 4A of the ADG requires that living rooms and private open spaces of at least 70% of apartments must receive a minimum of 2 hours direct sunlight between 9 am and 3 pm on June 21. The ADG also requires that a maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm on June 21.

The application is accompanied by a SEPP 65 Solar Analysis prepared by CKDS Architecture (Drawings DA-5001 and DA-5002) which demonstrate those residential apartments which receive 1-2 hours of sunlight between 9am and 3pm in June 21. This analysis indicates that a total of 67% of apartments (ie. 78 of the 116 apartments) will achieve this standard. The following level of compliance achieved for each proposed building on the site:

- Northern Building: 60 of 89 apartments (67%);
- Southern (Lyrique/Masonic) Building: 18 of 27 apartments (67%), including 3 units partially relying on skylights.

The applicant has sought variation to the requirement for 70% of units to achieve 2 hours of sunlight. This request is considered to be supportable for the following reasons:

- The adaptive reuse of the Lyrique/Masonic building has impacted unit configuration to some degree at the upper levels of this building. A total of 93% of apartments in this building will achieve in excess of 1 hour of direct sunlight between 9am and 3pm on June 21.
- The need for the Northern building to address three street frontages and the resultant 'U' shaped configuration has resulted in a number of the eastern apartments, which front Thorn Street, not achieving the 2 hours of sunlight access. However, 100% of

apartments within the Northern building, including those apartments addressing Thorn Street, will achieve a minimum of 1 hour of sunlight.

- There are no apartments in the northern building and only 2 apartments in this southern building which do not receive any sunlight. This equates to 2% of the total number of apartments, which is significantly less than the maximum 15% specified by Objective 4A of the ADG.

Cross Ventilation: Design Criteria 4B-3 of the ADG requires that at least 60% of apartments be naturally cross ventilated. The submitted SEPP 65 Cross Ventilation Analysis prepared by CKDS (Drawing DA-5003 & DA-5004) confirms that a total of 68.1% or 79 of the 116 apartments will be provided with cross flow ventilation. The breakdown of apartments which are cross ventilated within each building is as follows:

- Northern Building: 64 of 89 apartments (72%)
- Southern (Lyrique/Masonic) Building: 15 of 27 apartments (56%)

While the overall development is compliant, the Southern (Lyrique/Masonic) building has a deficit of 1-2 cross ventilated units. This shortfall is considered to be minor and acceptable having regard to the limitations imposed by footprint and adaptive reuse of the Lyrique Theatre/Masonic Hall. Further, the total development, when considering the combined Southern and Northern buildings, is compliant with the 60% cross ventilation requirement.

Ceiling Heights: The submitted Statement of Environmental Effects prepared by SJB Planning indicates that the proposed development incorporates 3.1m to 3.85m ceiling heights for commercial/retail spaces in the Northern building; 2.8m to 8.5m high ceiling for the adaptive reuse of the Lyrique/Masonic building; and 2.7 to 3.0m ceiling heights for habitable rooms in residential apartments. All ceiling heights are compliant, with the exception of the lower ceiling height in the Lyrique Masonic building, which is fixed by the adaptive reuse of the existing heritage structure. As the plans only indicate floor to floor levels it is recommended that any consent which is issued be conditioned to ensure compliance for any new construction works.

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

- 1 Bedroom units - 1 bathroom min 50m² & 2 bathroom min 77m²;
- 2 bedroom units (2 bathrooms): Min 75m²
- 3 bedroom units (2 bathrooms): Min 110m²

Room dimensions and habitable room depths are generally compliant with the Design Criteria 4B of the ADG. As areas of bedrooms are not clearly available on the plans, a condition should be applied to any consent requiring master bedrooms to have a minimum area of 10m² and other bedrooms to be 9m² (excluding wardrobe space), noting that they appear to be generally compliant.

Private Open Space and Balconies: The minimum balcony areas specified in Design Criteria 4E-1 of the Apartment Design Guide (ie. 8m² for 1 bed, 10m² for 2 bed and 12m² for 3 bed) are generally met, with the exception of the balconies for apartments N112, N212 and N312. The proposed balconies are 9m², which do not meet the 10m² minimum for 2 bedroom units. The variation proposed is minor both in terms of balcony size and number of affected units and is considered to be acceptable.

Common Circulation: The number of apartments serviced off a circulation core in the northern building is 3-4 per level, while 3-7 apartments per level in the southern building are serviced off a circulation core. This is in compliance with the maximum 8 units recommended by Design Criteria 4F-1 of the ADG.

Storage: Design Criteria 4G-1 of the ADG recommends a minimum required storage area of 6m³ for 1 bedroom apartments, 8m³ for 2 bedroom apartments and 10m³ for 3 bedroom apartments, with 50% of the required storage to be located within the apartment. The General Schedule prepared by CKDS Architecture (Drawing DA-00002) confirms that apartments provide the required level of storage with a minimum of 50% of storage provided within apartments. In addition to internal storage cupboards, a number of units are provided with storage areas at the basement level. A condition should be attached to any consent issued to ensure that those storage areas located in the southern section of the basements (to the rear of parking spaces) are used for their intended storage purpose and are not used for the purpose of stacked carparking.

Newcastle Local Environmental Plan 2012

Zone Objectives

The proposed uses for the Stage 2 development accord with the zone objectives as it will provide a range of compatible commercial and residential land uses in a highly accessible location, which will support the revitalisation of the Newcastle City Centre. The slight increase in retail floor area and decrease in commercial floor area as proposed by the modification is not likely to affect viability of the centre.

Clauses 2.1 to 2.3: Zoning and Land Use Table

The subject property is included within the B4 Mixed Use zone under the provisions of NLEP 2012, as shown in **Figure 2**. The objectives of the B4 zone are:

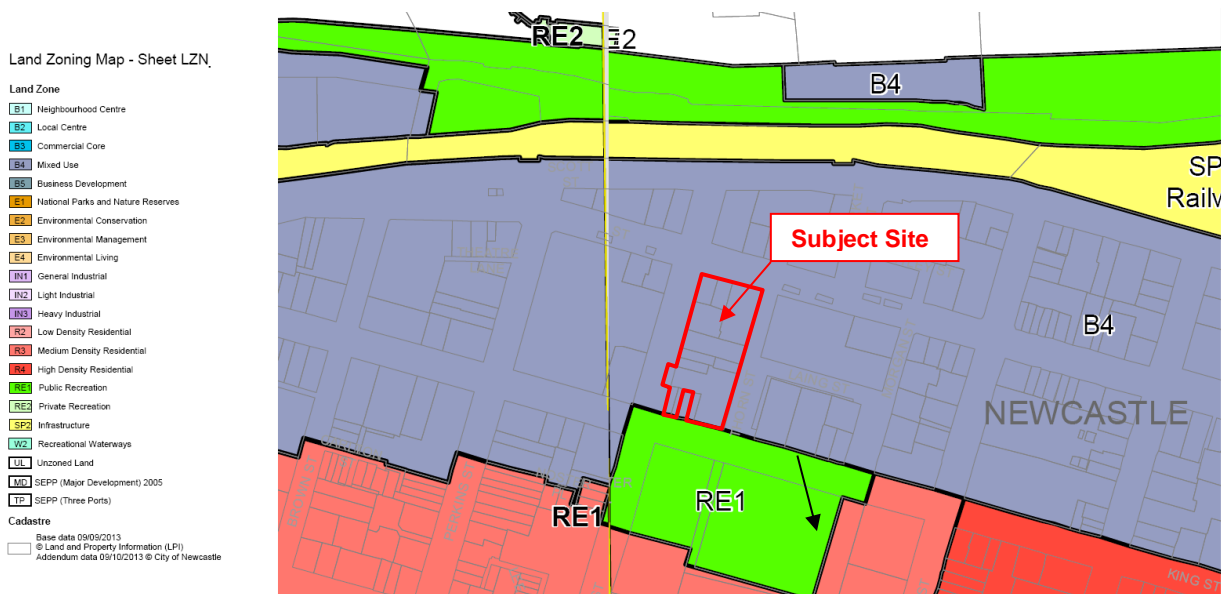
- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To support nearby or adjacent commercial centres without adversely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

The proposal comprises a mixed-use development that accords with the zone objectives as it will provide a range of compatible commercial and residential land uses in a highly accessible location, which will support the revitalisation of the Newcastle City Centre.

Permissibility:

The Northern and Southern buildings contain lower level retail and commercial spaces and upper level residential apartments which are defined under NLEP 2012 as "retail premises", "commercial premises" and "shop top housing". All uses are permitted with development consent within the B4 Mixed Use zone of NLEP 2012.

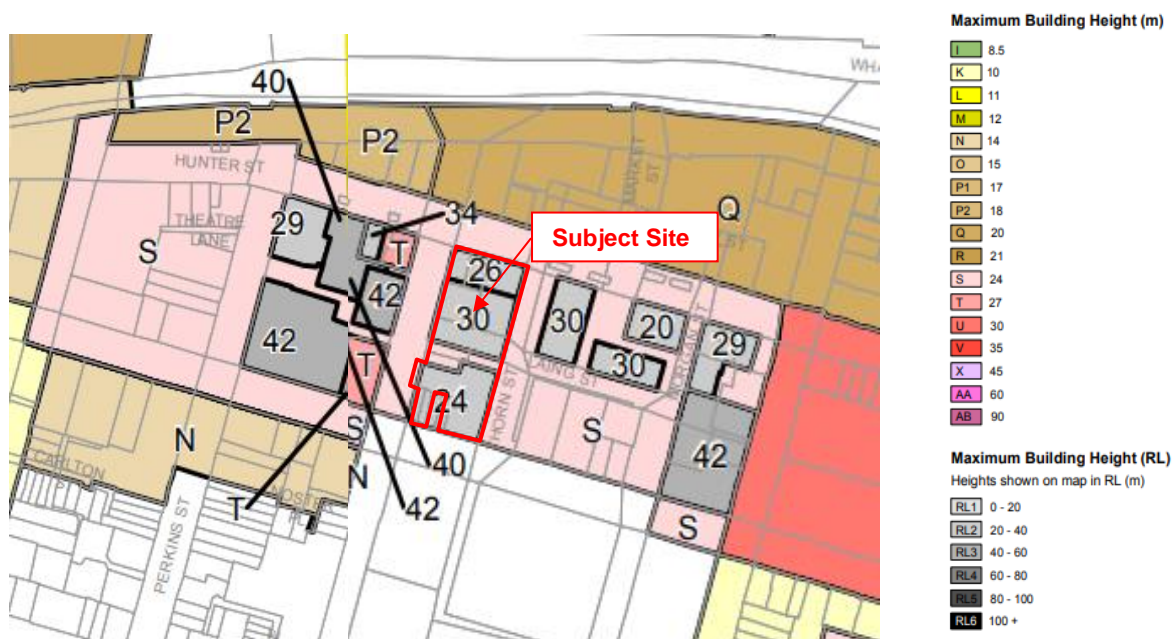
With respect to the terraces fronting King Street it is noted that 'Dwelling houses' are listed as a prohibited use within the B4 zone. Originally, the concept plan proposed that the three (3) terraces on King Street would be retained as dwelling houses, which at the time were considered to benefit from existing use rights and which are proposed to be retained. However, the current application proposes to convert the terrace at 110 King Street from a commercial use to a residential use, which could not be undertaken under existing use rights. Amended documentation submitted by the applicant has now confirmed that the King Street allotments will be amalgamated with the adjacent site, thereby allowing their categorisation as 'multi dwelling housing', which is a permitted use, rather than 'dwellings'. Carparking within the overall basement will then be allocated to the terraces through a subsequent strata subdivision. A condition will be attached to any consent issued requiring this initial amalgamation of the sites.

Figure 2: Extract of Zone Map showing location of site in B4 Mixed Use Zone - NLEP 2012**Clause 2.7: Demolition**

Development consent for demolition of all structures is sought under this clause (except for heritage buildings and facades proposed to be retained). [PE10]

Clause 4.3: Height of Buildings

This clause limits building heights to that shown on the current 'Height of Buildings' Map (refer **Figure 2**). The 'Height of Buildings' Map specifies permissible building heights across the four-block site, using a range of site-specific building heights (to Australian Height Datum) ranging from RL24m to RL30m.

Figure 3: Extract of Height of Buildings Map showing permissible heights applying to the subject site (HOB_004G and 004K) effective 9/11/2018 to date (Amendment 37).

As indicated in **Figure 3** and outlined in **Table 4** below, there are three different NLEP 2012 height controls applicable to Block 2 (northern, central and southern). With the exception of the King Street terrace dwellings, the proposed modified maximum building heights exceed the NLEP 2012 height controls across the whole site. The applicant has submitted a Variation Statement pursuant to Clause 4.6 in support of the variation to Clause 4.3 'Height of Buildings' for the Stage 2 development application.

A further consideration with respect to height under the LEP is the 'Design Excellence' provisions which are applicable to certain sites within the Newcastle City Centre (including this site). Clause 7.5(6) enables a consent authority to grant consent for a 10% bonus to the LEP Building Height allowed by Clause 4.3, but only if the design of the building or alteration has been reviewed by a design review panel. The proposal has been reviewed by CN's Urban Design Consultative Group (UDCG), who operate under a charter, stating that they undertake the functions of a design review panel for the purposes of Subclause 7.5(6) of NLEP 2012. The proposal was presented to the UDCG on six (6) separate occasions in accordance with the Design Excellence Strategy adopted for the site. In essence, for all intents and purposes, the proposal qualifies for the 10% height bonus. Notwithstanding this, all height exceedance to the NLEP 2012 Height of Building Map are subject to consideration under Clause 4.6 of NLEP 2012. Table 4 (below) is a table of building heights that consider the 10% height bonus.

Table 4: Comparison of LEP Control (with 10% bonus) and Proposed Stage 2 Heights

Existing Building Features	NLEP 2012 Max Height Control (with 10% bonus)	Proposed Maximum building height	Exceeds NLEP 2012 Height by	Exceeds LEP Height + 10% Bonus by
Northern Building				
Fronting Hunter Street, occupied by Soul Pattison Building and former Duke of Kent Hotel building, both having contributory heritage elements	RL26 (RL28.6)	RL33.6m to lift overrun RL31.62m to fire stair and rooftop awning	7.6m 5.62m	5.0m 3.02m
	RL30 (RL 33.0)	RL31.45m to rooftop plant screening	1.45m	N/A Complies
	Maximum vertical building height 24m from ground level	No building	N/A	N/A
Southern Building				
Lyrique Masonic group of buildings and King Street terrace dwellings which are listed heritage items.	RL 24 (RL26.2)	RL 30.10m to lift overrun RL 29.335m to rooftop	6.1m 5.335m	3.9m 3.135m
King Street Terraces				
Existing two storey buildings	RL24	RL20.309-RL24.0 (existing ridge height)	N/A Complies	N/A Complies

The Stage 2 DA varies from the Concept Proposal and so modification to the Concept Proposal is also proposed, being the subject of a detailed analysis in the concurrent report to the JRPP for DA-2017/00701.01. The report to the JRPP for the Concept Application also discusses the complexities of the background to the matter of LEP building height controls for the Newcastle East Precinct.

Figure 4: Extent of variation which is proposed to the NLEP 2012 Height of Building Map (above red dotted line)



Building Heights

What is the difference between the proposed building heights compared to that of the approved Concept Plan envelopes and NLEP 2012 Height of Building Map?

The approved Concept Plan (DA-2017/00701), did not anticipate (or consider) any built form on the sites occupied by the heritage buildings, however the approved concept plan permitted a maximum building height/envelope of 24m above ground level to reflect the NLEP 2012 height controls applicable at the time.

The current application for Stage 2 seeks to increase the recently gazetted Building Height Map of NLEP 2012, with minor variations on the northern portion of the site, and significant variations on the southern side, which is occupied by the heritage items (to the extent shown in **Table 4**). It also seeks to increase building heights above the approved concept plan height envelopes for Block 2 (to the extent shown in **Figure 4**).

Clause 4.6 'Exception to Development Standards'

The objectives of this clause are:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

A (revised) 'Clause 4.6 Exceptions to Development Standards Report' has been prepared by SJB Planning, seeking a variation to the provisions of clause 4.3 (Height of Buildings) in relation to all of the proposed buildings on the Block 2 site, with the exception of the proposed additions to the King Street terraces. The Clause 4.6 'Exceptions to Development Standards Report' is provided at **Appendix D** to this report. The initial written submission was considered to be inadequate and a revised document was provided. This amended written request is considered to satisfy subclauses (3) and (4).

Description of Variation Sought: There are three different height controls applicable to which a variation is sought, and a detailed list of the non-compliances of the various parts of the proposed buildings are provided within the Clause 4.6 Statement at **Appendix D**. **Figure 4** above more simply illustrates the extent of the variation sought. In summary:

- Northern portion of site fronting Hunter, Wolfe and Thorn Streets: a height limit of RL26 applies (maximum RL 33.6 proposed to lift overrun, exceeds by 7.6m);
- Central portion of site fronting Wolfe and Thorn Streets: a height limit of RL30 applies (maximum RL 31.4 to rooftop plant, exceeds by 1.45m);

- Southern portion of site fronting Wolfe, Thorn and King Streets (includes Lyrique/Masonic heritage buildings): a height limit of RL 24 applies (maximum RL 30.1 to lift overrun and rooftop plant, exceeds by 6.1m).

