

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

Panel Reference	2018HCC027 DA
DA Number	DA-2017/00701.01
Local Government Area	CITY OF NEWCASTLE
Approved Development	Staged Concept Development Application for a major redevelopment of Hunter Street Mall, a mixed use development comprising retail, commercial, public spaces, residential apartments, associated car parking & site works - Application to Modify Stage 2 of Concept Plan pursuant to Section 4.55(2): building envelopes and height, distribution of land uses, floor space and FSR
Street Address	<p>Lot 1 DP 84634, Lot 1 DP 331535, Lot 1 DP 819134, Lot 500 DP 879162, Lot 1 DP 718456, Lot 100 DP 810457, Lot 1 DP 735255, Lot 1 DP 77846, Lot A & B DP 388647, Lot 31 DP 864001, Lot 31 DP 864001, Lot 32 DP 864001, Lot A DP 89504, Lot 1 DP 84577, Lot 1 DP 610140, Lot 1 DP 749729, Lot 100 DP 1098095, Lot 1 DP 723967, Lot 1 DP 195975, Lot B DP 89504, Lot 1 DP 122380, Lot 1 DP 122381, Lot 98 DP 1098034, Lot 2 DP 331535, Lot 10 DP 1043870</p> <p>105-111, 121, 137-145, 147, 151-153, 163, 169-185 Hunter Street; 22 Newcomen Street; 3 Morgan Street; 66-74, 98-102, 104, 108-110 King Street, 14 Thorn Street and 21, 31, 33, 58 Wolfe Street Newcastle NSW 2300</p>
Applicant/Owner	Iris Land Pty Ltd
Number of Submissions	1
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 (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 • 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
List all documents submitted with this report for the	<p>Appendix A: Recommended conditions of consent</p> <p>Appendix B: List of the documents submitted with the application for assessment</p>

panel's consideration	Appendix C: Concept Proposal Plans (SJB Architects) Appendix D: Comparative Diagrams Appendix E: View Analysis – Stage 2 (SJB Planning) Appendix F: Background Report: 'Plan Finalisation Report for Draft Newcastle Local Environmental Plan 2012 Amendment No. 26' (Newcastle City Centre Building Heights prepared by NSW Department of Planning and Environment) Appendix G: Correspondence from NSW Department of Planning and Environment dated 16 March 2018 advising Draft Newcastle Local Environmental Plan 2012 Amendment No. 26' has been made. Appendix H: Development Consent DA2017/00701
Report by	City of Newcastle
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

Background

In December 2017, a Concept Development Application (No. 2017/00701) was approved by the Joint Regional Planning Panel for the redevelopment of four city blocks at the eastern end of the Newcastle City Centre between the Hunter Street Mall and the Christ Church Cathedral, Newcastle ('the subject site'). This Concept Plan superseded a previously approved concept proposal, determined in 2016, that has been surrendered.

The approved Concept Proposal granted consent for a mixed-use development comprising retail, commercial and residential uses with an indicative total gross floor area (GFA) of approximately 61,000m², including 8800m² retail/commercial GFA and 563 apartments. The Consent that was granted established building envelopes and height, indicative land use mix and floor space allocation, however, did not grant consent for any works. A concurrent development application was submitted for Stage 1 (the western-most Block 1) which is now under construction.

Proposed Development

The applicant lodged a Development Application to modify Development Consent DA-2017/00701. The proposed modifications largely apply to Block 2 only (bounded by Hunter, Thorn, King and Wolfe Streets). The modifications are to ensure that the concurrent Development Application DA-2017/00354 are not inconsistent with the Concept Plan approval. However some modifications (principally to land uses) apply to the wider four blocks (as detailed below). In summary, the key changes from the approved concept proposal are as follows:

Land Uses: 'Hotel and motel accommodation' and 'serviced apartments' are proposed to be included as additional uses. Applies to whole precinct (Blocks 1 to 4).

Altered mix of uses [increased retail and residential floor area (by 19 dwellings) and slightly reduced commercial floor area]

GFA and FSR: an increase in the total GFA across the site to 62,375m², thereby increasing the FSR for the whole site from 3:68:1 to 3.75:1. Consequently, the FSR in Stage 2 has also increased from 3.2:1 to 3.55:1

Building Envelopes/Massing (Street Wall Heights & Upper Level Setbacks) & Building Height: The building envelope over the northern part of the site has moved closer to Hunter Street. The building envelope has been increased over the heritage former Lyrique Theatre/ Masonic Hall (southern portion of Block 2) to a new addition accommodating apartments; and the building envelope has been altered to accommodate additions to the rear of the terraces at 104, 108 and 110 King Street. The setbacks above the street wall heights and heritage facades on Stage 2 vary from the 6m specified in Newcastle Development Control Plan 2012 (Conditions 12 and 13).

Car Parking, Servicing and Pedestrian Link: increased by 61 spaces. Removes vehicle access from the through-site link and servicing access off Thorn Street, and proposes vehicle access from Thorn Street and servicing from Wolfe Street. This ensures the through-site link is retained and functions as a pedestrian only link (slightly realigned). Some minor adjustments are proposed to Block 4 in terms of car parking allocation.

Amendments to Development Consent: Specific Modification to Development Consent: the proposal will require amendments to the wording of the development consent, including the development description: to include 'hotel and motel accommodation' and 'serviced apartments' and increase to a total of 582 dwellings; and to Conditions 4, 5, 6, 18, 22 and 44.

Referral to Joint Regional Planning Panel

This Section 4.55(2) modification is referred to the Panel in accordance with the EP&A Act, Regulations and Clause 21 of State Environmental Planning Policy (State and Regional Development) 2011 (Part 4 'Regionally Significant Development', noting the concurrent Stage 2 DA for physical work exceeds \$30 million and is therefore captured within Schedule 7 for 'Regionally Significant Development').

Permissibility

The applicable planning instrument is *Newcastle Local Environmental Plan 2012* (NLEP 2012) under which the subject site is zoned B4 Mixed Use. The proposed uses, which are defined as shop top housing, residential flat buildings and commercial premises, are permissible with consent within the B4 zone. The proposal is not integrated development.

Consultation

The development application was publicly exhibited in a newspaper notice, placed online on the City of Newcastle's (CN) 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 (ie the modification application and the Stage 2 DA). A total of six (6) submissions were received specifically referencing the concurrently-exhibited 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 Roads and Maritime Services, Office of Environment and Heritage, NSW Police and Ausgrid.

Key Issues

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

- Consistency with current planning controls and concept plan (in particular height);
- Heritage conservation;
- Built form, including building height and street wall heights;
- Carparking provision;
- Impact on views.

Recommendation

That the Joint Regional Planning Panel grant consent to DA-2017/701.01, 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 proposed modifications to the Concept Plan in terms of physical built form principally relate to Block 2, which is bounded by Hunter Street (north), Wolfe Street (west), Thorn Street (east) and King Street (south) – refer heading (b) below. In addition, 'Hotel and motel accommodation' and 'serviced apartments' are proposed to be included as additional uses over the whole precinct (Blocks 1 to 4) and some minor adjustments are proposed to Block 4 in terms of car parking allocation.