The applicant 'justifies that the proposal is consistent with the objectives of the building height standard and the B4 Mixed Use zone', and is therefore in the public interest, as provided in **Table 5** below:

Table 5: Applicant's Response to Objectives of Building Height Controls and B4 Mixed Use Zone	
NLEP 2012 Objective	Applicant's response
Objectives of the Height of Building standard (Clause 4.3)	
a) <i>To ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,</i>	<p>The site is within the Newcastle City Centre and is an appropriate location for increased height. The heights proposed remain consistent with the desired built form and are compatible with the scale and form of development in the Newcastle East End. The overall development will result in a positive contribution towards the built form as it provides a mechanism to reuse important heritage buildings and introduce appropriate scaled buildings to the centre.</p> <p>The protection of the King Street group of buildings and the retention of the original scale to King Street results in a positive contribution to the King Street streetscape. The protection of views to and from the Cathedral, and maintaining the prominence of the Cathedral in the city skyline, also represents a positive contribution to the built form.</p> <p>The development provides for the reintroduction of the fine grain of building that was evident in the earlier development of Newcastle. This is achieved through the introduction of a laneway between the North and South Buildings and through the retention of buildings facades that contribute to the streetscape and heritage conservation area.</p>
a) <i>To allow reasonable daylight access to all developments and to the public domain.</i>	<p>The proposed variation in height does not result in unreasonable shadow impact to the important public domain in the vicinity. The built form location has been carefully considered to maximise daylight access.</p> <p>Solar access to future development has been demonstrated as capable of complying with State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65).</p> <p>As detailed in the statement supporting the amended DA, the proposal allows reasonable levels of daylight to the adjacent development and to the buildings within the proposal.</p>
Objectives of the B4 Mixed Use zone	
<ul style="list-style-type: none"> • <i>To provide a mixture of compatible land uses.</i> • <i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i> • <i>To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres</i> 	<p>The proposed development provides a mix and range of compatible land uses.</p> <p>The proposal provides for retail and residential uses in an integrated way in a highly accessible location. The proximity of residential uses to employment will assist in maximising walking and cycling opportunities.</p> <p>The mix of land use will support the vitality of the centre by providing opportunities for the centre to grow. The scale of offering is not of a magnitude that would impact upon the viability of other centres.</p>

In addition to the above, other key criteria within Clause 4.6 to be satisfied regarding the contravention of the building height standard is as follows:

- *Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*

- *There are sufficient environmental planning grounds to justify contravening the development standard*

The City of Newcastle concurs with the following key reasons and justification as provided by the applicant (summarised in point form, detailed in **Appendix D**). It is noted that irrelevant justification provided in the applicant's written statement was not considered in the assessment (eg: provision of new cross-block laneway: this is a long-standing DCP requirement and has no bearing on building height exceedance).

- *The proposed built form results in a compatible scale relationship to the existing and emerging character of the Newcastle East End.*
- *One of the desired built forms for the locality is the retention of heritage fabric. The additional height protects the heritage elements and 'facilitates the adaptive reuse of challenging heritage buildings'. The restoration, refurbishment and adaptive reuse of the former Lyrique Theatre/Masonic Hall 'was one of the fundamental drivers in the design outcomes for the site. While the additions over these buildings exceed the height controls, it provides an appropriate built form that responds to the CMP and site context.' The applicant states that there is no adverse impacts on the significance of the heritage fabric on site or the conservation area. (Note: The Heritage Consultant concurred that the impact of the development in heritage terms was acceptable).*
- *The increased height of the proposal does not result in unreasonable amenity impacts, notwithstanding the height breaches including: solar access/overshadowing; views (including to the harbour and to/from the Christ Church Cathedral); and privacy. Refer to later sections of this report and the Stage 2 DA report for detailed discussion on impacts.*
- *Exceedance of height controls on the northern part of the site: the massing of this part of the site is limited by the requirements of SEPP 65 and the apartment design guide. The additional height in the front portion of the building (predominantly lift overruns and plant structures) does not give rise to unreasonable impacts.*
- *Topography: the built form massing and in part the height variations are a response to the sloping topography.*
- *Height exceedance on Lyrique Theatre/Masonic Hall/King Street buildings: the recent substantial reduction of the height controls "straight jackets" development of this part of the site. The previous height controls could reasonably facilitate some development of these sites, subject to preparation of conservation management plans (which were not completed at that time).*

With respect to the height exceedance over the former Lyrique Theatre/Masonic Hall Buildings: it is noted that Clause 5(10) of NLEP 2012 'Conservation incentives' states that: "*The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied (on certain matters).*" The Heritage Consultant noted in the assessment that the development is acceptable, and it is noted that the development could/does meet the criteria of the clause. In this regard, arguably, the increased height exceedance on the heritage listed part of the site could be permitted pursuant to this Clause (and hence a Clause 4.6 variation is not required for this portion of the site). Notwithstanding this, Clause 4.6 has been satisfied.

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

Clause 4.4 limits the FSR of a development to that shown on the FSR Map. The FSR Map confirms that a maximum FSR of 4:1 is permissible on the site, as shown in **Figure 5**. This permits a maximum Gross Floor Area (GFA) of 14,592m², based on a site area of 3,648m² for Block 2. The Stage 2 application proposes a total GFA of 12,983m², which is inclusive of surplus residential parking in the basement. This equates to an FSR of 3.55:1 (inclusive of surplus parking), or 3.5:1 (exclusive of surplus parking) which complies with the maximum permitted 4:1.

characteristics of Potential Acid Sulfate Soils (PASS), in addition to potentially mapped ASS approximately 30m to the north of the site. Therefore, Douglas Partners confirm that additional testing will be conducted following site demolition to confirm ASS conditions and requirements for treatment/management.

Douglas Partners advise that any disturbance of ASS through excavation or dewatering would be conducted in accordance with the Management Plan which includes the following: soil treatment strategies; liming and monitoring procedures; neutralising leachate; as well as dewatering. Appropriate monitoring strategies have been provided as well as a Contingency Plan should remedial action be required. The requirements of this clause are therefore met, though the submission of this ASS Management Plan.

Clause 6.5 Public Safety – Licensed Premises

This clause requires consideration of public safety prior to CN granting consent to a licensed premises. While the Concept Application seeks to include “hotel or motel accommodation” (which can incorporate licensed premises under the *Liquor Act 2007*) as an optional use, the Stage 2 application does not specifically identify such use within the current proposal. Therefore, should a licensed premises be proposed within any commercial space in Stage 2, this would be the subject of a further application, with consideration of clause 6.5 at that time.

Part 7: Additional Local Provisions - Newcastle City Centre

Clause 7.5 Design Excellence (Newcastle City Centre) is the only relevant Clause within this Part, noting that Clause 7.3 (Minimum Building Street Frontage) only applies to the B3 zone and Clause 7.4 (Building Separation) only applies to buildings in excess of 45m above ground level.

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

Table 6: Compliance with NLEP 2012 Clause 7.5 Design Excellence	
Clause 7.5 Provisions	Comment
(3) <i>In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters:</i>	
<i>(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,</i>	Satisfied. Refer Section 4.15(1)(b)(iv) of this report
<i>(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,</i>	Satisfied. Refer Section 4.15(1)(b)(vi) of this report
<i>(c) whether the development detrimentally impacts on view corridors identified in the Newcastle City Development Control Plan 2012,</i>	Satisfied. Refer Section 4.15(1)(b)(i) of this report
<i>(d) how the development addresses the following matters:</i>	
<i>(i) heritage issues and streetscape constraints,</i>	Satisfied. Refer Section 4.15(1)(b)(iii) of this report
<i>(ii) the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,</i>	Satisfied. Refer SEPP 65 section of this report.
<i>(iii) bulk, massing and modulation of buildings,</i>	Satisfied. Refer Section 4.15(1)(b)(iv) and SEPP 65 section of this report
<i>(iv) street frontage heights,</i>	Satisfied. Refer Section 4.15(1)(b)(iv) of this report
<i>(v) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,</i>	Satisfied. Refer Section 4.15(1)(b)(v) of this report

Table 6: Compliance with NLEP 2012 Clause 7.5 Design Excellence	
Clause 7.5 Provisions	Comment
(vi) <i>the achievement of the principles of ecologically sustainable development,</i>	Satisfied. Refer Section 4.15(1)(b)(xvii) of this report
(vii) <i>pedestrian, cycle, vehicular and service access, circulation and requirements,</i>	Satisfied. Refer Section 4.15(1)(b)(ix) of this report
(viii) <i>the impact on, and any proposed improvements to, the public domain.</i>	Satisfied. Refer Section 4.15(1)(b)(vi) of this report
(4) Development consent must not be granted to the following development to which this Plan applies unless an architectural design competition has been held in relation to the proposed development:	
(a) <i>development for which an architectural design competition is required as part of a concept plan approved by the Minister for a transitional Part 3A project,</i>	N/A
(b) <i>development in respect of a building that is, or will be, higher than 48 metres in height,</i>	N/A - No building exceeds 48m in height
(c) <i>development having a capital value of more than \$5,000,000 on a site identified as a "Key Site" and shown edged heavy black and distinctively coloured on the Key Sites Map,</i>	Applies. Refer (5) below
(d) <i>development for which the applicant has chosen to have such a competition.</i>	N/A
(5) Subclause (4) does not apply if the Director-General certifies in writing that the development is one for which an architectural design competition is not required.	The application is accompanied by correspondence from the Office of Government Architect, as a delegate of the D-G which grants exemption to the requirement for a design competition for the Stage 2 DA subject to the implementation of a design excellence process.
(6) The consent authority may grant consent to the erection or alteration of a building to which this clause applies that has a floor space ratio of not more than 10% greater than that allowed by clause 7.10 or a height of not more than 10% greater than that allowed by clause 4.3, but only if the design of the building or alteration has been reviewed by a design review panel.	Satisfied. The DA seeks an increase to the maximum allowable building height under Clause 4.3 by up to 7.0m. Refer discussion under Clause 4.6. The design has been reviewed by the design review panel (UDCG).

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

Newcastle Development Control Plan 2012 (the DCP) is the applicable Development Control Plan. Section 6.01 (Newcastle City Centre) applies to the overall development due to its inner city location. The provisions of Section 3.03 Residential development also apply to the terrace housing that addresses King Street, which is defined as 'multi dwelling' housing. However, this section does not apply to the residential apartments in the northern and southern buildings as this development is considered as 'shop top' housing and Section 3.03 does not apply to this form of housing. The Sections listed below are also relevant to this Stage 2 Development Application.

- 4.01 Flood Management
- 4.03 Mine Subsidence
- 4.04 Safety and Security
- 4.05 Social Impact
- 5.01 Soil Management
- 5.02 Land Contamination
- 5.03 Vegetation Management
- 5.04 Aboriginal Heritage
- 5.05 Heritage Items
- 5.06 Archaeological Management
- 5.07 Heritage Conservation Areas
- 7.02 Landscaping, Open Space and Visual Amenity
- 7.03 Traffic, Parking and Access
- 7.04 Movement Networks

- 7.05 Energy Efficiency
- 7.06 Stormwater
- 7.07 Water Efficiency
- 7.08 Waste Management
- 7.09 Outdoor Advertising and Signage
- 7.10 Street Awnings and Balconies

Section 6.01 'Newcastle City Centre'

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

Section 6.01.02 Character Area – East End

This section of the DCP contains the character statements and supporting principles for development within various precincts of the Newcastle City Centre. The subject site is within "East End".

The following principles apply to the East End Precinct:

- 1. Hunter Street continues to be the main retail spine of the area, supported by a range of complimentary uses, including residential, commercial, entertainment and dining.*
- 2. Hunter Street is recognised and enhanced as a major pedestrian space and an informal meeting place.*
- 3. The historic fine grain character is maintained and enhanced.*
- 4. Significant views to and from Christ Church Cathedral are protected, including views from Market Street and Morgan Street. Views to Hunter River are protected and framed along Market Street, Watt Street and Newcomen Street.*
- 5. Vistas that terminate at significant heritage buildings are protected, such as Fort Scratchley.*
- 6. Distinctive early industrial, warehouse and retail buildings that contribute to the character of the area are retained and re-purposed, including prominent corner buildings.*
- 7. Existing laneways and pedestrian connections are enhanced.*
- 8. Heritage items and their setting are protected. New buildings respect the setting of heritage buildings.*
- 9. In-fill buildings, additions and alterations to respond to the height, massing and predominant horizontal and vertical proportions of existing buildings.*
- 10. Recreational opportunities are created by establishing public space and pedestrian connections from Scott Street to the Hunter River foreshore.*

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

Section 6.01.04 Key Precincts - Hunter Street Mall

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

- 1. "Strengthen the sense of place and urban character of the east end as a boutique retail, entertainment and residential destination.*
- 2. Diversify the role of Hunter Street Mall precinct as a destination for many activities including retail, dining, entertainment, nightlife and events, additions to regular day-to-day services for local residents.*
- 3. Promote active street frontages.*
- 4. Protect heritage items and contributory buildings.*
- 5. Protect views to and from Christ Church Cathedral.*

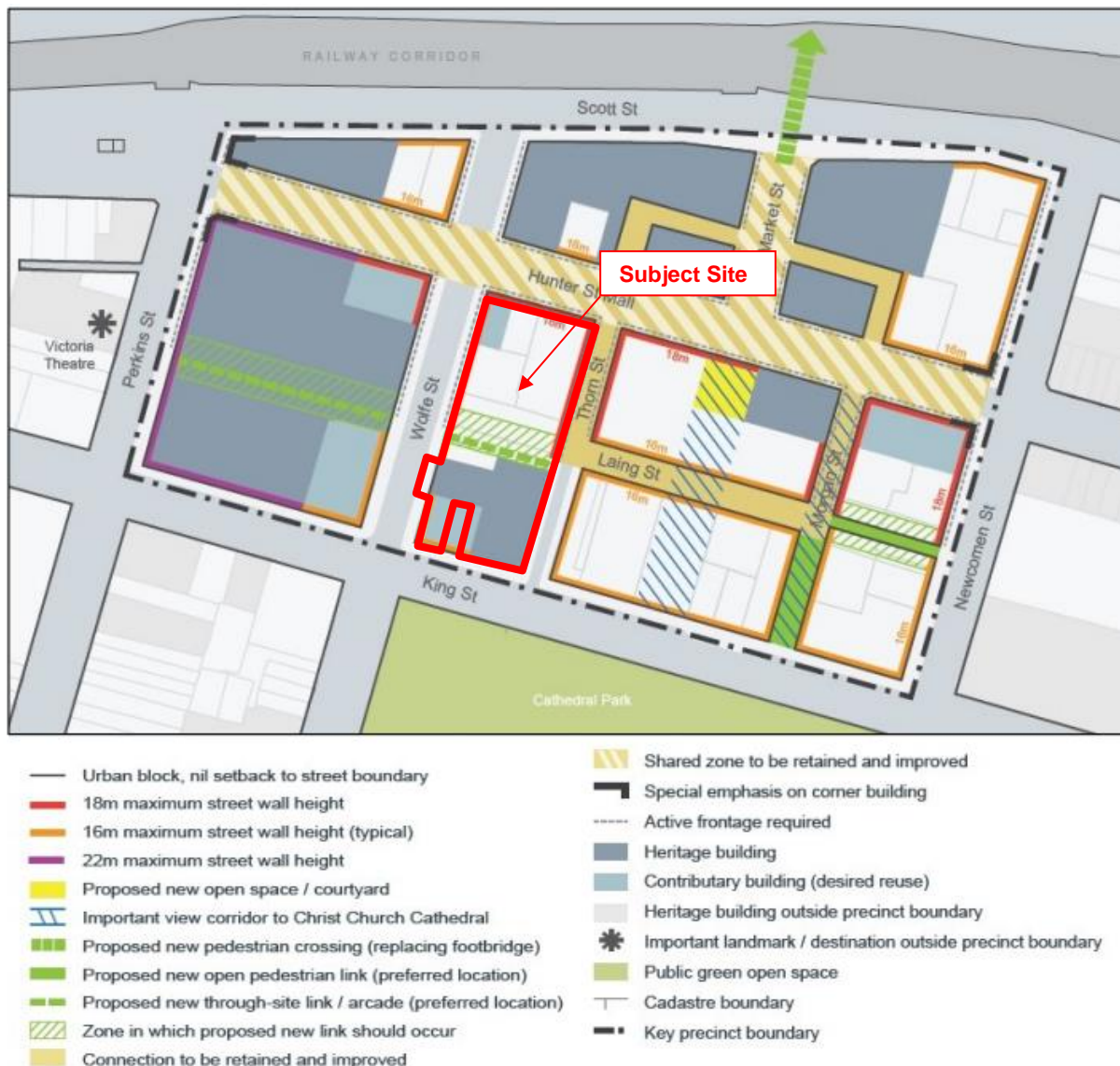
6. *Promote a permeable street network in Hunter Street Mall precinct with well connected easily accessible streets and lanes.*
7. *To create a space that is safe, comfortable and welcoming for pedestrians."*

B1 – Pedestrian permeability and amenity is improved

Figure 6.01.29 identifies a requirement for a through site link. The required Block 2 through-site link (Thorn and Wolfe Streets) is retained, with minor modifications, such as removal of vehicular access/servicing from the laneway (ie an improvement). This will now be pedestrian access only (without complying access for people with disabilities). Further discussion of views is contained in the following Section 4.15 assessment.