The wider site is highly urbanised in character, with the majority of development built boundary to boundary, with the exception of the south-east corner of the site between Morgan and Newcomen Streets. Existing development comprises a mix of building forms, styles and ages, of varying heights. Typically, development is two (2), three (3) or four (4) storeys in scale across the majority of the site. Prior to the commencement of development of Stage 1 (Block 1), development across the site comprised 25 buildings with a gross floor area of approximately 23,500m² containing some 91 tenancies, of which approximately 26 were vacant. The buildings have typically been used for a varied range of commercial and retail uses. Land uses within the site include a mix of retail shops and associated parking, cafes and restaurants, medical centres, commercial offices, former theatre, Masonic Hall and car parks.

Car parking across the site is largely limited to on-street parking. CN's King Street above ground car park located adjacent to and south of the site also contributes to the supply of car parking, accommodating 445 vehicles. Prior to the commencement of Stage 1 (on Block 1), parking was available on the site (within the former David Jones car park, located on the corner of Perkins and King Streets, which accommodated approximately 404 vehicles).

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

(b) Description of Block 2

The proposed modifications to the Concept Plan in terms of physical built form principally relate to Block 2 which is bounded by Hunter Street (north), Wolfe Street (west), Thorn Street (east) and King Street (south). The following development exists on this 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 a 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, and includes two (2) heritage buildings at 160 and 170 Hunter Street;
- West - Perkins Street forms the eastern boundary of the site. On the western side of Perkins Street is a mix of commercial development of various scales and building forms. Uses comprise the Crown and Anchor Hotel, retail shops and offices and the former Victoria Theatre. The streetscape presents a mixture of scale and form.
- South - The southern boundary of the site is King Street. On the opposite side of King Street, between Newcomen and Wolfe Streets, is Cathedral Park, the Christ Church Cathedral and the Newcastle Club. The presentation to King Street at this point is dominated by an elevated footpath, large sandstone retaining walls and steeply rising topography. The Cathedral Park and the Cathedral locations enjoy views north towards the harbour over the site.
- East - Newcomen Street forms the eastern boundary of the site and falls steeply from King Street toward the Harbour. Street trees within the road carriageway provide a leafy character to the upper part of the street. Otherwise Newcomen Street is dominated by the seven (7) and eight (8) storey multi-unit residential development on the western side of the street. The at-grade car park of the Newcastle Herald site is located on the east side at the corner of King Street. Between Wolfe and Perkins Streets development is a two (2), four (4) and six (6) storey scaled development, which appears to be largely residential in use. Developments east of Newcomen Street and west of Perkins Street along the northern and southern side of King Street vary in scale and form and are typically used for broad commercial uses with some mixed-use development on the northern side of King Street.

Figure 1: Aerial photo showing the location of the subject site (Block 2, in blue) and the other 3 blocks of the Newcastle East End Precinct (in red) (*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 the same 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.

In summary the Concept Proposal comprised:

- A mixed-use development comprising retail, commercial and residential uses;
- An indicative GFA of 55,400m² and allocation of FSR;
- Car parking with a capacity for approximately 491 vehicles;
- Vehicular access for car parking from King Street, Perkins Street, Wolfe Street, Thorn Street, Laing Street, Morgan Street and Newcomen Street;
- Service vehicular access from Perkins Street, Thorn Street, Laing Street and Morgan Street;
- Building envelopes and heights varying between 2 and 12 storeys;
- Staging of the development (7 stages);

- Public access, building retention and conservation, infrastructure and construction management strategies.

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 Concept Approval, which was surrendered. Many features of the 2017 revised concept application were the same, and it was not necessary to revisit the already assessed aspects of the revised staged concept application that did not change.

In summary, the key changes from the originally-approved (2015) Staged Concept proposal and 2017 Staged Concept DA were as follows:

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

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

This report applies to the 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 principally of the approved Staged Concept proposal (which does not involve any physical works). The proposed modifications to the Concept Plan in terms of physical built form principally relate to Block 2. In addition, 'Hotel and motel accommodation' and 'serviced apartments' are proposed to be included as additional uses over the whole precinct (Blocks 1 to 4) and some minor adjustments are proposed to Block 4 in terms of car parking allocation. A description of the modifications is provided at Section 3 of this report.

The initial assessment of the modification application (and of the originally-submitted design for DA-2018/00354 for the Stage 2 DA, refer below) identified unacceptable issues. Council 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 (DA-2018/00354) on

20 December 2018. Amended and supplementary information for this modification 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 modification application.

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

A DA for Stage 2 (being 'Block 2' comprising the city block bounded by Hunter, Wolfe, King and Thorn Streets) was submitted at the same time as the application to modify the Concept DA that is the subject of this report. The proposed Stage 2 works are consistent with the proposed modifications to the Staged Concept DA (DA-2017/00701.01). A separate assessment report on the Stage 2 DA has been prepared for consideration by the JRPP. Hence some of the planning issues within this report also are addressed in the separate report for Stage 2.

3. Project Description (Proposed Modifications)

The application (No. 2017/00701.01) seeks consent for modifications (to Block 2 only) of the approved Concept Proposal for the redevelopment of the four-block combined land holdings of Iris Land Pty Ltd. The reason for the modification is so the concurrent Stage 2 DA-2018/00354 is not inconsistent with the current approved Staged DA Consent.

Key Aspects of the Revised Concept Proposal:

Table 1 summarises the key aspects of the proposed Staged Concept Development. To indicate how the concept proposal has amended over time, the table also indicates a comparison of the original surrendered (2015) Concept application, the current approved Development Consent (2017.00701) and the proposed modification.

Table 1: Stage 2 Key Development Data (Source: *SJB Planning, Correspondence 16 January 2019*)

Element	2015 Concept Application (DA2015/10182- surrendered)	Approved Concept DA (DA2017/00701)	Concept DA Modification
GFA	55,314m ²	61,130m ²	62,375m ²
GFA Allocation Across Blocks	Block 1: 21,294m ² Block 2: 11,490m ² Block 3: 11,034m ² Block 4: 11,496m ²	Block 1: 26,224m ² Block 2: 11,709m ² Block 3: 11,034m ² Block 4: 12,163m ²	Block 1: No change Block 2: 12,954m ² Block 3: No change Block 4: No change
FSR	3.33:1	3.68:1	3.75:1
FSR Across Blocks	Block 1: 3.0:1 Block 2: 3.6:1 Block 3: 4.0:1 (now Stage 2 north) Block 4: 2.8-3.4:1 Block 5: 3.9:1 Block 6: 3.5:1 Block 7: 1.7 (now Stage 2 south)	Block 1: 4.0:1 Block 2: 3.2:1 Block 3: 3.3:1 Block 4: 4.0:1	Block 1: No change Block 2: 3.55:1 Block 3: No change Block 4: No change
Maximum Building Height	2-12 storeys (maximum RL 42.0)	2-11 storeys (maximum RL 42.0)	No change
Dwellings	565	563	582
Carparking	491	553	614
Carparking Distribution		Block 1: 273 Block 2: 76 Block 3: 88 Block 4: 112	Block 1: 273 Block 2: 143 Block 3: 88 Block 4: 114
Staging	7 stages	4 stages	No change

The following provides a detailed description of the proposed modifications [Source: adapted from *SJB Planning 'Statement of Support'* (2018) p22-37; and *SJB Correspondence* (2019)]:

Land Uses

'Hotel and motel accommodation' and 'serviced apartments' are proposed to be included as additional uses in the Staged DA to provide greater flexibility and diversity in land uses across the site, to support and reinforce its role as a mixed-use precinct.