Servicing and access are required to be designed to minimise potential conflicts with pedestrians. The Stage 2 development proposes access from Thorn Street to the ground level loading area and to the two basement levels. The placement of this service access will not lead to conflict with pedestrians utilising either Hunter Mall or Thorn Street. There will be no direct access or servicing from Hunter Street.

Figure 7: Figure 6.01-29 (Hunter Street Mall Precinct) of Section 6.01 of NDCP 2012 showing subject site



B2 - Significant Views

This section of the DCP requires the protection of significant views and vistas, with this issue discussed in detail in the section 4.15(1)(b)(i) assessment of this report.

B3 - Building Form to integrate with heritage character

This clause requires that street wall heights be selected to ensure that a minimum of 2 hours of sunlight is provided between 9am and 3pm in mid winter on the southern side of the Hunter Street Mall. The "Shadow Analysis" prepared by CKDS Architecture demonstrates that the Hunter Street Mall is already impacted between 9am and 3pm but the proposed development will not impact further, as it is contained to the southern side of the Mall.

This clause also requires that development be articulated to reflect the fine grain of the precinct and that existing contributory character buildings be retained and re-used. The (amended, reduced) proposal articulates the large building form into smaller elements and adaptively reuses heritage contributory buildings and heritage items on the site, achieving the acceptable solutions of this clause.

Section 6.01.03 General Controls

A1 - Street Wall Heights

The required street wall height is 18m for the Hunter Street frontage and the northern sections of Thorn and Wolfe Streets (as shown on Figure 6.01-12 of the DCP), with a 16m setback applying to King Street and the southern sections of Thorn and Wolfe Streets. Development above the street wall height is required to be set back by a minimum of 6m. Corner sites may be emphasised by design elements that incorporate some additional height above the nominated street wall height. Variations may be considered where it can be demonstrated that there will be no adverse overlooking, overshadowing or streetscape appearance impacts. A number of variations have been identified within the Stage 2 development application, with such variations discussed in detail within the Section 4.15(1)(b)(iv) assessment of this report.

A2- Building Setbacks

Section 6.01.03 of the DCP confirms that street wall heights are "*an important element to ensure a consistent building scale in streets that have a mix of uses, heritage items and final development*". They provide an "*appropriate street-width to building height ratio*". Clause A1.01 confirms that any development above street wall heights must have a minimum setback of 6m. Conditions 12 and 13 of the approved Concept DA Development Consent (2017/00701) also required the development above street wall heights and heritage items must have a minimum setback of 6m.

The application seeks to revise the street wall heights and 6m setback (above street wall height). Front setbacks to Hunter, King, Thorn and Wolfe Streets are discussed within the Section 4.15(1)(b)(iv) assessment of this report, with this section providing a summary of the compliance with the DCP controls and Conditions 12 and 13 of Development Consent DA-2017/00701.

A3: Building Separation

This clause requires separation between commercial buildings of 6m for buildings of up to 16m in height and 9m for buildings of up to 40m in height. The Ground Level commercial/retail functions comply with this requirement, as a 9m separation is provided between the northern and southern buildings across the through site link. Separation between the residential levels is addressed by SEPP 65 in Section 6 of this report.

A4 - Building Depth and Bulk

This clause specifies that residential floor plates above street wall heights are required to have a maximum GFA of 900m² per floor and a maximum building depth of 18m. The Statement of Environmental Effects (SJB Architects) indicates that the following floor plates and building depths are proposed:

- Northern Building: Floor plate of 308m² to the Wolfe and Thorn Street wings and 862m² to the Hunter Street wing. Maximum building depth of 14.65m.
- Southern Building: Floor plate of 701m² and depth of 18.4m.

The floor plate of the northern building, while having a combined area that exceeds the 900m² is acceptable given the “U” shaped design of this building which creates three wings separated by lobby spaces. The depth of the Lyrique Masonic building, which is marginally greater than the specified 18m is also acceptable given the limitations imposed by the adaptive reuse of this building.

A5 - Building Exteriors

This clause specifies requirements with respect to exterior finishes and detailing. Details of the colours and materials to be used are contained within the External Materials Schedule (Drawing DA-7002). The UDCG, at its meeting of 18 August 2018, while confirming that their previous recommendations regarding articulation of building exteriors have been positively responded to, “...urged that there be further investigation of external paint colours to the Wolfe Street elevation of the former theatre as a basis for a new colour scheme”. Additional information provided by the applicant suggests that the colour scheme of the Lyrique Theatre will be “...finalised in line with the findings of paint scrapings and colour investigation to be undertaken as part of the Schedule of Conservation Works, prior to the issue of the Construction Certificate”. This process is considered to be acceptable and a condition should be applied to any consent issued to this effect.

The applicant has also worked closely with the UDCG over a series of six (6) meetings, with the UDCG being supportive of the building exteriors. However, the UDCG recommended that the design of balconies be given further consideration “to ensure that there is adequate privacy and wind protection for residents. In particular, for example the balustrades at lower levels with vertical metal panels would provide inadequate visual screening, and at upper levels generally the design appears to have been driven more by aesthetic than amenity considerations.”

Further clarification has been sought from the applicant regarding balcony treatment, with the following advice provided:

- Solid balustrading (solid precast panels) is proposed on the balconies on Level 1, 2 and 3 of the Hunter and Thorn Street elevation of the northern building.
- Metal rod balconies are proposed on part of the Wolfe Street elevation from Level 1 and above to take advantage of views of the harbour, however these balconies are located in excess of 4m above street level to minimize privacy impacts. All other balconies in the northern building are contained behind the heritage facade of the Royal Exchange.
- Lower level balconies in the southern buildings are contained behind heritage facades to maximise occupant privacy.

The proposed balcony treatment is considered to be acceptable with respect to privacy. Further alteration to balconies to ameliorate wind impacts is considered to be unnecessary given the 8 storey height of the building. At the rooftop terrace level, wind and rain protection is proposed by means of operable screening, with roofing.

A6 - Heritage Buildings

This clause provides requirements relating to heritage buildings and sight lines, which are discussed in detail in the following Section 4.15 assessment.

A7 - Awnings

This clause specifies that continuous street awnings are to be provided to address pedestrian amenity. The northern building is provided with a street awning to the Hunter and Wolfe Street elevations and to part of the Thorn Street elevation, where ground level permits. Awnings are unable to be provided on the Lyrique/Masonic building due to the retention of the heritage item.

A8 - Design of Carparking Structures

This clause requires that carparking must be effectively integrated within building design, have access which is not located on the primary frontage and provide design solutions to screen from public spaces. The Stage 2 application includes two levels of basement parking, accessed from King Street, which meets the requirements of this clause.

A9 – Landscaping

This clause requires that new development incorporate landscaping and communal space that respects the desired character of the streetscape, adjoining land and public spaces and notes that residential buildings in the city centre do not require the provision of a deep soil zone. The development addresses the requirements of this clause through the provision of upper level and rooftop communal open space; ground level landscaped spaces and a through-site thoroughfare.

B1 - Access Network

The Stage 2 development includes a through-site connection, extending from Wolfe Street in the west to Thorn Street in the east, which will be privately owned but publicly accessible. This link extends between the northern and southern buildings. Direct access to the adjacent retail tenancies and the adapted Lyrique/Masonic building will be provided from this central laneway. The location of this link is consistent with the location of the through-site link identified in Figure 6.01-19 of this DCP chapter and will allow for a continuous pedestrian link through the site, as intended by the DCP. This laneway complies with the required 5m width, at 9m in width.

B2 – Views and Vistas

This section of Chapter 6.01.04 requires that new development must protect the views nominated in Figure 6.01-23 of the DCP. This figure identifies a view from the corner of Wolfe and King Street to the foreshore and a view from the Stockton Ferry Wharf immediately to the east of Block 2 to preserve views of Christ Church Cathedral. The Stage 2 development will allow for retention of views looking north along Wolfe Street. The overall impact of the Stage 2 development on views of Christ Church Cathedral are discussed within the Section 4.15(1)(b)(i) assessment of this report.

B3 - Active Street Frontages

This clause specifies that active street frontages are to be a minimum of 70% of the primary street frontage; in activity nodes as shown in Figure 6.01-24 of this section of the DCP; on through-block links; and on other streets, where possible. The Stage 2 application provides an active street address to Hunter Street as required by this clause and also provides an active street frontage to the northern extent of Wolfe and Thorn Street, where Figure 6.01-24 indicates that an active frontage is 'highly desired'. Further, active frontages are provided to both the north and south of the through site link. Foyer and lobby spaces do not comprise more than 20% of such active street frontage, as required by this clause.

B4 - Addressing the Street

This clause provides requirements regarding the siting and height of building entries, where an active street frontage is not required. Retention of the southern terraces will provide for an active street frontage to King Street. Along the southern extent of Wolfe and Thorn Street, the retained Lyrique Masonic building will positively address the street, with upper level residential apartments providing direct surveillance of the public domain.

B5- Public Artwork

This clause requires that development on key sites or over 45m in height are to allocate 1% of the capital cost of development towards public artwork. As the subject site is identified as a 'key site' this clause will apply and a condition to this to this effect will be attached to the consent of the Stage 2 development and future stages, if approved. This is also discussed in the following Section 4.15 assessment.

B6 - Sun Access to Public Spaces

This clause requires that sunlight access be provided to significant public spaces, including Cathedral Park to the immediate south of the Block 2, for at least 2 hours during mid-winter between 9am and 3pm. The 'Sun Studies – Shadow Diagrams' prepared by CKDS Architects confirm that the proposed development will not impact Cathedral Park.

B7 – Infrastructure

This clause contains requirements regarding stormwater, water and sewerage infrastructure which are addressed in the section 4.15(1)(b)(xii) assessment of this report.

Section 3.03 Residential Development

This section of the DCP applies to the terraces addressing King Street which are defined as 'multi dwelling housing' (but does not apply to the shop top housing, to which the Apartment Design Guide applies).

With respect to the King Street terraces, SJB confirm (in correspondence dated 20 December 2018) that the following key changes are proposed:

- 98-100 King Street is to be converted into two (2) x 3 storey dwellings, with separate entries from King Street. The original balconies will be re-instated to the King Street facade. Rear terraces are proposed on Level 1, which are accessed from the master bedroom. The existing configuration of windows in the northern elevation will be retained and additional windows are proposed.
- 102 King Street is occupied by a three (3) storey structure comprising the residential lobby at ground level and two (2) residential apartments above. As these apartments form part of the Southern Building and have therefore been assessed against the ADG.
- 104, 108 and 110 King Street will be modified to accommodate three (3) x 3 storey dwellings with separate access from King Street. Each of the dwellings will be provided with a central terrace that is directly accessed from the second storey living areas.

Only those provisions of Section 3.03 that are relevant to the proposed terraces have been considered, noting that the Stage 2 development proposes to retain the terraces and to undertake alterations and additions to such buildings.

Frontage Widths (Isolated Lot): Development in the B4 zone shall not result in the creation of an isolated lot. While the development site does not include No. 104 King Street, it is noted that development along the King Street frontage is limited to alterations/additions to the existing terraces. Hence, No. 104 King Street could not reasonably be termed an isolated lot as the general configuration of the existing structures on the King Street frontage will be retained.

Front Setbacks: No changes to front setbacks are proposed.

Side and Rear Setbacks: Extension to the rear of a number of terrace buildings are proposed. However, the specified rear setbacks do not apply as the site is a consolidated allotment which is to be amalgamated in title. No change to existing side setbacks (zero lot line) are proposed.

Landscaped Area: A minimum of 20% of B4 zoned sites are required to be landscaped, with a 10% deep soil zone provided. The development will result in the loss of a landscaped space at the rear of No. 98-100 with four levels of infill apartments between the terraces and the Lyrique/Masonic building. An area of landscaped space will also be lost at the rear of No. 104 King Street, following the extension of the terrace on this site. While there is a loss of landscaped space on two sites, private courtyards/balconies will be provided for all five residences, thereby providing improved amenity outcomes and an appropriate outcome in this inner city context.

Solar and Daylight Access: This clause requires that the living room and private open space of at least 70% of dwellings receives a minimum of 2 hours direct sunlight between 9am and

3pm at the winter solstice. Following a request for further information, CKDS Architecture submitted Sun Studies for the King Street terraces (Drawing DA-4107 and DA-4108) which show the level of sunlight access under the existing scenario; for possible development under the permissible LEP height; and under the proposed scenario.

SJB also confirm that those King Street terraces which form part of the development site will achieve the following level of sunlight access, following construction of the development:

- One of the dwellings within 98-100 King Street will receive sunlight at 9am, but does not receive sunlight afterwards. The other dwelling does not receive sunlight. The overshadowing impacts onto 98-100 King Street are primarily attributed to the infill component to the north, which sits under the NLEP 2012 height limit.
- 104 and 108 King Street do not receive sunlight to the living areas or private open spaces.
- 110 King Street will receive sunlight to the living areas windows on the western elevation from 12pm onwards and will achieve the 2 hours sunlight. The courtyards do not receive sunlight.

Comment: While 70% of the terraces therefore do not receive the required 2 hours of sunlight on June 21 the following is noted:

- The loss of sunlight access to the dwellings at No. 98-100 King Street is not a preferred outcome. However, it is considered that the improved streetscape outcomes through the provision of infill development between this building and the Lyrique Masonic building, on balance, warrants this variation.
- While No. 104 and No. 108 King Street will not receive sunlight into the living or private open space areas, the existing terraces currently receive a very limited amount of sunlight throughout the day on June 21. The reconfiguration of the internal spaces within such terraces and the provision of a central courtyard with good access to living areas is considered to be a positive outcome, which outweighs the loss of the existing level of direct sunlight access.

Overshadowing of Adjacent Development: The submitted Sun Studies also confirm that the courtyard and rear wall of No. 106 King St, which does not form part of the site is currently in shadow between 9am and 3pm on June 21. Further, it is noted that this building is currently utilised for the purpose of a doctor's surgery and is not utilised for residential purposes.

Natural Ventilation: The alterations/additions to the terraces provide opportunity to improve natural ventilation to living spaces through repositioning of spaces; the provision of additional windows for No. 98-100 King Street; and the inclusion of central courtyards, with increased openings at No. 104, 108 and 110 King Street.

Ceiling Heights: This clause requires 2.7m ceiling heights and 2.4m ceiling heights for first floor bedrooms. Compliance appears to have been achieved for new work. However, a condition has been imposed requiring compliance with such ceiling heights for new work to address any uncertainty with current plans (which indicate floor to floor heights).

Dwelling Sizes: The extended/altered dwellings will have minimum internal areas of 146m² to 203m² which complies with the required minimum of 95m² to 120m² for 2 and 3 bedroom apartments respectively (with 2 bathrooms).

Private Open Space:

This clause requires that a minimum of 16m² of private open space (POS) is required for each terrace, which is directly accessible from a living/dining/kitchen at a minimum width of 3m. The following POS is proposed to be provided for the King Street terraces:

- No. 104, 108 and 110 King Street are to be provided with central courtyards of 7-8m² at the first floor level, which are directly accessible from living spaces.
- Rear courtyards will be provided for the two x 3 storey dwellings located at No. 98-100 King Street accessed from the main bedroom. The first level decks, which will also be accessed off bedrooms, will also be reinstated. While the POS will not be accessible

from a living space, the existing levels of this building (which result in the lower level being partly above ground) have largely influenced the proposed arrangement. The placement of the living space at the middle level will allow for sunlight access, with additional windows to be provided on the eastern elevation.

The reconfigured and extended terraces will not provide the required 16m² of POS which is required for all dwellings, however it is considered that the terraces which are proposed will provide for an improved level of amenity for residents from that which currently exists. Further, it is recommended that to offset the shortfall in POS, a condition be attached to any consent requiring that residents of the terraces be granted access to the communal open space areas located on Level 7 of the Southern (Lyrique Masonic) building.

Storage: Terraces are to be provided with 8m³ to 10m³ of storage for 2-3 bedroom dwellings respectively. The General Schedule (Drawing DA-002) prepared by CKDS Architecture confirms that the terraces are provided with between 36m³ to 58.5m³ of storage for 3 bedroom dwellings and 9m³ to 14m³ for 2 bedroom dwellings. Only one dwelling (No. 100 King St) does not provide the required 10m³ for 3 bedroom dwellings, however this variation is considered to be minor and acceptable given that the development does not pertain to a new building but rather alterations to the existing building.

Car and Bicycle Parking: The carparking and bicycle parking requirements for the terraces have been considered in the overall parking requirements for the development, as residents of the terraces will be allocated parking in the basement.

Communal Open Space: This clause requires that a communal open space (COS) area be provided where more than 10 dwellings are proposed, with this space to equate to 5% of the site area and to have a minimum dimension of 8m. There are 5 terraces to which this section of the DCP applies, as the balance of dwellings in the development are defined as residential flats to which the provisions of the Apartment Design Guide apply. Hence, this clause is not technically applicable to the terraces. Irrespective of this, as noted above, it is recommended that residents of the terraces be granted ongoing access to the COS areas in the southern building.