Altered mix of uses [increased retail and residential floor area (by 19 dwellings) and slightly reduced commercial floor area] is also proposed as follows:

- As a result of the proposed changes to the approved building envelopes, the former Lyrique Theatre/Masonic Hall is to be adaptively reused for retail, as well as commercial uses. This will reinforce the link as a point of interest along the pedestrian link. The new additions above will accommodate residential apartments.
- The terrace building at 98-102 King Street (corner of Thorn and King Street) will be adaptively reused for residential purposes instead of commercial uses, in line with its original use.

GFA and FSR

As outlined in Table 1, the proposal provides an increase in the total GFA across the site which will increase the gross FSR from 3:68:1 to 3.75:1. The increase in GFA and FSR is attributed to the relocation of at-grade car parking to the basement within Blocks 1 and 4. Consequently, the FSR in Stage 2 has also increased from 3.2:1 to 3.55:1, but remains unchanged for Blocks 1, 3 and 4 as indicated in Table 1.

Building Envelopes/Massing (Street Wall Heights & Upper Level Setbacks) & Building Height

This is the main change and is discussed in detail later in this report.

In summary, alterations to the building envelopes for Stage 2 are:

- The building envelope over the northern part of the site has moved closer to Hunter Street (ie no longer stepped) and increased to accommodate plant, roof-top terraces and associated access;
- The building envelope has been increased over the heritage former Lyrique Theatre/Masonic Hall to a new addition accommodating apartments; and
- The building envelope has been altered to accommodate additions to the rear of the terraces at 104, 108 and 110 King Street.

The setbacks above the street wall heights and heritage facades on Stage 2 vary from the 6m specified in Newcastle Development Control Plan 2012 (Conditions 12 and 13).

Car Parking and Servicing

The potential capacity for on-site parking has been increased by 61 spaces. The increase in car parking is attributed to the additional car parking to be accommodated within Stage 2, with the inclusion of a second basement level, as well as minor adjustments of car parking to Stage 4.

The modification removes vehicle access from the through-site link and servicing access off Thorn Street, and proposes vehicle access to the basement car park from Thorn Street and servicing from Wolfe Street. This ensures the through-site link functions as a pedestrian only link.

Pedestrian Link

The proposal maintains the pedestrian public access linkages identified within the approved Staged DA. The publicly accessible pedestrian link between Wolfe Street and Thorn Street has been slightly realigned. As noted above, the linkage will be a pedestrian only access, with vehicle access now proposed from Thorn Street.

Amendments to Development Consent

Specific Modification to Development Consent: the proposal will require amendments to the wording of the development consent, including:

- Development description: to include 'hotel and motel accommodation' and 'serviced apartments' and increase to a total of 582 dwellings;
- Condition 4: to reflect proposed gross floor area for entire site and Block 2/Stage 2;
- Condition 5: to reflect proposed floor space ratio for entire site and Block 2/Stage 2;
- Condition 6: to reflect increase in amended building envelopes and heights;
- Condition 18: to reflect to increase in car parking across the site;
- Condition 22: to reflect the amendments to Stage 2 vehicle access and associated plans;
- Condition 44: to reflect the minor realignment of the through-site link.

Appendix A: Recommended conditions of consent.

Appendix B: List of the documents submitted with the application for assessment.

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

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

Appendix D: Comparative Diagrams

Appendix E: View Analysis – Stage 2 (SJB Planning)

Appendix F: Background Report: 'Plan Finalisation Report for Draft Newcastle Local Environmental Plan 2012 Amendment No. 26' (Newcastle City Centre Building Heights prepared by NSW Department of Planning and Environment)

Appendix G: Correspondence from NSW Department of Planning and Environment dated 16 March 2018 advising Draft Newcastle Local Environmental Plan 2012 Amendment No. 26' has been made.

Appendix H: Development Consent DA2017/00701

4. Section 4.55(2) of the EP & A Act 1979 – Modifications to Concept Plan

This application seeks modification pursuant to Section 4.55(2) of the EP&A Act 1979. The following provides an excerpt of that clause and how the proposal relates to the provisions:

"A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

There are a number of factors to consider with the respect to the changed aspects of the concept application. The initial assessment accepted that the changes to other aspects of the development could warrant 'substantially the same development' such as increased floor space ratio, parking numbers, number of dwellings etc.

However, the applicant's initially-submitted response to this provision was unsatisfactory as it did not clearly establish how the modification was 'substantially the same development'. In particular, the application did not assess or justify the qualitative differences of the development, such as the significant diversion from building envelope requirements (including building heights) of Block 2 compared to that of the original concept approval (referenced specifically in conditions of development consent, in addition to the LEP and DCP controls). In considering this significant discrepancy, it could be argued that these changes to the concept plan are fundamental differences to the material and essential features of the development, which could warrant a new development application [ie rather than a modification pursuant to Section 4.55(2)]. The preliminary assessment determined that the initially-submitted design and accompanying documentation did not satisfy this provision.

As requested by Council in its letter dated 9 October 2018, the applicant provided amended design plans for the Stage 2 DA that provided improved outcomes, in particular to the built form, heritage and solar access of the development and adjacent properties and public domain. A satisfactorily detailed response (correspondence dated 16/1/2019) was also

provided by the applicant that assesses the proposed modification in the context of Section 4.55(2), including the qualitative and quantitative aspects of the changes proposed to the concept approval. Below is an excerpt of the concluding comments of this document (p12-13) which summarises the response:

“The building envelopes across Block 2 have been amended to reflect the amendments to the building envelopes in the Stage 2 DA2018/00354. The Concept Approval includes broad, building envelopes that identify the predominant roof, plant and lift overrun heights. It did not authorise any works as this was to be the subject of future DAs for each of four (4) stages.

Accordingly, the nature of the Concept Approval is one that contemplates some change, given the analysis and design development that is required for the detailed proposals that will be subject of future DAs.

The assessment of the degree of change is required to be conducted against the totality of the Concept Approval site not just the changes to Block 2.

As detailed in the quantitative assessment, the proposal provides for minor increases in the gross GFA and FSR allocation across the site and on Block 2, minor realignment of the laneway, as well as minor increases in car parking which has been directly guided by a comprehensive design excellence process and a detailed CMP prepared by City Plan as required by Condition 14 of the Concept Approval.

The modified building envelopes proposed for Block 2 include building heights of seven (7) to eight (8) storeys which falls within the approved range of heights across the site (being 2 to 11 storeys across the four blocks of the overall site).

The approved retail, commercial and residential uses will be maintained whilst the addition of a hotel, motel and serviced apartment use proposed to Block 1 is consistent to uses that are permitted within the B4 Mixed Use zone.