Section 94A Development Contributions Plan 2009

A levy of 2% of the cost of development will apply to the development and will be attached as a condition of any consent which is issued.

(a)(iia) any planning agreement that has been entered into or any draft planning agreement that the developer has offered to enter into

Not applicable.

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

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

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

Not applicable.

(b) the likely impacts of the development

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

i. View Analysis and Impacts

Background

As it was a key issue of the assessment of the original Staged Concept DA-2015/10185 (now surrendered), a detailed discussion on impacts of the Newcastle City East development was provided in the report to the JRPP meeting of 28 April 2016, which was also referenced in the assessment report for the (now) approved Concept Plan DA-2017/00701.

This assessment considered existing key views and view corridors, in addition to analysis of the impact of the proposed built form of the staged concept proposal on these views. The impact of the proposal on existing views of some private properties was also provided. A major issue of consideration was the impact to and from the Christ Church Cathedral. Background to previous and existing planning controls and guidelines was included in the report to provide context to the issue, including

- DCP 2005 - Element 6.2 City East
- Newcastle City Centre LEP 2008 and Newcastle LEP 2012
- Newcastle Urban Renewal Strategy 2012 (as originally exhibited)
- Newcastle Urban Renewal Strategy 2012 (exhibition of amendments)
- Newcastle LEP 2012 City Centre Amendment 2014
- Newcastle DCP 2012: View-related controls for the City Centre and Subject Land

This review of the above documents noted that a historical building height of 24 metres on Block 2 was identified numerous times through various historic planning studies, documents and plans as being an appropriate height for the Block 2, although some alternative (including increased) building heights on other blocks were considered to be appropriate.

In relation to overall views and view corridors, the report on the original Concept DA-2015/10185 stated that:

"The proposed development will indeed alter the Newcastle East City skyline as viewed from afar and will be visible from many locations. Closer to the site, the development will alter the character of the surrounding streets, being prominent in some street views, but overall, the proposal will generally respect important views, noting the DCP's required vistas of the Cathedral being of the 'tower, roofscape and pinnacles of the buttresses of the building.' TCG Planning concur with the conclusions (page 67) made by SJB Architects but again, are too numerous to reproduce in this report. In summary, with the exception of the views from Cathedral Park (which would be, the impacts on views and view corridors are considered to meet the objectives, performance criteria and acceptable solutions of the DCP."

In relation to the views from Cathedral Park, the assessment confirmed that the proposed built form of the concept DA will negatively impact on the views from Cathedral Park and the Cathedral Park Masterplan. However, it was noted that the height controls within the LEP (former and current) all enable this built form and on balance, it is therefore assumed that CN's higher order LEP height control at that time take precedence over the views achieved from the Cathedral Park.

The 'Visual Impact and Street View Analysis' (SJB Urban, 2017) for the current approved concept DA (DA-2017/00701) provided visual representations ("before" and "after") of impacts of the proposed built form along streets and of key views (ie generally those identified in DCP Figure 6.01-24), and at various points at and near the Cathedral (including Cathedral Park). Updated view analysis and impact documentation has been provided showing the proposed modifications to the concept building envelopes previously considered for Block 2, to accommodate the intended Stage 2 buildings (as amended). The proposed modification and assessment of impacts is provided below:

Stage 2 DA: Assessment of Impacts to Views

In terms of Block 2, the proposed changes from the approved Concept DA building envelopes to reflect the proposed Stage 2 DA buildings are limited to:

- Northern-most part of site (fronting Hunter Street): approximate increase in building height of 7.5m, with no 6m setback above the 18m street wall height (as required by DCP and Conditions 12 & 13 of Concept Approval);

- Central portion of the site: approximate increase in building height of 2m with no 6m setback above the 18m street wall height (as required by DCP and Conditions 12 & 13 of Concept Approval);
- Southern portion of site: Significant increase in building height (up to 10m) on the southern portion of the site, on the Lyrique Theatre and Masonic Hall sites. Additions to the King Street terraces are below existing roof heights.

Table 7 below contains all view-related controls within Part 6.01 'Newcastle City Centre' of NDCP 2012:

Table 7: Summary of View-related controls in NDCP 2012 (6.0 Locality-specific provisions)

6.01.02 Character areas	
<i>F. East End</i>	
<i>Principles - East End</i>	<p><i>Significant views to and from Christ Church Cathedral are protected, including views from Market Street and Morgan Street. Views to Hunter River are protected and framed along Market Street, Watt Street and Newcomen Street.</i></p> <p><i>Vistas that terminate at significant heritage buildings are protected, such as Fort Scratchley</i></p> <p><i>Heritage items and their setting are protected. New buildings respect the setting of heritage buildings.</i></p>
6.01.03 General Controls - Building Form	
<i>A6. Heritage buildings</i>	
<i>Performance criteria</i>	<i>A6.1 Development conserves and enhances the cultural significance of heritage items</i>
<i>Acceptable solutions</i>	<i>Views and sight lines to heritage items and places of historic and aesthetic significance are maintained and enhanced, including views of the Christ Church Cathedral, T&G Building, Newcastle Courthouse and former Post Office.</i>
<i>B2 Views and vistas</i>	
	<i>The most important views in Newcastle tend to be along streets leading to the water or landmark buildings, including Christ Church Cathedral and Nobby's head</i>
<i>Performance criteria</i>	<i>B2.1 Public views and sight lines to key public spaces, the waterfront, prominent heritage items and landmarks are protected.</i>
<i>Acceptable solutions</i>	<p><i>New development protects the views nominated in Figure 6.01-23.</i></p> <p><i>New development in the vicinity of views to Christ Church Cathedral nominated on Figure 6.01-23 must ensure that vistas of the Cathedral's tower, roof-scape and pinnacles of the buttresses are preserved.</i></p> <p><i>Open space and breaks in the built form align with existing streets and view corridors as identified in Figure 6.01-23.</i></p> <p><i>A visual impact assessment accompanies the application and confirms that this performance criteria has been met.</i></p>
6.01.04 Key Precincts	
<i>B. Hunter Street Mall</i>	
<i>Objectives</i>	<i>Protect views to and from Christ Church Cathedral.</i>
<i>Performance criteria</i>	<i>B.02 Significant views are protected (refer to section B3)</i>
<i>Acceptable solutions</i>	<p><i>Development between Thorn and Morgan Street provides an opening on the Market Street alignment to preserve views of Christ Church Cathedral.</i></p> <p><i>Figure 6.01-23 Hunter Street Mall precinct plan indicates "Important view corridor to Christ Church Cathedral."</i></p>

Figure 8: Extract of NDCP 2012 – Figure 6.01-23 View Axis to Christ Church

The following (summarised) excerpts are provided by the applicant in relation to view impacts and relationship to the above DCP controls and relevant views and vistas for consideration (SJB Planning) in the Statement of Support (p68-78, May 2018) and correspondence (on DA-2018/00354) dated 20 December 2018. It should be read in conjunction with the applicant's document 'Views Analysis - Stage 2 prepared by SJB Architects' (Version 7 dated 20/12/18 – refer **Appendix F**^[PE11] of the concurrent report for the modification to the Concept Plan), which is an analysis of public views over the site. The View Analysis provides a comparison of the view impacts (as viewed from various locations) resulting from the approved building envelopes under the Staged concept DA (shown in yellow) and the additional or altered view impacts arising from the proposed modified heights/proposed buildings on Stage 2 (identified with a red line^[PE12]). Refer to **Appendix F** of the separate report on the proposed modification to the concept plan report, for each viewpoint referenced below.

Views corridors to the Harbour

- Pages 5 and 6 of the View Analysis – Stage 2 illustrate that the proposed buildings will have a negligible impact on the views to the harbour along Wolfe Street, compared to the approved Staged DA. The additional building massing will obscure parts of the sky and distant views of Stockton. There are no north-south views to the harbour from Thorn Street (near King Street) (obstructed). All other key view corridors will be unaffected.
- As shown in (Page 6 of the View Analysis – Stage 2), the proposed Northern Building will result in a slight reduction in the views of Stockton from the approved Staged DA, however the view corridor is maintained. The red outline of the proposed Lyrique Theatre/Masonic Building is visible below the height of the Northern Building.

Views to Christ Church Cathedral

- Prominent views to Christ Church Cathedral identified in the DCP are significant and need to be preserved. The View Analysis indicates that key distant vistas to the Cathedral from Stockton and Fort Scratchley will be preserved with the proposal. The identified key views of the Cathedral from street and public spaces within the city centre will also be preserved.
- Distant views from Stockton and Fort Scratchley show the proposed new buildings sit below the sight lines to the Cathedral, which remains the tallest and most prominent feature.
- As detailed in the assessment of the NLEP 2012 height controls, in Section 5.4.2, the proposal has a maximum height of RL33.600 to the roof terrace lift overrun located on the Northern Building and a predominant roof height of RL29.7. The proposed buildings are well below the ridge of the Cathedral, which is at RL58.6 and sit comfortably within the existing city skyline view. This is illustrated in (page 3 and 4 of the View Analysis – Stage 2), which shows the distant views towards the site from Griffith Park at Stockton and Fort Scratchley. Views of the proposal from Stockton are partially obstructed by the Hunter Mall Chambers building located at 175 Scott Street. When viewed from Fort Scratchley the proposal sits below the approved envelope of the Stage 1 DA (2017/00701) view of the proposal.
- It is also apparent from these images that the proposed increase in building height from the approved Staged DA building envelope will be indiscernible within both views.

- From the foreshore along certain north-south streets, views of the Christ Church Cathedral are enjoyed. This includes the view from Hunter Street Mall (near the corner of Morgan Street) and Wharf Road (corner Market Street). While these views fall within the wider Staged DA site, they are not impacted by the Stage 2 proposal. (Page 26 of the View Analysis – Stage 2) illustrates that the Stage 2 building envelopes sit outside the view corridor of the Cathedral from Market Street. This view corridor sits within the Stage 3 site.
- The proposal does not impact on key views of the Cathedral from Morgan Street, which is located east of the site.
- As illustrated in (Page 22 of the View Analysis – Stage 2), the Stage 2 proposal will have some additional impacts on views of the Cathedral from Queens Wharf Ferry Jetty and the foreshore park, from the approved Staged DA. These impacts are generally confined to the north-west of the site which is not identified as a key view or vistas in the NDCP. Additionally, the existing building to the north of the site on the corner of Scott and Wolfe Street, is subject to a 20m building height limit under the NLEP 2012. Given this is not identified as a key view or vista of the Cathedral and the view loss is commensurate with view loss that would result with the development of the adjacent sites in accordance with current height controls, as such, the view impacts are considered reasonable.
- As shown in (Page 22 of the View Analysis – Stage 2), while the proposal will reduce the visibility of the Cathedral from the approved Staged DA building envelope, this is not a key view identified in the DCP. Furthermore, views of the Cathedral from this location would be obscured if the buildings to the north on the corner of Wolfe and Scott Street was redeveloped up to the 20m building height limit applying under the NLEP 2012.

Views from the Cathedral

- The lower levels of the Cathedral Gardens feature views across the East End's roofscape towards the harbour and Stockton. While the proposed buildings will be prominent elements in the views from the gardens to the north-west as illustrated in (Page 8 of the View Analysis – Stage 2), and will be viewed alongside and against the back drop of the approved buildings on Stage 1.
- (Page 18 of the View Analysis – Stage 2) also illustrates that the proposal will result in a minor reduction in views of the harbour towards the north-east.

Miscellaneous Views

- The proposal will be visible in views to the north along Wolfe and Thorn Street and King Street from the east and west. As illustrated in (pages 16, 14 and 19 of the View Analysis – Stage 2).
- There is minimal visual impact to the views along Hunter Street, from both the east and west, due to the existing tree cover, existing built form and the retention of existing façade of the former Royal Exchange building within the proposal.

Applicant's Response to Comments from Heritage Council

The following comments are provided in relation to these impacts and in response to the comments from the Heritage Council:

- The additional view impacts are confined to the north-west of the site which is not identified as key views or vistas in the NDCP. The site located directly to the north on the corner of Wolfe and Scott Streets, known as No.1 Wolfe Street, is subject to a 20m building height limit under the NLEP 2012. Views of the Cathedral from these locations would be obscured if the building at No.1 Wolfe Street was redeveloped in accordance with the allowable 20m height limit applying.
- Given the affected views are not identified as a key view or vista of the Cathedral in the NDCP and the view loss is commensurate with the view loss that would result from development of the adjacent sites under the current NLEP 2012 20m controls, the view impacts are not considered unreasonable.
- The reference to the comments from the Heritage Council Approvals Committee in February 2016, relates to the previous heights that applied to Blocks 1 and 4 of the Concept DA site and a historical development application which sought to realise these heights.

Blocks 1 and 4 had height limits of up to RL58.9. Under the current LEP heights and the Concept DA, a maximum height limit of RL42 applies to Blocks 1 and 4. Having regard to the above, the reference to Heritage Council Approval Committee's comments in February 2016 is not relevant to the Stage 2 proposal as they relate to historic height limits on Blocks 1 and 4 that predate the current height limits under NLEP, and those ultimately approved in the Concept DA in December 2017.

Conclusion: The proposal will alter the view-scape to and from the Newcastle East End. In the context of the city centre location, design excellence process and other planning considerations, on balance, the proposed building envelopes and resultant impact to views is considered to be acceptable. The proposed modifications to the Block 2 building envelopes preserve key view corridors as identified in the DCP, including to/from the harbour and Cathedral. It is noted that the Heritage Consultant that assessed the application for CN also confirmed the proposal will retain primary views to the Cathedral (ie key DCP views and vistas are not impacted).

ii. Aboriginal Cultural Heritage

The Stage 1 Application was accompanied by an Aboriginal Cultural Heritage Assessment Report (ACHAR) prepared by Umwelt in 2017, which was followed by the issuing of an Aboriginal Heritage Impact Permit (AHIP # C0003431) by the Office of Environment and Heritage on 21 March 2018. An ACHAR has now prepared by Umwelt for the Stage 2 development which provides advice regarding the likely key Aboriginal and historical archaeological requirements and associated processes which will apply to any proposed future redevelopment of the subject site, in addition to key risks.

Consultation was undertaken concurrently for Stage 1 and Stage 2 in accordance with Part 8A, Clause 80C of the *National Parks and Wildlife Regulation*, with 14 Aboriginal parties registering an interest in ongoing consultation regarding the project. An on-site meeting that was held was attended by two registered Aboriginal parties, being Divine Diggers Aboriginal Cultural Consultants and Lower Hunter Aboriginal Incorporated. A copy of the draft Stage 2 ACHAR was provided to all registered Aboriginal parties on April 2018. Umwelt note that during their previous assessment of Stage 1-4 in 2007 that registered Aboriginal parties identified that the Newcastle CBD *"is an important location for Aboriginal people due to its association with key physical and spiritual aspects of Aboriginal culture, including key oral traditions relating to this region"*.

Umwelt conclude that the project area is located in an environmental context which would have allowed Aboriginal people ready access to a range of resources but that the project area has been the subject of substantial disturbance which has impacted on archaeological deposits at the upper portion of the soil profile. However, archaeological deposits may still be preserved at a considerable depth. Further, the ACHAR confirms that a search of the Aboriginal Heritage Management System indicates that there are two potential archaeological deposits in the immediate vicinity of the project area, with the first being located to the north-west of the project area. The site area of the second potential archaeological deposit encompasses the project area and the area which was subject to AHIP#C0003431.

GML Heritage has undertaken a review of the submitted Stage 2 report and advise of the following:

"An Aboriginal Heritage Impact Permit (AHIP) is required to be obtained the Office of Environment and Heritage (OEH) under Part 6 of the National Parks and Wildlife Act 1974 prior to the commencement of ground disturbance works. The AHIP is to include provision for the completion of Aboriginal archaeological investigations in the form of test excavations and (if required) further salvage activities.

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

This approach is consistent with the approach that was adopted of the Stage 1 development and any consent which is issued for Stage 2 can be conditioned accordingly. [PE13]

iii. European Heritage (Built and Historical Archaeology)

Schedule 5, Part 1 of NLEP 2012 lists that the Stage 2 site is located within the Newcastle City Centre Heritage Conservation Area. Block 2 also contains the former Lyrique Theatre on Wolfe Street (incorporating the former Masonic Hall and house at 98 King Street) as locally-significant Item I423. The subject site is not State heritage listed. Several heritage items are located in the vicinity of the site, including the Christ Church Cathedral to the immediate south, which is listed on the State Heritage Register. Table 8 below listed the heritage items and contributory buildings on the site:

Table 8: Heritage Items and Contributory Buildings on the Site (Source GML Heritage, 2019)

Name	Address	Significance	Listing	Item No.
Former Masonic Hall and former Lyrique Theatre	98 King Street (Wolfe Street)	Local	NLEP 2012	I423
Retaining wall and sandstone steps	Wolfe and King Streets	Local	NLEP 2012	I477
Former Soul Pattinson Chemist	151 Hunter Street	Contributory Building		
Former Royal Exchange Hotel	53 Hunter Street	Contributory Building		
Residence	104 King Street	Contributory Building		
Medical Centre	106 King Street	Contributory Building		
Medical centre	108 King Street	Contributory Building		
Restaurant	110 King Street	Contributory Building		
Former RAA EFA Court	14 Thorn Street	Contributory Building		

The Stage 2 development will include the following works:

- Conservation and adaptive reuse of the former Lyrique Theatre/Masonic Hall;
- Conservation, adaptive reuse and alterations/additions to the terrace houses at 98-100, 102, 104, 108 and 110 King Street;
- Retention of the facade of the former Royal Exchange (at 153 Hunter Street) and the Soul Pattinson Chemist building (at 151 Hunter Street) with vertical additions for residential use.