The effects of the abovementioned modifications have been considered from a qualitative perspective and the development retains the essential elements of the Concept Approval as noted below:

- A mixed use development will be maintained whilst the additional of a hotel, motel and service apartment use proposed to the Block 1 is consistent to uses that are permitted within the B4 Mixed Use zone.*
- The delivery of a through-site link and ancillary on-site parking within basement levels will be provided.*
- Adaptive reuse of existing and contributory heritage buildings including the Lyrique Theatre and Masonic Hall, Royal Exchange, former Soul Pattinson and terrace buildings on King Street were informed by the CMP prepared by City Plan Heritage as required.*
- The increase in view impacts arising from the proposed modification is minor and within the context of the approved Concept DA in that the affected views are not identified as a key view or vista in the NDCP.*
- The shadow diagrams demonstrate that the proposed modifications have negligible additional impact on the surrounding sites.*

On the basis of the above, it is considered that the proposed modifications are consistent with the intrinsic nature of the original approval as the essential elements of the mixed use development, including adaptive reuse of heritage items on Block 2, will be maintained, and are not fundamentally altered.

The Concept Approval as sought to be modified is considered to maintain the essential elements of the original approval.

Accordingly, the proposed modifications satisfy Section 4.55(2)(a) of the EP&A Act 1979 as they result in a development that is substantially the same as the development originally approved by Council. It is therefore requested that the scope of amendments described in

this Statement and the attached architectural plans be approved thereby updating the original plans.”

Comment: as indicated earlier, it could be argued that the changes to the height (on the southern part of the Block 2 in particular) warrant a new development application, rather than a modification. The original concept approval did not indicate anywhere the possibility or intention of developing above the heritage-listed Lyrique Theatre and Masonic Hall. The approved plans indicate these buildings to be ‘refurbished’. Because of this, on one hand it is difficult to come to terms with the significant difference in the concept proposal on this part of the site, while on the other hand it is acknowledged that the supporting documents (principally Heritage Impact Assessment/Strategy) do not preclude this possibility either, and support adaptive reuse of these buildings and additional/new building elements, provided the recommendations are met. It is unfortunate that the applicant did not anticipate this in the existing approved concept application. The applicant explains this in the Clause 4.6 Statement accompanying the Stage 2 DA: “...the circumstances of the Concept DA did not, at that point in time, contemplate development above the heritage buildings, principally as the conservation management plans were not completed and the height controls that were in place at the time could reasonably facilitate some development with any future development application.”

It is acknowledged that the current LEP height controls for this portion of Block B (RL24m AHD on the sloping site) have altered (reduced) in the complex historical amendments referred to later in this report. Prior to this LEP amendment, a maximum height of 24m above existing ground level applied, as originally gazetted in 2012 (which the current proposal would comply with).

The applicant explains in the Clause 4.6 Statement accompanying the Stage 2 DA that the height controls are “*inappropriate for the site as they have sought to straight-jacket development on the site*”.

Given that the historical height limit for the southern part of the site (where the greatest variation occurs) was 24m from existing ground level (which the proposal complies with), it is considered that this is what was expected for the site for several years prior to the current (reduced) RL24m AHD amendment, including for the most recent concept plan approval. In this regard, the proposed modification is considered to be within the realms of building height historically permitted and anticipated.

In practical terms, CN therefore supports the application being considered as a modification as opposed to a new development application. The overall argument by the applicant that the modifications retain the essential elements of the Concept Approval (eg. overall land use, through site link, 2-4 storeys across the entire development; adaptive reuse of heritage buildings etc) remain similar are accepted on this basis.

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

Refer to Section 6 of this report. Satisfied.

(c) it has notified the application in accordance with:

- (i) the regulations, if the regulations so require, or*
- (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

Refer to Section 5 of this report. Satisfied.

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Refer to Section 7 of this report. Satisfied.

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified."

Refer to Section 7 of this report. Satisfied.

5. 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 (ie the modification application and the Stage 2 DA). A total of six (6) submissions were received specifically referencing the Stage 2 DA (which is the subject of a separate report), 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 Doctor's 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.
- CN 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.
- Demolition of 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.

6. Referrals**Approval Authorities - Integrated Development**

The staged development is not identified as 'Integrated Development' pursuant to Section 4.46 of the EPA Act 1979 as it does not grant approval to any works, with such works being the subject of the various stages of the project.

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

Table 2 - Summary of External Referrals	
Agency/Reason/Date	Response
Roads and Maritime Services 3 August 2018 Referral under <i>SEPP (Infrastructure) 2007</i> , Clause 104, Schedule 3 is required as the development is of a size/scale that triggers referral.	<p><u>Roads and Maritime response:</u> Roads and Maritime has reviewed the information provided and raises no objection to or requirements for the proposed (development). <u>Advice to CN:</u> Roads and Maritime recommends that the following matters should be considered by Council in determining this development:</p> <ul style="list-style-type: none"> • Roads and Maritime has no proposal that requires any part of the property. • 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. • 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. • 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.

Table 2 - Summary of External Referrals	
Agency/Reason/Date	Response
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"> the commercial premises by limited to Monday to Sunday 6am – 7pm; the development must maintain a CCTV system on the premises 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 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 inclusive) by more than 5dB between 07:00AM and 12:00 Midnight at the boundary of any affected residence. 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.
Ausgrid 4 July 2017 SEPP (Infrastructure) 2007 Clause 45(2) No statutory approval role	<p><i>Ausgrid requires that due consideration be given to the compatibility of proposed development with existing Ausgrid's infrastructure, particularly in relation to risks of electrocution, fire risks, Electric & Magnetic Fields (EMFs), noise, visual amenity and other matters that may impact on Ausgrid or the development.</i></p> <p><i>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</i></p> <p><i>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.</i></p> <p><i>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).</i></p> <p><i>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.</i></p>
NSW Office of Environment and Heritage (Heritage Branch) 11 July 2018 No Statutory approval role	<p>Comments provided on the Stage 2 DA. No additional Comments in relation to the Concept DA.</p>
Subsidence Advisory NSW 10 September 2018 Not Integrated Development	<p>General Terms of Approval for Stages 2, 3 & 4 Issued on 10/9/18 (<i>Mine Subsidence Compensation Act 1961</i>).</p>

Internal Referrals – CN Officers

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

The proposed modifications have arisen from the Stage 2 development associated with Block 2 of the Staged Concept DA. Section 2 (Site Identification) of the *Preliminary Site Investigation* prepared by Douglas Partners dated October 2015 states "*The site fronts the Hunter Street Mall and comprises the majority of the buildings across four (4) city blocks, between Perkins, Hunter, Newcomen and King Streets.*" Given that the Stage 2 development is within the above locality, it is noted that Stage 2 was assessed in the Concept DA. No further comment is made with regard to this application as the environmental concerns were addressed with the Concept DA.

Licensed Premises Reference Group (LPRG) of 27.8.2018 and 30.7.2018

Police were requested to provide a referral response, with specific advice regarding CCTV requirements.

Heritage Independent Assessment (GML Heritage)

The application was referred to a 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 Urban Design Consultative Group (UDCG) considered the Stage 2 DA (applicable to Block 2) at its meetings of on 27 September 2017, 19 October 2017, 16 November 2017, 11 December 2017, 20 February 2018 and 16 August 2018. There are no changes to the other Blocks (1, 3 & 4) from the previously considered approved Concept DA. The comments of the UDCG are provided in the assessment report for the Stage 2 DA (2018/00354) with respect to Block 2.

7. Strategic Context

Draft 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 Concept 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 re-activate the adjacent Hunter Street Mall.