The Stage 2 application was also accompanied by the following documents that are considered to satisfy the provisions of Clause 5.10 of NLEP 2012 'Heritage Conservation':

- Heritage Impact Assessment, prepared by City Plan, Rev 02, dated 21.05.2018;
- Conservation Management Plan prepared by City Plan Rev 07 dated 18.05.2018;

As heritage conservation/management is an important aspect of this application, Council engaged GML Heritage to review the application. GML Heritage noted that the application includes changes to the maximum building height and building envelopes for Block 2, including:

- *Increase in height over the northern part of the site to allow an eight storey envelope;*
- *Increase in the height and building envelope over the Lyrique Theatre/Masonic Hall to accommodate five levels of apartments, resulting in a seven storey building envelope. An increase in height is also proposed over the former entrance of the masonic hall in King Street;*
- *The building envelopes at the rear of the terraces along King Street have been altered to accommodate additions to the rear of the terraces. The envelopes sit below the ridge height of the existing terrace buildings.*

GML Heritage reviewed the design and were of the opinion that the development would have a detrimental heritage impact “...as the proposal does not ensure the scale of development makes a positive contribution towards the desired built form...”. Accordingly, GML recommended that the design be amended to reduce the height of development above the Lyrique Theatre; increase setbacks above heritage buildings; and to reduce the height of the addition above the northern part of the site to not extend higher than the corner parapet of the former Royal Exchange.

In response to this request amended plans were submitted, together with correspondence prepared by City Plan Heritage (dated 12 December 2018). The key amendments to the proposal in relation to heritage were:

- *Reduction of the scale of additions over the former Royal Exchange Hotel by one storey, with an increase in setbacks*
- *Changes to the facade treatment of the Soul Pattinson building to reduce its perceived height*
- *Reduction in the footprint of the addition over the Masonic Hall and Lyrique Theatre on the southern part of the site, including increased setbacks above the heritage items and the terraces in King Street.*

Supplementary advice was provided by GML Heritage (dated 4 February 2019), which is contained in **Appendix G.** [PE14] This advice confirms the following with respect to the amended plans:

Southern Building:

The reduction in the height and footprint of the addition above the Masonic Hall and Lyrique Theatre has reduced the impact of the additional bulk in the southern section of the site. The historic buildings will have greater prominence within the streetscape due to the increased setbacks of the building above, in relation to the original proposal. Although there is still some heritage impact caused by the addition above the heritage items, it is now considered acceptable within the context of the overall development and the benefits of the conservation works and reinvigoration of the heritage items included in the proposal.

The additional information and details provided regarding the treatment of the northern facade of the heritage items and the laneway has provided a clearer description and greater justification for these works. This part of the proposal is considered to be acceptable, subject to recommended conditions of consent regarding interpretation and conservation works.

Northern Building:

The reduction on the height above the Royal Exchange building has made a significant improvement to the northern part of the development, by retaining the landmark qualities of the Art Deco corner. The additional information regarding the remaining internal fabric and further details of the proposed works to the interior of the former Royal Exchange Hotel has provided appropriate justification for these works. Given the previous modifications to the interiors and lack of remaining original layout and fabric, the proposed internal works are considered acceptable, subject to appropriate conditions for the protection of the structural stability of the building and facades during construction

The changes to the buildings heights and façade treatments across the site has assisted in varying the height of the building at the northern end of the site to better reflect the varied heights of historic development in the Conservation Area.

Views to Cathedral:

The Heritage Council had raised concerns about the loss of views of the Cathedral Park from the harbour and foreshore due to the increase in height proposed in the Stage 2 DA and Modification to Concept Approval. However, the additional impacts on views of the Cathedral are confined to the north-west of the site, from locations that are not identified as key views or vistas in the NDCP. While some limited views of Cathedral Park from the harbour would be

impacted, these impacts were largely envisaged by the Concept Approval and are considered to be acceptable given that the primary views of the Cathedral are retained. The amendments to the proposal may allow some increase to views of the Park from limited locations.

Conclusion - Stage 2 DA:

In conclusion, the Stage 2 DA proposal (as amended) complies with the provisions of Clause 5.10 (Heritage and Conservation) of the NLEP 2012 and generally complies with the relevant heritage controls in the DCP 2012. Although the proposal includes non-compliances with some detailed heritage sections of the DCP, many of these are not relevant to this development. The proposal is considered to comply with the general aims and objectives of the DCP, and includes conservation works to and revitalisation of the listed buildings and contributory items with significant public benefit. The proposed development is guided by an approved concept proposal and has been subject to detailed input from Council's Urban Design Consultative Group. The development (as amended) is considered, on balance, to be acceptable on heritage grounds subject to a number of detailed heritage conditions.

Private Views

- *It is acknowledged that the proposed modifications to the heights and envelopes has the potential to impact upon the private views enjoyed by residential properties to the south and south-west around Church and Wolfe Streets and to a lesser extent, the south east of the site stepping up to and along the ridge line at Church Street.*
- *A number of properties to the south of the site, because of topography, and depending on proximity and location of other buildings, enjoy views across the East End of Newcastle toward the Harbour, and in some cases Nobby's. These views will be potentially impacted.*
- *A significant change in the built form of a city has the potential to result in some impacts.*
- *The planning framework and approved Staged DA contemplates significant change to the built form of the city to facilitate its revitalisation.*
- *While a relatively small number of private views may be impacted, the catalyst renewal that the development will provide, is of greater public value to the City of Newcastle.*

Conclusion: The proposal will alter the view-scape to and from the Newcastle East End. In the context of the city centre location, design excellence process and other planning considerations, on balance the proposed building envelopes and resultant impact to views is considered to be acceptable. The proposed modifications to the Block 2 building envelopes preserve key view corridors as identified in the DCP, including to/from the harbour and Cathedral. It is noted that the Independent Heritage Consultant that assessed the application for Council also confirmed the proposal will retain primary views to the Cathedral (ie key DCP views and vistas are not impacted). Impacts to some views enjoyed from private properties are also anticipated by the modified building envelopes on the southern portion of Block 2. However, in the context of the already-approved built form on the northern portion of Block 2, the potential impacts are considered to be limited and within the scope of the emerging scale of the Newcastle East End.

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

Figure 6.01-29 (Hunter Street Mall Precinct Plan) contained in Section 6.01.04 of the DCP illustrates the maximum street wall heights that are required within the Newcastle East precinct. This plan confirms that the following street wall heights are required for Block 2:

- 18m for the Thorn, Hunter and Wolfe Street frontages north of the mid-block pedestrian walkway;
- 16m for the King Street Terraces (cnr Wolfe and King Streets);
- No Street wall heights apply to the Lyrique Theatre/Masonic group of buildings.

Section 6.01.03 of the DCP confirms that street wall heights are "an important element to ensure a consistent building scale in streets that have a mix of uses, heritage items and final development". They provide an "appropriate street-width to building height ratio". Clause A1.01 confirms that any development above street wall heights must have a minimum setback of 6m.

Conditions 12 and 13 of the approved Concept DA Development Consent (2017/00701) also required the development above street wall heights and heritage items to have a minimum setback of 6m.

Proposed Block 2 Street Wall Height and Setbacks

The application seeks to revise the street wall heights and 6m setback (above street wall height). The initially-submitted design was considered unsatisfactory having regard to the building envelopes and massing (including street wall height and setbacks) of the heritage items (Lyrique Theatre/Masonic Hall), and contributory former Royal Exchange Hotel building. The revised design is discussed in this report having regard to these controls and is a significant improvement on the built for outcome within the precinct, in particular with respect to heritage impacts.

Table 9 below is a summary of the compliance with the DCP controls and Conditions 12 and 13 of Development Consent DA-2017/00701.

Table 9: Comparison of Block B Required and Proposed Street Wall Heights and 6m setbacks		
Block B Location	NDCP 2012 Street Wall Height (Provided)	6m Setback required?
<i>Northern half of site (north of pedestrian link)</i> Includes contributory heritage buildings Former Royal Exchange Building NW (corner Wolfe and Hunter Sts) and Soul Pattinson building (Hunter St)	18m required Provided: 23-27m Does not comply NB. The former Royal Exchange building already has a street wall height of approx 20m (excluding corner element of approx. 23m)	Yes. Above 18m and above heritage facade on NW corner Wolfe and Hunter Sts Provided: 0m setback Does not comply A 2m setback is provided to the upper level (L6) of the former Royal Exchange building of 2m Does not comply
<i>Southern Half of the Site</i> (King Street terraces)	16m Complies (existing)	Not required as remains less than street wall height
98-100 King Street (cnr Thorn St)	N/A (existing)	Not required as remains less than street wall height
Lyrique Theatre building Wolfe Street	N/A Existing facade retained: (0m setback and extends over road reserve)	Yes Level 4 (partially obscured by existing facade): 5.1m to new building facade (minor non-compliance) Levels 5 & 6: 4.45m to balcony edge and 6.45m to building facade Level 7: 9m to building facade (non-compliance to balconies)
Masonic Hall Building Thorn Street	N/A Existing facade retained (0m setback)	Yes Levels 5-6: .2m to balcony edge and 3.8m to facade Level 7: 4.2m to facade Does not comply

The SEE accompanying the DA (p127-128), by SJB Planning, justifies the proposed street wall heights and setbacks as follows:

The departures to the street wall height controls are considered acceptable as detailed below:

The street wall heights were the outcome of a robust, site specific design excellence process led by CKDS Architects, City Plan Heritage Architects, SJB Planning and Aspect

Landscape, with SJB Architects in a peer review roll. The process involved the detailed analysis of options and testing of design approaches for the site. This was an iterative process that included presentations to the Council's Urban Design Consultative Group (UDCG) on five (5) separate occasions. The design options were refined and amended in response to the UDCG feedback.

In this regard, the street wall heights were informed by careful consideration of the character and significance of the existing heritage buildings and facades on site and within the conservation area, the existing and desired built form, and the established, variable street wall heights that characterise the East End. This is reinforced by following extract of the SEPP 65 Apartment Design Guide Verification Statement prepared by CKDS Architects:

'The proposed development carefully navigates the varied conditions of the site through sensitive additions between, and above, the existing heritage buildings. Together with the reinstatement and upgrade of the finer grain buildings that define the King Street frontage the proposal considers the historical layering as well as the future aspiration of the East End Redevelopment

The development maintains a zero setback for the proposed built form adjacent to the existing heritage fabric. This integrates the new fabric into the existing fabric and maximises activation on the ground plane.

The proposed built form above heritage elements (Royal Exchange, Soul Pattinson & Masonic Hall) has been setback to the inside face of the existing parapet. The built form above the Lyrique Theatre facade is set back further due to ornate nature of the heritage façade and aligns to the terrace buildings on King Street.

Key to the proposal is the integration of new built form above and around existing heritage buildings. Cues are taken from the existing to inform street frontage heights, skyline articulation, corner configuration and massing strategies.'

The Conservation Management Plan (CMP) prepared by City Plan Heritage (refer to Attachment 2) has informed the design of the proposal and the relevant policies have been implemented in the design. In this regard the vertical extensions above the heritage facades are consistent with therelevant policies of the CMP (Policy 18 and 49)"

Refer also to the assessment within the heading 'Heritage Impacts' which confirmed the increased setbacks forming the current design will have acceptable impact in terms of heritage.

The revised design, with accompanying documentation (shadow, view analysis etc) confirmed that the proposed street wall heights and reduced setbacks do not result in unreasonable additional impacts (also discussed under those headings of this report).

The design excellence process considered street wall heights in detail, and while too lengthy to provide in this report, it is considered that significant attention to the street wall heights and built form of the buildings (in particular heritage-listed and contributory building) were addressed, resulting in a suitable outcome.

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

v. Overshadowing

The Stage 2 DA is accompanied by Sun Studies prepared by CKDS Architecture which demonstrate the impact of overshadowing mid winter (June 21) of the proposed buildings.

Additional information was sought from the applicant, particularly to confirm whether the increased height above the Lyrique Theatre/masonic building would result in an increased and unacceptable level of overshadowing on the King Street terraces or any other buildings. The submitted Sun Studies now provide a comparison between the impacts previously identified for this block in the approved Concept DA; the impacts of an LEP compliant DA; and the impacts associated with the current scheme. This analysis demonstrates the following with respect to overshadowing of adjacent properties:

- The Stage 2 development will overshadow part of the Stage 1 development to the south west at 9am on June 21, together with a small portion of the buildings at 115 King Street. However, such overshadowing will only occur in the early morning period, with all such properties continuing to retain 3 hours of sunlight on June 21. Further, the increased height which is proposed in the Stage 2 development will result in only a minor increase in overshadowing, with the additional shadow restricted to the road reserve.
- To the south, additional overshadowing throughout the day is concentrated in the road reserve and will not impact further on the Christ Church Cathedral site.
- To the southeast there will be additional shadow cast over the southwestern corner of the Block 3 development in the later afternoon period however the impact is not considered to be significant and should be able to be addressed through considered placement of windows and private open of the corner apartments within this building.

The submitted Sun Studies also demonstrate the following with respect to overshadowing of the King Street terraces (which are to be renovated/extended):

- The existing Lyrique/Masonic building currently significantly overshadows the terraces at No. 102, 104, 108 and 110 King Street. The upper level additions to the Lyrique/Masonic Building will cast additional shadow over the extended and renovated terraces on such sites. It is noted that such terraces were overshadowed by the approved Concept DA, however the approved development did not incorporate rear extensions to the terraces, relocated courtyards to the placement of additional apartments in the space between the terraces and the masonic Lyrique building.
- The Stage 2 development, which proposes increased height in the southern section of the site, will result in an increased level of overshadowing of such buildings, with minimal sunlight access obtained throughout the day. While any additional overshadowing of such properties is not an ideal outcome it is noted that the direct sunlight which is currently obtained by such buildings is primarily restricted to the roof of the buildings and a limited section of the rear wall for part of the day (including the first floor of No. 104 between 9am and 12pm). The rear walls of such buildings contain a limited number of windows, with No. 110 King Street currently containing a commercial addition to the rear. It is noted that sunlight access will continue to be provided to the western windows of No. 110 King Street between 12pm and 3pm.
- Further, the building at No. 102 King Street, which was the former entrance to the Masonic Hall, is intended to be used as lobby space for the southern building. Sunlight access to the residential apartments above this lobby has been considered within the SEPP 65 assessment within this report.
- The two storey building located at No. 98-100 King Street was previously used for commercial purposes, however the Stage 2 application proposes to convert this building for residential use. Additional apartments associated with the Lyrique/Masonic building will extend into the rear yard area of this site, thereby exacerbating a loss of sunlight into the terraces. The loss of sunlight access is considered to be significant and is a result of the proposed additional levels above the Lyrique /Masonic Building and the infill apartments between the terraces and the theatre. To compensate for the loss of sunlight access the application seeks to provide four additional windows in the eastern wall of this building. Such windows, while not obtaining sunlight access due to the impact of the Stage 3 development, will allow for additional cross ventilation and an improved outlook to the street.

The submitted Sun Studies also demonstrate the following with respect to overshadowing of the doctor's surgery located at No. 106 King Street (which does not form part of the development site):

- This property is currently significantly overshadowed by the Lyrique/Masonic building, including the courtyard and rear wall of the building, as shown in **Figures 9-11**. 106 King Street is bounded by red in Figures 9-11.
- While concerns regarding the height of the proposed additions to the Lyrique Theatre/Masonic Hall have been raised by the occupant of No. 106 it cannot be argued that this increased height will result in an unreasonable loss of sunlight, particularly to the courtyard area. **Figures 9-11** demonstrate the minimal loss of sunlight as a result of the development which predominantly equates to an increase at the roofline in the worst scenario being June 21.

Figure 9: 9AM- Comparison of Overshadowing Impacts on King Street Terraces under Existing Situation and With Proposed Additions to Lyrique Theatre/Masonic Hall

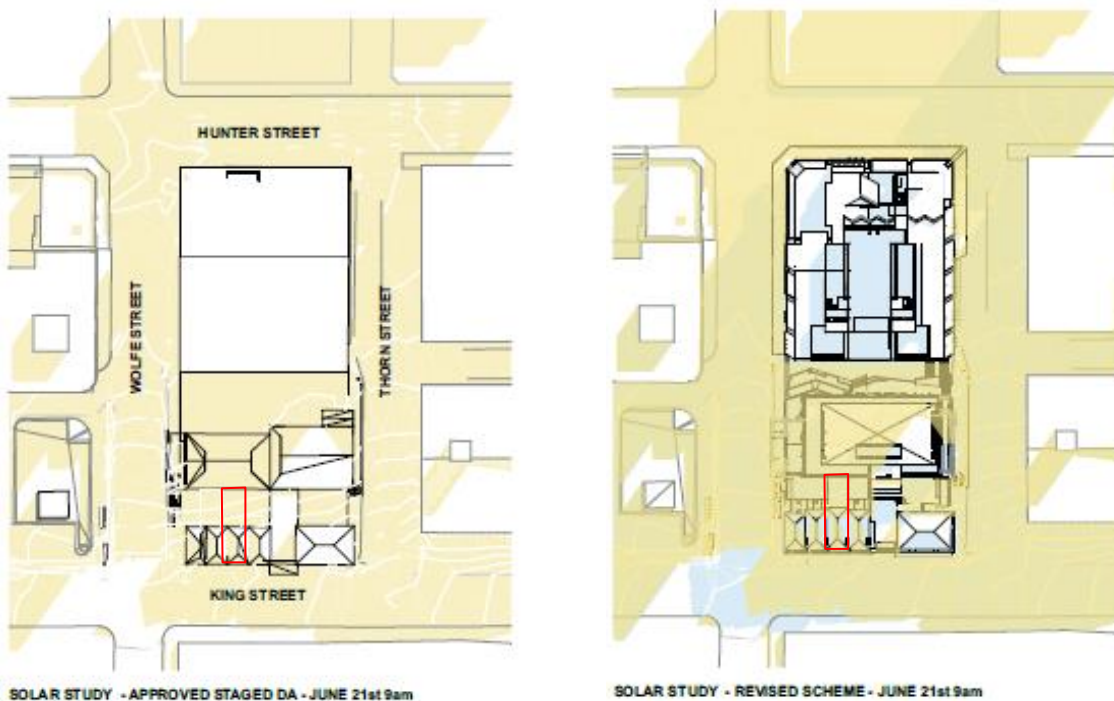


Figure 10: 12 Midday - Comparison of Overshadowing Impacts on King Street Terraces under Existing Situation and With Proposed Additions to Lyrique Theatre/Masonic Hall

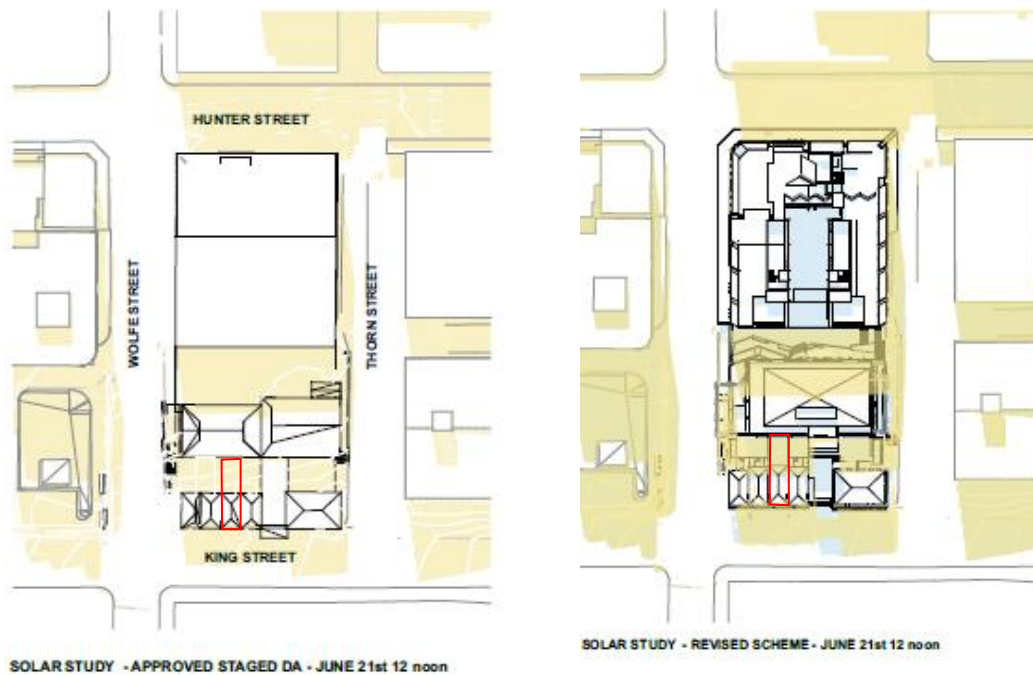
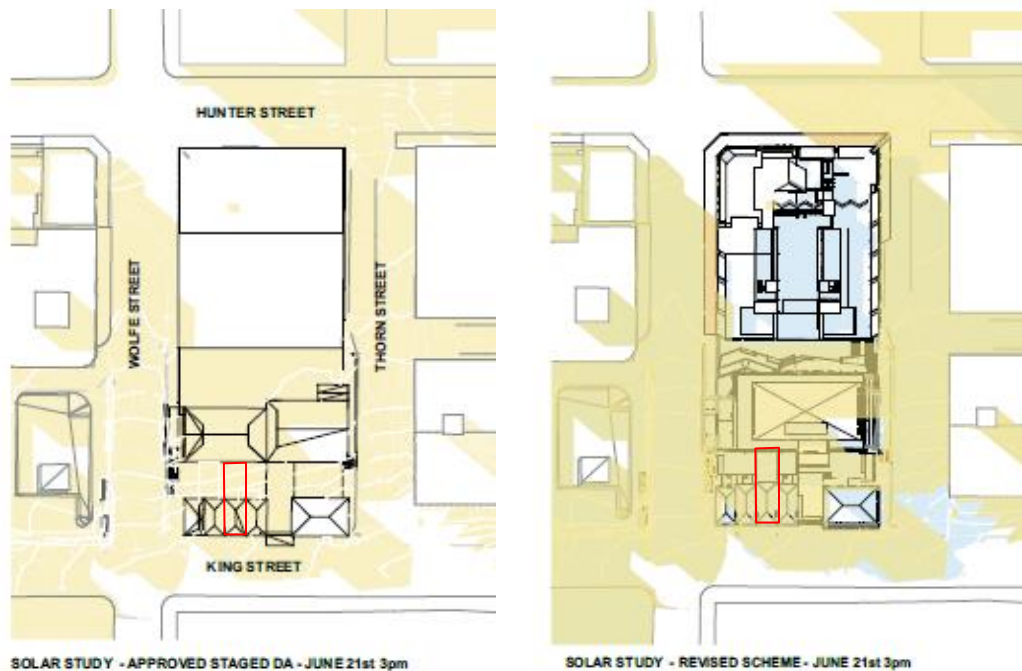


Figure 11: 3PM- Comparison of Overshadowing Impacts on King Street Terraces under Existing Situation and With Proposed Additions to Lyrique Theatre/Masonic Hall



On balance it is considered that the improved amenity outcomes achieved by the renovation and extension of such terraces; the reinstatement of balconies on King Street; the provision of more useable areas of open space; and the outlook to the Cathedral warrant the variation sought. Further, the level of sunlight access achieved by the through-block link, while not ideal, is improved from that identified in the approved Concept and is also considered to be acceptable.

vi. Public Domain and Publicly Accessible Private Land

Consistent with the original and revised Concept Proposal, the proposed landscape scheme for the site and public domain areas is set out in a Landscape Concept and Stage 2 Landscape Statement (by ASPECT). The key components of this Strategy are listed below:

Through-site Link and Masonic Court: will be retained in private ownership that is accessible to the public. Aspect advise that *“this pedestrian connection facilitates an east-west through site link as well as creating areas for people to stay and occupy the space in a variety of ways. The space rationalises the level change associated with the adjacent buildings, connecting the proposed lower retail frontages to the upper Masonic Theatre frontage. Between these two levels, a stepped landscape treatment provides opportunities for people to sit and enjoy the space while softening the hard edges through a lush planting palette.”*

Streetscape and Public Domain: *The intended upgrades of King, Thorn and Wolfe Streets includes installation of new paving, lighting and furniture in accordance with the City of Newcastle City Centre Public Domain Guidelines. There are currently no existing street trees within the public domain of these streets however the addition of new street trees has been explored on each street, although the presence of building awnings as well as narrow footpaths with steep slopes limits opportunities for this to occur.*

Furniture and Fixtures: *The proposed public domain works for the development includes the provision of new furniture and lighting within the publicly accessible through site link.*

Public Art: *The design envisions that public art will be incorporated as a considered, holistic strategy that encompasses the opportunities that exist within the building and public domain.*

Consistent with the approach adopted for Stage 1, the public domain works for Stage 2 will require the design and construction of works along Hunter, King, Wolfe and Thorn Streets at no cost to Council, with such works to be in accordance with Council's guidelines and design specification. The applicant has advised that such works will comprise:

- Road shoulder pavement
- Kerb and gutter replacement
- Footway formation
- Foot paving
- Associated drainage works
- Street tree planting in gap-graded structural soil vaults
- Retaining walls and vehicular safety barrier fencing
- Street furniture - bins, bicycle racks etc

Council's engineer has advised that as the extent of works to be undertaken in the public domain has not be fully documented, a condition should be attached to any consent requiring a full upgrade of the public domain across each frontage of the site. It is also recommended that conditions be applied to any consent, consistent with conditions C19 to C25 of the Stage 1 DA (DA2017/00700) relating to works within the public domain. Further, details will be required for proposed public artwork per or a contribution payable, equivalent to 1% of the capital cost of development. A section 94 contribution, equivalent to 2% of the development cost will also be payable.

vii. Social Impacts

The Concept Application required the submission of a Strategic Social Plan at the time of submission of the Stage 1 development application which addresses the potential impacts on residents and businesses; address residential amenity and security; details how social issues

will be addressed; details community benefits; details the community consultation process and includes a Community Engagement Plan for all stages of the project. In response to this, a Strategic Social Plan was prepared by GHD in June 2017 in relation the four street blocks that comprise the Newcastle East End development as an addendum to the Social Impact Assessment which was prepared in 2015.

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

Design and Planning

- *Develop a Public Art Plan for implementation during construction;*
- *Develop a wayfinding strategy for staged implementation during construction and for the project at completion;*
- *Ensure commercial/retail spaces support accommodating a small format supermarket and childcare centre;*
- *Public domain provision of inclusive infrastructure (e.g. seating, bubblers, public toilets);*
- *Planning for public domain areas to prioritise inclusive public uses over alfresco dining;*
- *Ensure NBN accessibility for all public and private spaces.*

Consultation

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

Project Implementation

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

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

The Stakeholder engagement plan was used for the consultation activities for the Stage 1 DA, however, the plan will also be used to inform the stakeholder engagement for subsequent stages, including this Stage 2.

Condition 57 of the Concept Approval (DA2017/00701) states that any residential component within the development is to provide for a range of dwelling sizes and dwelling types and that consideration shall be given to the inclusion of seniors housing and affordable housing schemes. While a range of dwellings sizes and layouts are proposed within the Stage 2 development, the applicant does not propose the inclusion of either affordable or seniors housing within Stage 2, as discussed below:

Housing Type: The Stage 2 development includes 37 x 1 bedroom (31%), 77 x 2 bedroom (58.7%) and 7 x 3 bedroom (6%). While the component of 3 bedroom apartments is low, it is considered to be acceptable given the anticipated occupancy rates in this inner city location.

Affordable Housing: The Stage 2 development application does not include the provision of affordable housing. While the Newcastle Affordable Living Plan (2018) seeks to facilitate affordable housing projects in accessible locations including the city centre, there is currently no legislative requirement requiring the provision of such housing.

Seniors Housing: The Stage 2 development does not include designated seniors housing but the applicant has advised that the demand for seniors housing can be met through the provision of adaptable housing, with a total of 12 (10%) of the proposed dwellings being adaptable. Further, a total of 25 dwellings will satisfy the Silver Level Housing rating.

Supermarket: The Stage 2 application does not accommodate a supermarket but includes 1,510m² of retail and commercial space and at the first floor level of the Lyrique Theatre/Masonic Hall, which can accommodate a range of retail and commercial functions^[PE15]. A condition has been recommended that requires separate application for the use of these spaces.

viii. Safety and Crime Prevention

The Concept Approval (condition 50 of DA2017/00701) requires the submission of a formal Crime Risk Assessment for each stage of the development. Accordingly, the Stage 2 application is accompanied by a Crime Risk Assessment prepared by GHD (dated May 2018) which considers the type and magnitude of crime likely to be committed and appropriate CPTED strategies for the project.

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

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

- *Courtyard Level 1:* This courtyard may act as vantage point for intruders to gain access to other levels of the building. Doors should be electronically access controlled and a video intercom system provided.
- *Lobby/car park and lift access:* At the pedestrian entry and egress points from both the street level and basement car park provide electronic access control; video intercom system and Close Circuit Television (CCTV) surveillance (recorded to a dedicated digital video recorder). It is also recommended entry doors be visually permeable and at least 2m in height.
- *Laneway:* Provide adequate lighting of the area, 24 x 7 recorded CCTV surveillance of the area and advisory signage.
- *Vehicular entry/exit to carpark:* Should be controlled via the use of an aluminium sectional door, with electronic access and possibly a steel roller shutter door for additional strength.
- *Loading dock:* Secure with a commercial steel roller shutter door. Adequate lighting and CCTV should be provided to the adjacent public footpath areas

The recommendations of this report will be included as conditions of consent, if approved^[PE16].

ix. Traffic, Parking & Access

Refer to the separate report on the modification to the Concept Proposal for a background on the required car parking provision the Newcastle East site, which differs from the standard development control requirements/rates.

Both the application to modify the approved Concept DA and the Stage 2 development application were accompanied by documentation by GTA Consultants that addresses traffic, parking and intersection impacts.

In relation to parking, the proposed development provides the following number of car parking spaces which is in accordance with Condition 19 of the approved concept plan (as detailed in the separate report on the modification application).

Table 10 shows, on a block by block basis, the number of parking spaces required under the DCP and proposed as part of the development.

Table 10: Stage 2 Car Parking Requirements as required by NDCP 2102 rates and Concept DA Condition 19	
Car Parking Requirements NDCP 2012	Required Spaces
1 Bed Units <i>0.6 spaces x 37</i>	22.2
2 Bed Units <i>0.9 spaces x 77 units</i>	69.3
3 Bed Units <i>1.4 spaces x 7 units</i>	9.8
Total Residential Parking Required <i>(121 units)</i>	102
Residential Visitor Spaces Required <i>(1 for first 3 dwellings, + 1/5 thereafter)</i>	25
Retail/Commercial GFA	1510m ²
Required Retail/Commercial spaces <i>(1/60m² GFA)</i>	25
Total Car Spaces Required (if NDCP applied)	152
Total Car Spaces Required (Condition 19 of DA-2017/00701)	
Residential (100% on site required)	117 (+15)
Residential Visitor (minimum 25% x 25 = 7 required) <i>Remaining 75% to be provided on street and within existing Council car park</i>	7 provided
Retail/commercial (minimum 50% provided on site: 50% x 25 = 12.5 spaces required) <i>Remaining 50% to be provided on street and within existing Council car park</i>	13 provided
Total Car Spaces Provided	137

In relation to traffic generation and loading, the Statement of Environmental Effects for the Stage 2 DA summarises the proposal as follows (p129 and 131, SJB Planning):

- *Based on the traffic generation rates associated with the approved Staged DA, estimates of peak hour and daily traffic volumes resulting from this proposal have been assessed. The traffic generation estimates indicate that the site could potentially generate 83 vehicle movements in a weekday morning peak hour and 68 vehicle movements in a weekday afternoon peak hour. This represents total traffic arriving and departing the precinct generally, including accessing the proposed on-site car park, Councils multi-deck car park and on-street parking.*
- *Overall, with the completion of Stage 1 and Stage 2 around 47 per cent of the overall Staged DA traffic volumes will be generated. As such, the traffic impact is expected to be acceptable and in-line with the forecasts detailed as part of the approval.*
- *Service vehicle loading is proposed to take place on-street where a proposed loading zone will replace approximately four angled on-street car parking spaces on the eastern side of Wolfe Street near its intersection with Hunter Street.*

In response to CN's request, additional information was provided by the applicant with respect to swept paths and provision of bicycle parking which was considered by Council and considered satisfactory. CN's Development Engineers reviewed the applications for Block 2 and provided satisfactory advice, including recommended conditions of development consent, indicating that:

- The parking provision is consistent with the Concept Approval requiring full compliance with resident parking, 25% of resident visitor parking and a reduced retail parking provision allowing for a percentage of parking to be accommodated in CN's King Street multi-level car park. The residential parking provision of 117 spaces is surplus by 15 spaces. The parking provision for Stage 2 is acceptable.
- Conditions are provided in relation to the proposed loading /service area in Wolfe Street.

x. **Acoustic Impacts**

The Acoustic Assessment for the Stage 2 Development Application includes an external noise impact assessment which is primarily associated with traffic noise, together with background noise monitoring to determine noise emission goals to address EPA and CN requirements. The assessment confirms that the nearest potentially affected residential receivers are the existing residential premises to the south on King Street, and future residential dwellings within the proposed concept development, including the development within Stage 1.