Hunter Regional Plan

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 Concept 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 Concept development is consistent with the objectives of the strategy as it will provide for safe and activated spaces in the East End.

8. Section 4.15 Considerations

The previous assessment of the approved Concept DA (DA2017/00701) is still largely relevant to the current revised concept staged DA as there have been no major changes to the planning controls for the site. It is not necessary to revisit the already-assessed aspects of the revised staged concept application that have not changed. The previous assessment and most conditions of development consent are considered to still be relevant and/or will require edits/amendments as per **Attachment A**. To avoid duplication, this assessment report is largely limited to matters relating to the proposed changes to the concept DA as compared to the approved Staged Concept Plan (DA2017/00701).

(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*. 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 will be undertaken as part of the various stages of the development, with matters pertaining to the Stage 2 development assessed in the separate report to the JRPP.

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

State Environmental Planning Policy (State and Regional Development) 2011

The Concept Approval DA-2017/00701 was identified as 'regional development' in accordance with Part 4 of the SEPP (State and Regional Development) 2011, as the proposal is listed within (the then) Schedule 4A of the *Environmental Planning and Assessment Act 1979*, being general development over \$20 million (the total development value was estimated to be

\$211,775,587). This Section 4.55(2) modification is referred to the Panel in accordance with Clause 21 of the SEPP under Part 4 'Regionally Significant Development' (noting the concurrent Stage 2 DA for physical work exceeds \$30 million and is therefore captured within Schedule 7 for 'Regionally Significant Development') and the EP&A Act and Regulations.

State Environmental Planning Policy (Infrastructure) 2007

Division 17 'Roads and Traffic' Subdivision 2 (Development in or adjacent to road corridors and road reservations) of the SEPP is applicable. Clause 104 requires development specified in Column 1 of the Table to Schedule 3 (Traffic generating development to be referred to the RMS). The proposed development will increase the number of dwellings (from 563 to 582 across the site) and retail GFA (from 7,300m² to 7,942m²) and will therefore exceed the referral criteria of 300 dwellings and retail GFA of 2,000m² with access to any road. Therefore, referral to the RMS is required and was undertaken, with the advice obtained discussed in a later section of this report [Section 4.55(1)(b)]. The provisions of the Infrastructure SEPP are met or can be met via appropriate conditions of development consent.

Several other State Environmental Planning Policies (SEPPs) were considered in the assessment of the approved Concept Development Application. No other State Policies have relevance to the proposed modification.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

This assessment only addresses provisions of NLEP 2012 that are relevant to the modification, noting that some additional relevant clauses to the original (approved) concept application would have been addressed already at the time of the current approved proposal.

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

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

Block 2: 'Commercial premises' (ground and upper level commercial) and 'dwelling house' (existing terraces); and 'Shop top housing' (basement and ground level parking, ground level retail, with upper level residential);

Block 3: 'Shop top housing' (Basement parking, ground level retail, with upper level residential); and 'Commercial Premises' (ground level retail with upper level commercial);

Block 4: 'Shop top housing' (Basement parking, ground level retail, with upper level residential); and 'Residential flat building' (ground level parking, with upper level residential/parking);

Permissibility

All of the above uses are permitted with development consent within the B4 Mixed Use zone of NLEP 2012. '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. It is noted that the terrace at 110 King Street has been used for commercial purposes and could comprise use as a dwelling.

However, the modified scheme now does not intend for the King Street terraces to be individual dwellings on separate allotments. Rather, the scheme involves amalgamation of the King Street properties into the overall subject site, and conversion of the existing buildings into 'multi dwelling housing' (with basement parking and to be later strata subdivided). Multi dwelling housing is a permitted use (with development consent) in the B4 Mixed Use zone.

The current modification application also seeks the following additional uses (and associated definitions) to the above for the entire site. No sites are specified for these uses yet. Both of these uses are permissible with development consent in the B4 Mixed Use zone and are considered to be complimentary uses to the locality and other intended uses. It is noted that the merit assessment of these uses will occur at the time of individual development applications, including the differences in the car parking generated by these uses.

hotel or motel accommodation means a building or place (whether or not licensed premises under the Liquor Act 2007) that provides temporary or short-term accommodation on a commercial basis and that:

(a) comprises rooms or self-contained suites, and

(b) may provide meals to guests or the general public and facilities for the parking of guests' vehicles,

but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.

serviced apartment means a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents.

Zone Objectives

The proposed uses for the modified Concept Proposal 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 hotel and motel accommodation and serviced apartment uses are considered to be complimentary to the other proposed uses on the land, subject to detailed assessment for each future application. 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.

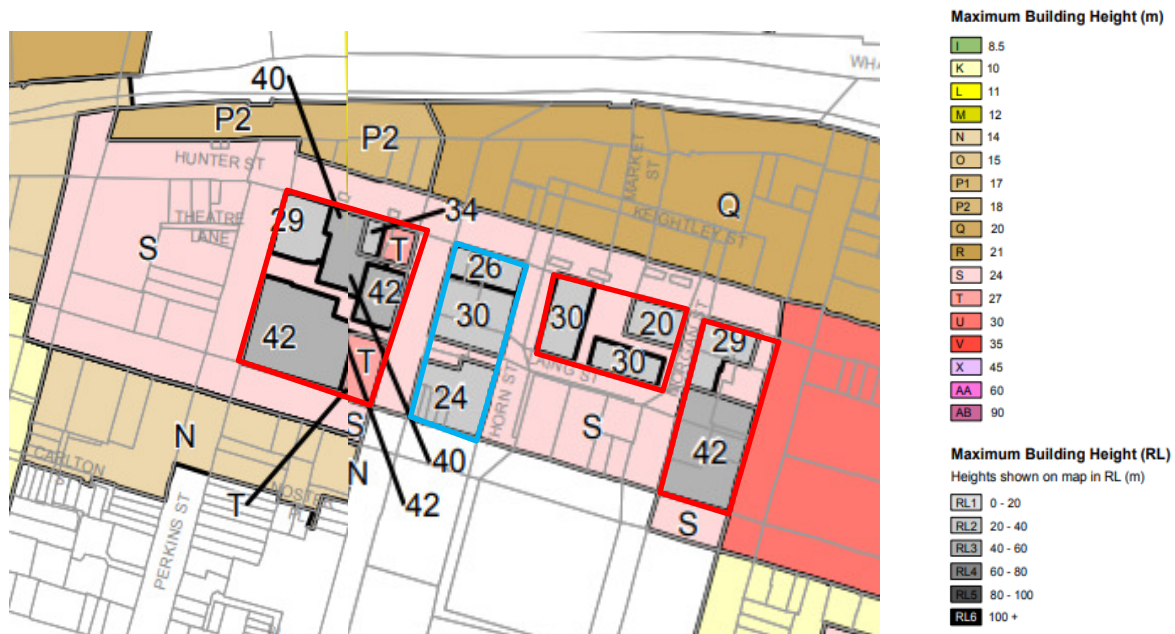
Clause 2.7: Demolition

Not applicable: while the Concept Proposal identifies buildings to be demolished it does not seek approval for any works and therefore demolition of buildings will be the subject of future development applications for the stages of development.