The preliminary assessment undertaken included both attended and unattended noise monitoring and resulted in the following recommendation based on noise intrusion:

- Glazing thickness of all rooms 6mm float, however bedrooms at the south elevation and west elevation increased to 6.38mm laminated. Acoustic seals are to be provided at all windows.

The main noise emitted from the project site will be proposed plant servicing the future buildings, however, equipment items have not been determined at this stage. Therefore, a detailed review of external mechanical plant items should be undertaken at CC stage.

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

"The noise assessment calculated the project specific noise goals for the site based on unattended monitoring at the subject site. The dominant noise source in the area was road traffic. The Acoustic Assessment demonstrated that provided the glazing recommendations as set out in Section 4.3 are applied, compliance with internal noise level requirements from the NSW Department of Planning SEPP Infrastructure 2007 and AS 2107:2016 will be achieved. This will be addressed by an appropriate condition of consent.

The Acoustic Assessment identifies in Section 5.3 that the mechanical plant associated with the development has not been selected and thus no external noise emissions have been assessed. The acoustic consultant however has recommended that a detailed assessment be carried out once the plant has been selected so that any potential acoustic treatments can be incorporated into the design of the building to ensure compliance with the relevant noise criteria. This will be addressed by an appropriate condition of consent."

A Construction Noise and Vibration Management Plan prepared by Acoustic Logic also accompanies the application and is discussed in further detail in the section of this report discussing construction management (below).

xi. **Construction Management**

Many of the submissions received from members of the community for the previous concept approval raised concern regarding potential construction impacts, particularly given the extended timeframe between commencement and completion. In response to the issues raised, a number of conditions were attached to Development Consent 2017/00701.

- *Condition 34: Prior to commencement of site works for each respective stage of the development the developer is to submit to Council for approval a Construction Parking Management Plan (CPMP) addressing the parking of construction vehicles and the transportation of construction personnel to the site. The CPMP is to detail a common location for the parking of construction vehicles outside of the Newcastle CBD area and utilise shuttle buses and for the transportation of construction personnel and their equipment to the site.*
- *Condition 35: The development application for each stage shall be accompanied by a detailed Construction Management Plan (CMP) to ensure the provision for safe, continuous*

movement of traffic and pedestrians within the road reserve. The CMP shall include, by not be limited to:

- a) Details of the manner in which disruption to all surrounding areas (including Hunter Street Mall) will be mitigated*
 - b) Location of material storage and temporary storage sheds;*
 - c) Details of site fencing / hoarding, excavation and shoring; and*
 - d) Measures to minimise potential odour associated with the operation of machinery or other potential odour sources*
- *Condition 36: The Construction Management Plan shall include a Traffic Management Plan which shall include, but not be limited to:*
 - a) Details of site personnel parking, including consideration of public transport options to minimise on street parking*
 - b) Location of construction zones and delivery access, including pedestrian / traffic management;*
 - c) Proposed traffic control measures which will be in place during the construction phase of each stage of the development to minimise the impact of construction vehicles on traffic efficiency and road safety within the vicinity; and*
 - d) Construction hours, including hours for deliveries*
- *Condition 37: The Construction Traffic Management Plan shall be prepared by a Roads & Maritime Services accredited person with a Design and Audit Traffic Control Plans Certificate in accordance with the AS 1742.3:2009 Manual of uniform traffic devices – traffic control for works on roads’.*
- *Condition 38: The Construction Management Plan shall include a Noise and Vibration Management program prepared by a suitably qualified acoustical consultant which details:*
 - a) Potential construction noise and vibration impacts;*
 - b) Measures for minimising the impact of the construction phase on the amenity of the neighbourhood, generally in accordance with AS 2436-2010 – Guide to Noise and Vibration Control in Construction, Demolition and Maintenance Sites’ and the Environmental Protection Authority’s ‘Interim Construction Noise Guideline’ and ‘Assessing Vibration: a technical guideline’ and;*
 - c) Measures to mitigate dust impacts arising from demolition and construction activities*

The Stage 2 application is accompanied by the following documents in response to such conditions:

- A Construction Management Plan (prepared by Iris Capital dated 1.4.18) which provides information regarding construction operations, materials handling, hoardings[PE17], cranes, loading zones and the like.
- A Construction and Noise Vibration Management Plan prepared by Acoustic Logic (dated 24.4.17) which evaluates work to be performed during demolition and construction and which forecasts the potential impact of noise and vibration.
- An Overview Construction Traffic Management Plan (prepared by GTA Consultants dated 16.5.18) which details work hours; site access and work zones; heavy vehicle access routes; and pedestrian/cyclist access;

Car parking is addressed within the overview Construction Traffic Management Plan (CTMP) prepared by GTA Consultants. This document outlines that the off-site car parking area, located at McDonald Jones Stadium for the Stage 1 development is also proposed to be utilised for the Stage 2 construction. Public transport will also be encouraged, with allowance on site for equipment and tool storage. A works zone is proposed on Wolfe Street whereby a detailed CTMP will be provided prior to issue of the construction certificate which will outline a traffic guidance scheme. GTA Consultants estimate a works zone of approximately 50m on Wolfe Street, to be confirmed in the detailed CTMP. The placement of the Wolfe Street works

zone will require the temporary removal of on street parking, a loss of 11 on street timed spaces.

There is expected to be in the order of 40 – 50 trucks per day, or up to 5 trucks per hour, which GTA Consultants suggest will have minimal impact on the surrounding network. Truck drivers will be advised of the designated truck routes to and from the site, outlined within the CMP. Work hours will be carried out within the approved work hours, which are 7:00am to 6:00pm Monday – Friday; 7:00am – 4:00pm Saturdays (no work Sundays or public holidays).

With respect to the CMP and the CTMP it is noted that both documents are 'overview' documents only with Iris Consulting noting that detailed plans will need to be prepared (prior to the issue of the Construction Certificate, in consultation with the appointed contractor/builder. While the submission of final documents in conjunction with the Stage 2 application would have provided a greater understanding of potential construction impacts, it is accepted that refinement of such documents will be required once a contractor is appointed and detailed design is undertaken at the Construction Certificate stage. On this basis, and having regard to the issuing of conditions by Council's Traffic Engineer, it is considered appropriate that the Stage 2 consent contain conditions requiring the submission of a final CMP, CTMP and CPMP prior to the commencement of any site works. This is consistent with the approach adopted of the Stage 1 development.

In response to condition 38 of DA 2017/00701 a Construction Noise and Vibration Management Plan prepared by Acoustic Logic accompanies the Stage 2 DA. With respect to potential noise impacts the report concludes that;

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

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

- The use of vibration compactors should not be conducted within 30m of a neighbouring building.
- Sheet piling activities are to be managed such that the following are addressed.
- Vibration impacts generated from the site construction activities shall not exceed 10mm/s at any neighbouring residence.
- Noise impacts should be managed by scheduling of works outside of particularly sensitive activities within surrounding receiver locations
- Sheet piling works are not to be conducted outside the specified hours of operation.
- Use of concrete sawing which is preferable to using pneumatic hammers.
- Surrounding receivers should be consulted on the processes of the demolition phase (particularly rock breaking). Recommended management processes include:
 - Loud activities (such as rock breaking) should be typically undertaken within hours which would be mutually agreeable.
 - Substituting hammering during excavation for alternative measures such as milling or ripping where possible.
 - Sawing and then lifting (where practical) to shorten the duration of impact.
 - Hammering works to be scheduled to minimise impacts on surrounding sensitive receivers.
- Where prolonged excavator use is necessary, excavators could be moved to another part of the site to offer the receiver closest to the excavator some respite.

- Trucks, trailers and concrete trucks should turn off their engines when on site to reduce impacts on adjacent land use (unless truck ignition needs to remain on during concrete pumping).
- Concrete pumps should be located to the north-western portion of the site away from the sensitive receiver locations where feasible.
- Limit hours of construction to 7am to 6pm Monday to Friday and 8am to 1.00pm [GD18] on Saturdays.

The report confirms that *"typically, noise from most construction activities will comply with the construction noise objectives within surrounding receiver locations. In the event of complaint, noise management techniques identified in this report should be employed to minimise the level of noise impact. This may include community consultation and scheduling of loud construction process."*

As was the case with the Stage 1 development, it is evident that construction impacts on the community and businesses will be significant and ongoing and, on this basis, will need to be well managed by CN and the proponent. This is reiterated by Acoustic Logic who confirm that *"In order for any construction noise management programme to work effectively, continuous communication is required between all parties which may be potentially impacted upon, the building and the regulatory authority."*

The concerns of the community remain valid and if construction impacts, particularly carparking, traffic movements and noise, are not well handled, they have the potential to significantly impact on residential amenity and business viability. While the complete detail of the management of construction impacts has not yet been provided, it is considered that the level of information that has been provided in conjunction with the Stage 2 application is sufficient to confirm that construction impacts can be adequately managed, and that the high level of detail that is required will be submitted prior to the commencement of any site works or the release of the Construction Certificate.

CN's Regulatory Services Unit (RSU) has reviewed the Construction and Vibration Management Plan (CVMP) prepared by Acoustic Logic and notes that the CVMP has identified that rock breaking and piling activities will occur at the subject site. The RSU notes that bored piling will be used for the majority of on-site activities as this method results in lower noise and vibration impacts. It also noted that sheet piling may also be used on site, as this type of piling has the potential to produce adverse impacts, with the acoustic consultant identifying mitigation measures such as the use of hoarding to provide acoustic attenuation to surrounding receivers. Conditions of consent are provided by RSU including a requirement for the submission of a final CMP which includes (but is not limited to) a community relations plan, a site management strategy and a dust minimisation strategy.

This plan will need to provide more detailed advice regarding the management of potential noise and vibration impact on the doctor's surgery at No. 106 King Street, noting that the submitted Acoustic Assessment did not specifically consider potential impacts on this property. Additional information was submitted by Acoustic Logic in response to this concern, with a number of recommendations provided regarding the management of impacts on this property. Such recommendations have been attached as conditions of consent and include the undertaking of further site investigations prior to commencement of site operations to identify potential noise/vibration paths and potential mitigative treatment. Further, Acoustic Logic also recommend consultation with the medical operators, together with noise and vibration monitoring during works and ongoing review of mitigation strategies.

xii. Service Infrastructure

The Concept Application (DA 2017/00701) was accompanied by an Infrastructure Services report prepared by ADP Consulting Engineers which addressed the demand for utilities, provided high level strategies for service delivery and confirmed which existing utilities would

be affected by the proposed development. A Stage 2 DA Infrastructure Services Report has now been prepared by ADP Consulting Engineering and accompanies the current application. The report provides a summary of the concept planning works carried out to date relating to the inground infrastructure that will service the proposed Stage 2 DA to address Conditions 28 – 33 of DA 2017/00701 relating to service infrastructure. Condition 28 specifically *“requires that the development application for each stage shall be accompanied by documentation from service and telecommunication providers which details the available network capacity and upgrades required and which confirms that satisfactory arrangements can be made for the provision of services to the development, including the payment of any contributions towards necessary upgrades”*. In addition, the conditions of the Concept Approval require the following to be provided for each stage of the development:

- A 'kiosk' type electricity substation, if required;
- Hydraulic modelling of the local drainage network;
- A gas demand and supply assessment;
- Details of any relocated or terminated services;
- A condition assessment of roads and related infrastructure and a condition assessment of general street infrastructure.

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

Power Infrastructure: One substation is anticipated to be required. This is proposed to be a chamber substation, rather than a kiosk to provide an improved streetscape outcome and security. ADP have initiated liaison with Ausgrid to coordinate the anticipated power infrastructure requirements.

Telecommunications and Optical Fibre: The report confirms that ADP have liaised with NBNCo. and Telstra to ascertain the location of the exiting telecommunications network which may require upgrades and modifications.

Further, the report notes that *“The signal to and from the roof mounted aerials on the Telstra exchange building may be affected by the proposed buildings East of the roof mounted aerials, which will require further assessment during design development.”* The applicant was requested to provide further information to clarify options which are available to adequately address this issue and has requested that a similar approach be adopted to that implemented for Stage 1. Specifically, written confirmation from Telstra will be required prior to the release of the Construction Certificate confirming that there will be no impacts to the existing Exchange facility infrastructure located on the corner of Wolfe and King Streets. When consulted in respect of Stage 1 Telstra had advised that two options were available, being reorientation of aerial bearings or relocation of aerials to Stage 1 buildings. The condition will require that such works be undertaken at no cost to Telstra.

Water and Sewerage Infrastructure: The report confirms that *“a pressure and flow inquiry from Hunter Water indicates that there is sufficient capacity in the 200mm Water Main along Hunter St to service the proposal..... The existing 100mm water main, within Wolfe St, is to be amplified to 150mm.”* Sewerage upgrades include amplification of the existing 150mm sewer main within Hunter St to 300mm. Hunter Water has issued a Formal Notice of Requirements which confirms sewer and water main relocation /protection works and augmentation. A 'Review of Environmental Factors' will need to be submitted to Hunter Water prior to providing final approval to the design.

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

xiii. Geotechnical Constraints

The Stage 2 development incorporates the construction of basement carparking and associated access passageways to lift shafts on the central and northern portions of the site, which will comprise excavation to a depth of approximately 6.1m along Hunter Street. The consent for the previous Concept Application contained a condition (No. 63 DA 2017/00701) required that *"the development application for each stage be accompanied by a detailed geotechnical investigation which identifies ground constraints and identifies engineering design and management strategies for building and earthworks"*. Specifically, the report to the JRPP of 28 April 2016, in relation to DA2015/10182 identified that:

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

The Stage 2 application is therefore accompanied by a 'Report on Geotechnical Assessment' prepared by Douglas Partners (DP) which addresses ground constraints such as groundwater and identifies engineering design and management strategies for building works such as footings, pile footings and anchors.

In relation to the basement and groundwater, the report confirms that the proposed excavation will be below the groundwater levels. DP discuss the alternatives of a fully drained basement which would require constant pumping and further analysis would be required to determine if lowering the groundwater would adversely impact adjacent structures. There would be subsequent flow-on effects of the stormwater system capacity. Alternatively, a fully tanked impermeable basement is believed to be the most appropriate design, although there are also risks associated with mounding of water on the King Street side. DP recommend further groundwater analysis is required to further assess the risks associated with ground water and to determine ground water management strategies.

In regard to excavation support methods, the proposed Stage 2 basement will be close to the site boundary and existing structures along King Street and heritage buildings. Appropriate bracing or anchoring will be required. The basement will also need to be water tight given it will be below groundwater level and the use of secant pile walls are recommended, similar to the Stage 1 development. DP have included a number of measures required for the design and construction of the basement walls. DP expect that after installation of the secant wall, sump and pump requirements will be required to manage water at the site.

With respect to excavation conditions, DP confirm that basement excavation could encounter very low strength to high strength bedrock. The medium strength and stronger rock will require heavy ripping equipment and hydraulic or pneumatic rock breaking equipment or alternatively saw cutting could be undertaken. The potential noise and vibration impacts of such activities is discussed in the section 4.15(1(b)xi) assessment of this report (construction impacts).

DP have provided recommendations for suitable footing types, founding depths and geotechnical design parameters include, which include, but are not limited to:

- Excavation is likely to expose rock. Where weaker rock is exposed, the footings could be deepened to more competent rock.
- Near the King Street end, it is recommended piled footings are adopted. Uncased bore piles are not recommended here to the potentially collapsing conditions, and casting is instead recommended.
- Any voids in the mine workings of the Dudley Seam will need to be grouted.
- Pad footings could be designed for the bores drilled around the perimeter of the site for the lower basement excavation. Geotechnical drilling within the footprint of the building after demolition could increase the confidence of the expected ground conditions where higher strength bedrock is exposed.

It is recommended that a condition of consent be attached to any consent which is issued requiring the submission of a final geotechnical assessment prior to the undertaking of any site works, or prior to Construction Certificate (whichever occur first). This report should confirm the acceptability of the final engineering design from a geotechnical perspective and should be accompanied either by the consent of any affected property owners or engineering solutions which do not rely on either temporary or permanent anchors extending into adjacent properties.

xiv. Mine Subsidence

Condition 64 of the Concept DA (DA2017/00701) requires that the Geotechnical Report include a grouting strategy of any mine workings, which will require the approval of Subsidence Advisory NSW (SANSW). The 'Preliminary Mine Subsidence Assessment' Stage 2 (Douglas Partners, 1 May 2018) confirms that the site is underlain by three coal seams, two of which potentially include mine workings below the site. Douglas Partners conclude that the workings with the Dudley Seam appear to be present below much of the broader Newcastle East End, including the Stage 2 development. It is unlikely that the site is underlain by workings in the seam which has been identified as the Yard Seam.

The report outlines the requirement for full grouting of the workings, due to risk of pothole subsidence, which includes the heritage buildings within Stage 2. In the case of buildings for adaptive reuse, remedial measures will depend on several factors including the likelihood of them being undermined and the extent, nature and cost of refurbishment, however, if any significant structural changes are to be made, SANSW consent will be required.

In summary, remedial grouting of the borehole seam to limit potential subsidence is proposed. This strategy for grouting is currently being undertaken and is anticipated to include targeted grouting of selected pillars on the southern side of the Stage 2 site. The development of grouting strategies would be undertaken in ongoing consultation with SANSW.

xv. Waste Management

A Waste Management Plan, prepared by Jacobs, accompanies the development application for the operational phases only of the Stage 2 development, once constructed. This report notes that Condition No. 26 of the Concept approval (SA 2017/00701) requires that waste servicing to be undertaken on site and the applicant has requested that this condition be amended. The applicant has advised that waste servicing will not be undertaken on site due to heritage items within the Stage 2 locality limiting the head height available for an onsite loading dock. Alternatively, the applicant is proposing waste collection from on-street loading areas located either to the east of the site in Thorn street or the west of the site in Wolfe Street. Consultation with CN has confirmed that Wolfe Street is the preferred option.

It is noted that in order to accommodate this loading area, four existing angled parking spaces will be required to be removed along the northern end of Wolfe street and replaced with a loading zone. Additional information has also been submitted by GTA Consultants, in the form of a swept path analysis, which confirms that 12.5 rigid vehicles can access this area.

The applicant has advised that:

- Ideally, servicing of bins would occur before 9:00am and after 6:00pm reverting the on-street collection area to parking for light vehicles;
- CN will require garbage operators to access the bins from inside the storage room rather than individual bins being left on the street for collection.

Council's engineer has advised that this arrangement is satisfactory and has provided recommended conditions of consent.

With respect to waste generation and collection, the Site Waste Minimisation and Management Plan (SWMMP) prepared by Jacobs confirms the following:

The following summarises the key content and outcomes of the report:

- Generation figures of 120 litres per unit per week for garbage and 60 litres per week for recycling have been utilised of the residential apartments.
- Residential Waste: Chutes for the collection of garbage are proposed on each floor located in the lobby area which will drop into 660L bins located on the ground floor to compact the waste. In addition, 240L bins will be provided on each floor for the collection of recycling which will be transferred via the lifts into 1,100 litre bins in the waste storage room. The residential waste storage area is located at the Ground Floor of the northern building. Bins will be transported for collection by an appointed building caretaker.
- No allowance has been made for green waste collection which will be by commercial contractor who will be responsible for removal and disposal.
- The design accommodates a bulky waste storage room of 15m² at the ground Floor Level to allow for resident's bulk waste storage prior to collection.
- The waste and recycling rooms located adjacent to the lifts which contains a chute for garbage and a 240L bin for co-mingled recycling, will be transported via the lift to the basement by an appointed caretaker.
- Waste will be collected twice weekly and recycling will be collected weekly.
- For the townhouses off King Street, the chute room for waste and recycling room are separate. The recycling bin will be transported to the basement via the lift by a building caretaker.
- The retail tenancies are estimated to generate approximately 5,000 litres of waste and recycling per day, based on utilisation of a generation rate for cafes or restaurants, which will therefore allow for a broader range of uses. A separate waste storage room will be located at the Ground Floor Level of the northern building which will accommodate 660 litre bins for garbage, 660 litre bins for recycling, 360 litre bins for glass and 400kg bales of cardboard.
- On the nominated day of collection, Mobile Garbage Bins will be able to be wheeled from the waste storage room straight on the Wolfe Street where the collection vehicle will be waiting in a designated loading zone which will allow for servicing of bins before 9am and after 6pm.

Relevant conditions can be imposed with respect to the waste management service and operation of the development.

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

In addition, Council's Environmental Health Officer has requested clarification regarding the ventilation of the garbage room. It is recommended that a condition be attached to any consent requiring provision of this information at the Construction Certificate stage.

xvi. Stormwater and Flood Management

Stormwater drainage from the site is within CN's assets system and generally flows in gutters, underground pipes and pits in a northerly and westerly direction toward the two principal drainage outlines under the former railway corridor and the Honeysuckle precinct into the harbour. Northrop Consulting Engineers have prepared a stormwater design and management plan for Stage 2.

A Flooding Impact Assessment prepared by Northrop (dated 9 April 2018) for the Stage 2 development includes an analysis of the performance of the existing stormwater network and details the proposed upgrade works for inadequate sections of the network, as well as preventative measures for flood controls. Northrop note that the information available to conduct the stormwater analysis was limited and therefore the report includes preliminary conclusions pending detailed survey information.

Based on their analysis, generally the drainage system had adequate capacity during the 10% and 1% AEP storm events, however the following upgrade works will be required:

- Existing kerb inlet pit in Thorn Street to be constructed with new drainage connection.
- Existing downpipe connections to be demolished or capped.

Pending further detailed investigation of the drainage network, Northrop advise that upgrade works may or may not be required which would include new pipes and junction pits.

Council's Senior Development Officer (Engineering) initially raised concern regarding a lack of capacity in Thorn Street where the site discharge is proposed. CN's CCTV footage shows a single 450mm diameter pipe where dual 450mm pipes are assumed in the Northrop study and therefore the applicant was requested to submit a more detailed site survey. In response to this request for additional information Northrop advised that *"The most likely drainage arrangement as documented on NCC GIS data is 450mm and 375mm outlet pipes". A surveyor was "unable to access the stormwater pits due to a number of aspects such as buried junction pits (under roads) or pits in poor condition preventing access.....There is a low design risk for the development as the likely existing drainage arrangement has been allowed for in the design. The investigation may be conducted during early construction works of the project and if the drainage is found to be different to what was previously assumed, suitable upgrades will be constructed as required to achieve the target results."*

CN's Senior Development Officer (Engineering) has reviewed the revised information and concurs with this advice. Appropriate conditions of consent have been provided.

With respect to flood mitigation, Condition 66 of DA 2017/00701 requires that the minimum floor level for the ground level of the development should be RL2.6m AHD, and vehicular access to any basement parking areas should also to at or above RL2.6m AHD.

Council's Senior Development Officer (Engineering) notes that *"The Northrop study has identified has a higher flood risk due to local catchment flooding than was presented in Council's regional study information provided to the applicant. At the intersection of Thorn and Hunter Streets a 1% AEP flood level of 3.1m AHD has been calculated. Northrop have argued that the proposed minimum floor level of 3.3m AHD is adequate for the calculated risk and best suits the proposed development. This argument is considered reasonable."*

Northrop indicate that should upgrade works be required (based on further detailed analysis), it is the applicant's intention to negotiate with CN to offset such works against Section 94 contributions. [PE19] However this is not proposed as part of this application.

xvii. Sustainability

A Sustainability Report has been prepared by ADP Consulting Pty Ltd which identifies an ecologically sustainable design framework within the proposal. This framework includes compliance with Section J of the Building Code of Australia (for the commercial components of the development) and for the residential component, achievement of the requirements of the water and energy targets/commitments identified by BASIX accordance with *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

The Sustainability Report outlines some key sustainability initiatives including:

- Energy efficiency: passive design; solar gain and sun shading; thermal mass; natural ventilation; demand shifting; high efficiency heating, ventilation, and air conditioning equipment; high efficiency air conditioning systems;
- High performance building envelope;
- Insulation;
- Lighting: high efficiency lighting and use of sensors;
- Renewable Energy: Photovoltaics, solar hot water systems to be provided;

- Indoor Environmental Quality: provision of natural daylighting where possible;
- Water: efficient fittings and fixtures, capture and retain water from roofs and common areas;
- Waste Management: reduction reuse and recycling targets; commercial waste plan;
- Materials: to be reviewed against sustainability criteria, minimisation of use of Volatile Organic Compounds, formaldehyde, mould and moisture control, life cycle assessment;
- Transport: public transportation optimisation, walking;
- Embedded Energy Networks and Smart metering.

The Concept Stormwater Concept Plan (Northrop) confirms that a stormwater tank with a storage of 68kL will be used to retain stormwater from landscaped areas located on the roof and will be used for flushing of retail toilets and irrigation of landscaped areas.

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

xviii. Acid Sulphate Soils

Condition 61 of DA 2017/00701 for the approved Concept requires that each stage be accompanied by further detailed investigations to confirm the extent of Acid Sulfate Soils (ASS) on the site. Therefore, an Acid Sulfate Soil Management Plan has been prepared by Douglas Partners (dated May 2018) for this subject Stage 2 development. Test results indicate the absence of actual ASS within the vicinity of the Stage 2 area, however the report identifies characteristics of Potential Acid Sulfate Soils (PASS), in addition to potentially mapped ASS approximately 30m to the north of the site. Therefore, Douglas Partners confirm that additional testing will be conducted following site demolition to confirm ASS conditions and requirements for treatment/management.

Douglas Partners advise that any disturbance of ASS through excavation or dewatering would be conducted in accordance with the Management Plan which includes the following: soil treatment strategies; liming and monitoring procedures; neutralising leachate; as well as dewatering. Appropriate monitoring strategies have been provided as well as a Contingency Plan should remedial action be required.

xix. Contamination

A Report on Preliminary Site Investigation (Contamination) and a Remediation Action Plan has been prepared by Douglas Partners for Stage 2 in accordance with Conditions 59 and 60 of the Concept Approval. Douglas Partners recommend that further investigations be undertaken following site demolition and prior to construction, however conclude that *“.....there were generally no observations of gross contamination within the soil or groundwater at test locations, with the exception of inclusions such as slag, ash and bricks/concrete/porcelain in filling.”* Hence, Douglas Partners conclude that *“the site is considered to be suitable for the proposed residential / commercial development from a contamination perspective, subject to additional confirmation investigation and appropriate remediation and validation (where required) once buildings have been demolished.”*

CN's Regulatory Services Unit has reviewed this RAP and advise that:

“The existing RAP proposes to address the potential petroleum infrastructure, hydrocarbon and asbestos contaminated soils on site by excavating the contaminated affected areas and disposing the material to a licenced facility that can lawfully accept this waste. Following remediation works being carried out, the site will be validated and the report submitted to Council and the Principal Certifying Authority. The RSU supports this method along with the need for further sampling to be incorporated in the RAP and will address the above by appropriate conditions of consent.”

xx. Accessibility

Condition 52 and Condition 54 of the Concept Approval related to accessibility and adaptable housing, whereby ten percent of units within each stage are to be developed as adaptable housing, and each stage is to be accompanied by adaptable building solutions. In response, an Accessibility Assessment Report (dated 18 May 2018) has been prepared by City Plan in relation to Stage 2.

There are 121 units proposed, which therefore requires a total 13 Class C adaptable units and 25 Silver Level Liveable housing units, to comply with Concept Approval conditions and the SEPP 65 Apartment Design Code respectively. A total of 12 dwellings are proposed to be adaptable and 25 dwellings will satisfy the Silver Level Housing rating.

In addition, a total of 1 accessible car parking space is required based on the number of commercial / retail spaces as well as the required 13 spaces for the residential component. A total of 14 accessible spaces are provided, however the Access Report has identified some deficiencies in the design of such spaces, such as positioning of structural columns. Accordingly, it is recommended that a condition be applied to any consent issued requiring that construction certificate documentation demonstrate compliance with Australian Standards.

With respect to disabled access, the report notes that *“access to the internal laneway between the northern and southern building is not available via Thorn Street. The internal laneway is the primary access to some residential lobbies and retail tenancies. Access around the northern tower via Hunter and Wolfe Street is proposed to be addressed via a performance solution.”* This is due to the positioning of stairs at the eastern extent of the laneway accessed off Thorn Street. Council's Principal Planner has reviewed this information and has advised that the Building Code of Australia and the Premises Standards allow for the exercising of professional judgement where the application of the Premises Standards might impose an unjustifiable hardship. *“In respect of this application, the applicant has foreshadowed an assessment of compliance with the access provisions of the BCA that is based on an alternative solution to deemed-to-satisfy provisions, in order to achieve compliance with the performance requirements of the BCA. Such an assessment needs to take place in the context of the assessment of a construction certificate application”* and an appropriate condition of consent is recommended.

(c) the suitability of the site for development

The Preliminary Site Investigation prepared by Douglas Partners confirms that the investigations conducted were limited to accessible areas of the site prior to demolition and accordingly the report recommends that further investigation be conducted following demolition. However, the level of investigation was sufficient to enable Douglas Partners to conclude that *“the site is considered to be suitable for the proposed residential / commercial development from a contamination perspective, subject to additional confirmation investigation and appropriate remediation and validation (where required) once buildings have been demolished.”*

The site is also flood-affected, potentially contains acid sulfate soils, requires dewatering during construction; and is located within a Mine Subsidence District. However, as detailed in this report, these physical constraints can be appropriately addressed, enabling development of the site.

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

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

Section 4 of this report contains a summary of the issues raised within public submissions. A response to the concerns raised are contained throughout Section 7 of the report, including

increase in height; overshadowing and privacy impacts; traffic and parking impacts (particularly during construction) and amenity impacts during construction.

It is recognised that the greatest impact of the Stage 2 development will be felt by the occupants of the doctor's surgery at No. 106 King Street. While not dismissing the fact that the increased building height over the Lyrique Theatre/Masonic Hall will present a more imposing form when viewed from this property, it should be acknowledged that this terrace is currently significantly overshadowed and the development that is proposed will result in minor additional overshadowing, predominantly at the roof level. Further, sill heights of the two bedroom windows on the southern wall of the Lyrique/Masonic additions will be a minimum of 1600mm above floor level and screening can be provided to the upper level communal open space.

This land owner has also raised concerns regarding the existence of a right of way (ROW) at the rear of the site which links with Wolfe Street. The submission states that the applicant has no right to build over this ROW as it is essential for a fire egress route and has been used for a period of 41 years while the property has been in his ownership. In response to this submission, the applicant has advised that there is some conjecture as to whether a ROW exists over No. 108 & 110 King Street. Irrespective of this, the design has been amended by stepping back of the lower levels of the proposed building to provide a passageway 1.2m wide x 2.5m high. It is recommended that this ROW be formalised to remove any conjecture, with this to be conditioned.

It is again recognised that there is potential for short to medium term economic impacts on businesses and amenity impacts on residents (noise, vibration and parking during construction phase), particularly to the doctor's surgery which is located centrally within the construction area on King Street. Additional acoustic information requested from the applicant confirms ****. Ongoing and unimpeded access to the doctor's surgery will be essential and will need to be effectively managed during the Stage 2 construction phase. The mechanism for achieving this will need to be well documented within a final Construction Management Plan, including the need to ensure that the footpath area remains clear and unobstructed, and this should be reflected within appropriate conditions of consent. Further, it is recommended that Council's Traffic Committee investigate the feasibility of allocating a small number of short term parking spaces and/or an ambulance space in front of No. 106 King Street to alleviate potential parking shortfalls in the immediate vicinity during the construction phase.

With respect to construction impacts of the Stage 2 development, it remains evident that construction impact on the community and businesses will be significant and ongoing and, on this basis, will need to be well managed by CN and the proponent. The concerns of the community continue to be valid and this issue is detailed in the report. Should the development be approved, it is recommended that a condition be imposed requiring a high level of detail confirming that construction impacts can be adequately managed and details submitted prior to the commencement of any site works or the release of the Construction Certificate.

(e) the public interest

The proposed mixed-use development comprising Stage 2 of the development, if approved, will allow for the continued realisation of the revitalisation of the Hunter Street Mall and East Newcastle Precinct as contained within CN's Planning Documents. The development will activate all street frontages and provide for the planned through-block connection between Wolfe and Thorn Street. Through a design excellence process, the built form will integrate existing heritage elements within the site and surrounds and will deliver the urban design outcomes contemplated by the strategy.

Subject to the submission of further detailed information to clearly address mitigation strategies, on balance, it is considered that the overall economic and social benefits of this Stage 2 development are in the public interest.

7. Conclusion

The development application for the mixed-use development pertains to the second stage of the redevelopment of the East Newcastle Precinct that will contribute to its revitalisation. The proposal allows for the delivery of the second stage of the East End precinct.

The proposal has a number of benefits including: retention and adaptive reuse of the former Lyrique Theatre/Masonic Hall and the King Street terraces; retention of facades of the former Royal Exchange and Soul Pattinsons buildings; and a mid-block pedestrian connection linking Thorn and Wolfe Streets. The design is a result of an accepted alternative design excellence process involving six meetings with the UDCG.

The proposed development seeks variation to the overall height of the northern and southern buildings; the street wall heights and 6m setback (above street wall height); and seeks variation to a number of the design criteria of the Apartment Design Guide including setback/separation distances. A (revised) 'Clause 4.6 Exceptions to Development Standards Report' has been prepared by SJB Planning, which satisfies the provisions of clause 4.6 of NLEP 2012, with variation to the building height considered to be justified.

The development will also result in construction impacts that will need to be carefully managed to minimise impacts to surrounding residents and businesses. The identification of an 'off-site' carpark for construction vehicles will go some way to alleviating this impact. However, consistent with the Stage 1 application, recommended conditions are provided to minimise noise, dust and vibration impacts.

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

8. Recommendation

That the Hunter & central Coast Joint Regional Planning Panel grant consent to DA2018/00354, subject to the conditions contained in **Appendix A**.

APPENDICES

Appendix A: Recommended conditions of consent

Appendix B: List of current/final submitted plans and documentation.

Appendix C: Architectural Drawing Package for the Precinct (Block 2)

Appendix D: Clause 4.6 Report - Height of Buildings

Appendix E: Heritage Response (City Plan Heritage)

Appendix F: LEP Height Changes East & West, North & South

Appendix G: Heritage Assessments – GML Heritage