Clause 4.3: Height of Buildings

This clause limits buildings 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, ranging from 24m to 27m (vertical height as measured from existing ground level), and a range of site-specific building heights utilising an RL height (to Australian Height Datum) ranging from RL20 to RL 42m AHD.

Figure 2: 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)
Block 2 shown in blue. Blocks 1, 3 and 4 shown in red



In addition to the height controls within NLEP 2012 'Height of Buildings Map', pursuant to Clause 4.3, there are also height limits imposed within Condition 6 of the Development Consent for the Newcastle East Precinct DA-2017/00701 (sought to be modified by this application) which has statutory effect. [Section 4.24 of the EPA Act 1979 (Status of staged development applications and consents) confirms that the "*while any consent granted on the determination of a staged development application for a site remains in force, the determination of any further development application in respect of that site cannot be inconsistent with that consent.*" Effectively, this requires future development applications for each stage of the development to remain consistent with the approved Concept Proposal (including height). The Stage 2 DA varies from the Concept Proposal and so modification to the Concept Proposal is proposed and is the subject of this report].

Confusingly, the heights within these two separate documents differ. There is a complex background to the building height controls for the precinct. To simplify this issue, this section of the report discusses all building height matters: the background and the relationship of the proposed Block 2 proposed building heights/envelope with both NLEP 2012 Clause 4.3, and Condition 6 of DA-2017/00701.

The proposed modification applies to the plans for Block 2 only. It is noted that the submitted plan DA-2901 'Envelope Plan' for the Market Square Building on Block 3 indicates height levels (RLs) of maximum building height of 24m. This is inconsistent with the new height limits for that site (RL 20m AHD). No change is proposed to this approved plan.

Stage 1: The 'Stage 1' approved buildings on Block 1 now under construction (Development Consent DA-2017/00700) generally conformed to the currently-gazetted building height limits, with some minor exceptions. The approved concept plan heights reflect the Stage 1 buildings under construction as they were concurrently determined.

What are the Current Building Height Controls applicable to Block 2?

As indicated in Figure 2 and outlined in Table 3 below, there are three different NLEP 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. **Figure 3** shows the areas of non-compliance with the NLEP 2012 Height of Buildings Map.

Similarly, the Concept Approval nominates different building heights across Block 2, also indicated in Table 3. **Figures 4 to 7** illustrate the differences between the as-approved Concept Plan Building Envelopes (referenced in Condition 16) and the as-proposed building height/envelopes.

Part of Block	Existing Building Features	NLEP 2012 Max Height	Approved Concept Plan Height (SJB Plans)	Proposed Maximum building height	Exceeds NLEP 2012 Height by
Northern	Fronting Hunter Street, occupied by Soul Pattinson Building and former Duke of Kent Hotel building, both having contributory heritage elements	RL26m AHD	RL26.1m AHD	RL33.6m to lift overrun RL31.62m to fire stair and rooftop awning	7.6m 5.52m
Central		RL30m AHD	RL29.4m AHD	RL31.45m to rooftop plant screening	1.45m
Central - Laneway		Maximum vertical building height 24m from ground level	No Building	No building	N/A
Southern	Occupied by the Lyrique Masonic group of buildings and King Street terrace dwellings which are listed heritage items.	RL 24m AHD	Plan DA-502, 503 and 504: outline of height of existing heritage building "to be refurbished"	RL 30.10m to lift overrun RL 29.335m to rooftop	6.1m 5.335m

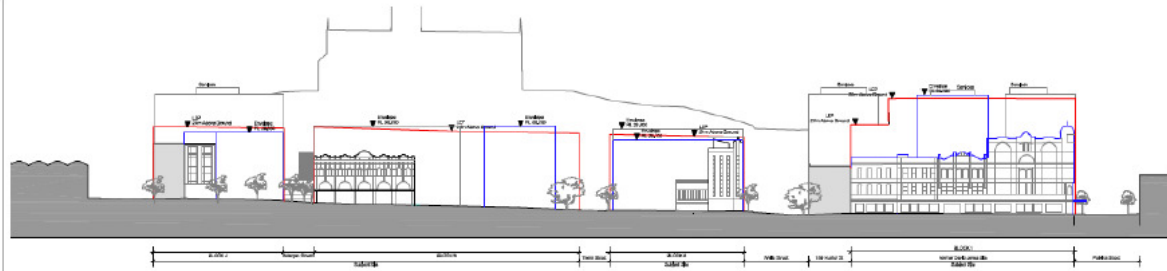
Figure 3: Extent of variation which is proposed to the NLEP 2012 Height of Buildings Map – View from Wolfe Street of Western Elevation (shown in red shading). Yellow line depicts approved concept plan heights)



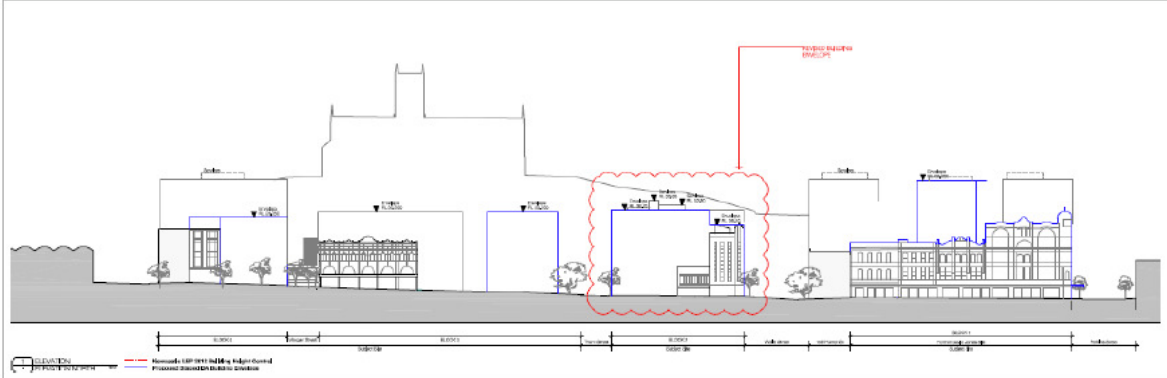
Figures 4-7: Comparison of Approved concept DA plans and Proposed Modifications (SJB Planning)

Elevation – North (Hunter Street)

Approved



Proposed

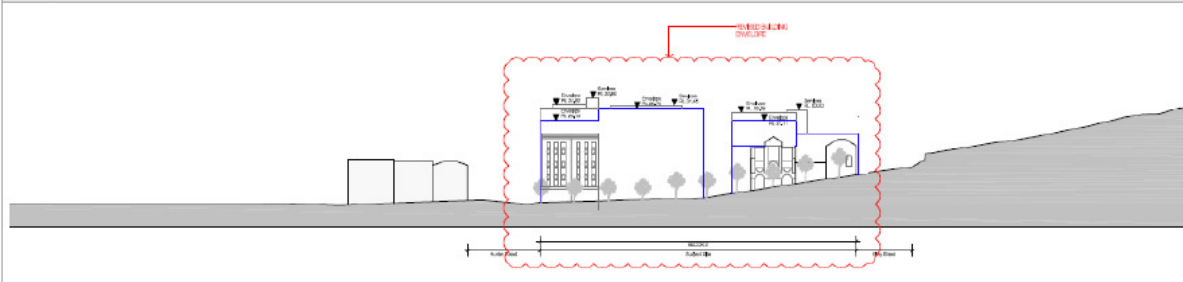


Elevation – Wolfe Street West

Approved



Proposed

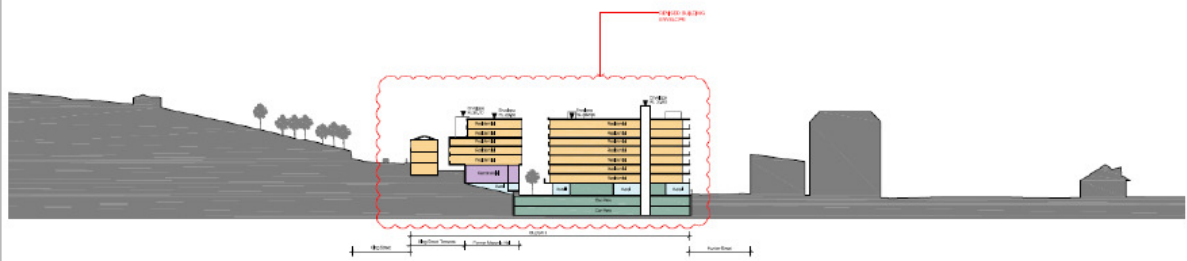


Section F

Approved

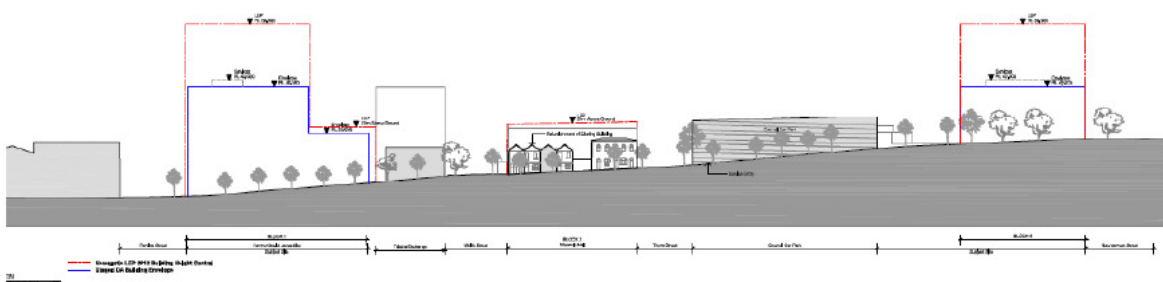


Proposed

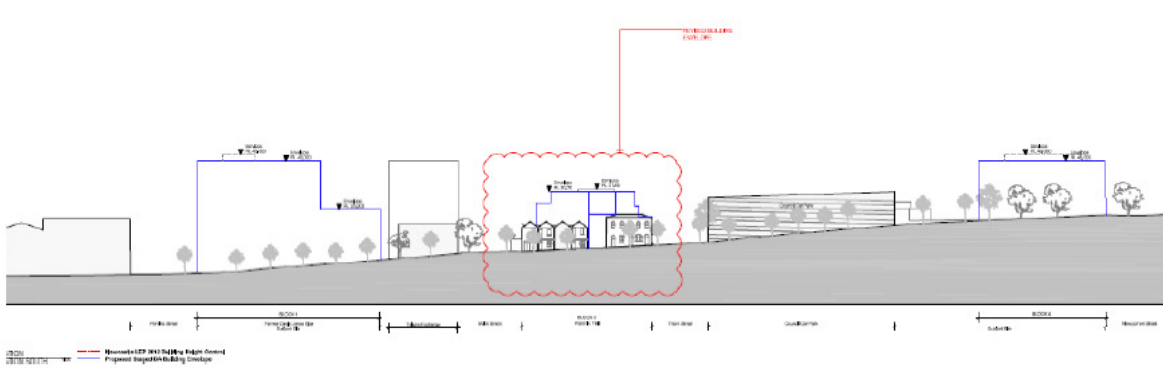


Elevation – South (King Street)

Approved



Proposed



What other NLEP 2012 provisions apply to the proposed building height?

As the development application for the proposed physical building works for Stage 2/Block 2 (DA-2018/00354) seeks to exceed the building heights stipulated on the NLEP 2012 Height of Buildings Map, the applicant has submitted a Variation Statement pursuant to Clause 4.6 'Exemptions to Development Standards' in support of the variation to Clause 4.3 'Height of Buildings'.

A further consideration with respect to height under NLEP 2012 for the Stage 2 DA (but not this modification application) 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 NLEP 2012 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 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 purpose, the proposal qualifies for the 10% height bonus. Notwithstanding this all height exceedances to the NLEP 2012 Height of Buildings Map are subject to consideration by Clause 4.6 of NLEP 2012.

An assessment of these provisions is provided in the separate report for the Stage 2 DA.

Background of NLEP 2012 Height of Buildings Map

The previous report to the JRPP for the approved concept approval discussed the complex background to the matter of LEP building height controls for the Newcastle East Precinct. The following provides an updated summary of the background and how the proposed modifications related to the current building height development controls. This is particularly relevant to the southern portion of Block 2 (which has significant non-compliances with the NLEP 2012 Height of Buildings Map) and the following provides an explanation as to how this has been arrived at.

The current NLEP 2012 Height of Buildings Map (Figure 2) was gazetted in March 2018, being Amendment 26. This was prepared to reflect the originally approved Staged Concept Plan approved by the JRPP in April 2016 (now surrendered). These heights reflected the levels shown on elevations of proposed building envelopes (as referenced in Condition 7 of the Concept Approval Determination as noted 'Staged DA Building Envelope'). Some building heights increased, while others decreased, including sites of the two heritage-listed sites within the precinct - the Market Square Building (in Block 3) and Masonic Hall/Lyrique Theatre and King Street Terrace buildings (on Block 2) - the outline of these existing heritage buildings only is shown in blue on the approved elevation plans, reflecting the existing height of these buildings). The plan also indicates those buildings "to be refurbished". At that time, the NLEP 2012 Height of Buildings Map indicated a maximum building height of 24m from ground level for those heritage sites.

While another approved plan (Envelope Plan Dwg No. DA-2901), not specifically referenced in Condition 7 but included in the list of approved plans (Condition 1), shows building heights on these blocks at RLs of 24m above ground level (reflecting the LEP heights at the time of 24m vertical height from ground level). Notwithstanding this, from the Concept Plan documentation, it could reasonably be expected that the concept was limited to refurbishment of the existing heritage listed Market Square Building (in Block 3) and Masonic Hall/Lyrique Theatre and King Street Terrace buildings (on Block 2), although the NLEP 2012 Height of Buildings Map and approved plan DA-2901 indicated a maximum building height for those sites of 24m above natural ground level.

Council resolved to prepare a planning proposal (becoming Amendment No. 26 to NLEP 2012) which applied lower maximum building heights to the heritage-listed sites only: being a maximum RL height of 20m AHD to the Market Square Building (in Block 3) and RL24m AHD

Masonic Hall/Lyrique Theatre and King Street Terrace buildings (on Block 2). It is assumed that the proposed maximum heights were the approximate heights of the highest points of the existing heritage buildings on the sites outlined on the 'Staged Building Envelope' referenced as the maximum building heights by Condition No. 7 of the original Staged Development Consent (now surrendered). The draft LEP was exhibited in October-November 2016.

During the Planning Proposal process for NLEP 2012 Amendment 26, the owner of the Newcastle East End land made a post-exhibition submission raising concerns regarding the proposed heights for these two sites, seeking the (then) 24m vertical height limit to be maintained. The submission asserted that maintaining the existing height controls for the two heritage listed sites provided greater opportunity for a range of architectural and heritage options for the viable adaptive re-use of the buildings. Council in considering the matter, resolved (on 28 February 2017) to endorse the planning proposal, forwarded it to the Department of Planning & Environment (the Department) for making and amending the building heights in line with the JRPP decision dated April 2016 for the concept plan approval.

The planning proposal that was forwarded to the Department (in May 2017) sought two changes to the draft LEP (from that exhibited), seeking removal from the LEP of the Market Square Building (in Block 3) and Masonic Hall/Lyrique Theatre and King Street Terrace buildings (on Block 2), effectively to maintain the status quo height (of 24m vertical height). The Department's 'Plan Finalisation report' on the planning proposal (refer **Appendix F**) recommended that the Minister's delegate make the draft LEP, as the heights have been assessed as part of the JRPP concept plan process, however, the report also recommended that the Market Square Building (in Block 3) and Masonic Hall/Lyrique Theatre and King Street Terrace buildings (on Block 2) be deferred to enable the further consideration of suitable height controls for those sites.

On 16 March 2018, the Department of Planning and Environment's delegate advised Council in correspondence (refer **Appendix G**) that Amendment 26 was to be made, with all proposed building heights to be amended as proposed [ie. not agreeing to the recommendation to defer the Market Square Building (in Block 3) and Masonic Hall/Lyrique Theatre and King Street Terrace buildings (on Block 2)]. On this, the Department's correspondence stated "*I note that Council sought to change the proposed building height on these sites in response to a submission after exhibition without seeking further public comment on the proposed changes. However, I consider it appropriate that the building heights be consistent with the existing concept approval. The finalised height on these two sites therefore reflects which was publicly exhibited.*"

Prior to the gazettal of Amendment 26, Concept Plan DA-2017/00701 was approved (by the JRPP in December 2017). The assessment of this DA considered the proposed building heights in draft NLEP 2012 Amendment 26. However, the 'Envelope Plans/elevation Plans' did not outline the aforementioned heritage buildings [Market Square Building (in Block 3) and Masonic Hall/Lyrique Theatre and King Street Terrace buildings (on Block 2)] as 'Staged DA Building Envelope' and therefore building heights referred to in the new approved Concept Plan Development Consent (now condition 16) arguably did not apply to these buildings (unlike the previous surrendered consent). As with the surrendered concept plan, the (then) plan referenced in Condition 1 (DA-2901) reflected the NLEP 2012 Height of Buildings Map that was current at the time (24m from ground level). Again, the heritage buildings on Blocks 2 and 3 were indicated 'to be refurbished', and no additional built form to the heritage sites was anticipated or considered at that time.

The applicant contends that the future development of the heritage properties was not anticipated at the time but was to be within the Council's planning framework and would "*be the subject of a Conservation Management Plan (CMP) and extensive Design Review Process which will ultimately determine the appropriate form of development for the site*".

The 'lowering' of the LEP Height of Buildings Map to RL24m AHD for the Masonic Hall/Lyrique Theatre and King Street Terrace buildings, and RL 20m AHD for the Market Square Building, while reflecting the height of the originally approved (now surrendered) concept approval plans, is considered to unreasonably limit the development potential of these sites, for which a maximum vertical building height of 24m was provided for by NLEP 2012 at the time.

Upon reflection, the applicant should have more clearly stipulated in these plans the potential for redevelopment of these heritage properties, rather than 'refurbishment'. As mentioned above, it is arguable that another plan (Envelope Plan Dwg No. DA-2901), not specifically referenced in the relevant conditions, but included in the approved plans, shows allowable LEP building heights/envelope on these block at 24m above ground level [reflecting the LEP heights at the time for both the original concept plan, (now surrendered) and the current approved concept plan that is proposed to be modified].

In addition, contrary to the Department's letter relating to the LEP Height of Buildings Map Amendment, a deferral of these two heritage sites would not have 'changed' the LEP heights of these two sites without public exhibition, but rather would have maintained the controls to a 24m vertical height (which was publicly exhibited prior and associated impacts of these heights in theory would have been considered by Council prior to the gazettal of NLEP 2012).

It is also noted that further complexities (associated with minor amendments to City Centre LEP mapping and plan making process) were identified during the assessment of this application and the Stage 2 DA, notably for Sheet HOB_004K Amendment No. 32, which was in force at the time of the lodgement of the current DA and later found to contain a drafting error associated with the subject sites. This error was corrected by Amendment No. 37.

Summary on Height of Buildings:

Since the original gazettal of NLEP 2012, the maximum building height control under the LEP for Block 2 was 24m from ground level. The original (now surrendered) approved concept plan approved in 2016 enabled higher building envelopes on the northern portion of the Block. The building envelopes for the southern portion of Block 2 reflected the heights of the existing heritage buildings. Amendment 26 to NLEP 2012, gazetted in April 2018 reflected these heights, thereby reducing the statutory maximum building height. However, in the meantime, (in December 2017) a new Concept Plan was approved with different building heights, so the heights within the new LEP Height of Buildings Map have already been superseded by, and in some areas are inconsistent with the Height of Buildings Map gazetted in April 2018.

Neither concept plan anticipated (or considered) any built form on the sites occupied by the heritage buildings, however, the submitted concept plan applications referenced a maximum building height/envelope of 24m above ground level to reflect the longstanding NLEP 2012 height controls applicable at the time. This was reflected on Envelope Plan Dwg No. DA-2901 and the 'Building Envelope' elevation plans of DA-2017/00701.

The current application to modify DA-2017/00701 seeks to increase building heights to the existing approved concept plan across Block 2 (to the extent shown in Table 2 and Figures 3 to 7). The greatest exceedance exists above the heritage buildings to which the height limit was set by Amendment No. 26. If the NLEP 2012 height of buildings map was retained at 24m from natural ground level, the proposed building height for the southern portion of Block 2 above the heritage buildings would comply. The application also seeks increases to the recently-gazetted Height of Buildings Map of NLEP 2012 (minor variations on the northern portion of the site, and significant variations on the southern side, occupied by the heritage items).

The modification process has provided the community and consent authority with further opportunity to assess the suitability of the revised proposal, including building height. 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. An assessment of this Clause 4.6 report is contained in the Stage 2 report and, in summary, is supported, based on detailed assessment of the required considerations.

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 indicates that a maximum FSR of 4:1 is permissible on the site (total site area 16,608m²). The approved Concept development application sought specific FSR's for each block: Block 1: 4:1; Block 2: 3.2:1; Block 3: 3.3:1; Block 4: 4:1, with an average across the site being: 3.68:1 (based on a GFA 61,130m²). The proposed modification seeks an increase to the GFA from 61,130m² to 62,375m³, resulting in an increased FSR for Block 2 from 3.2:1 to 3.55:1, and an overall increase of the entire site to 3.75:1 (from 3.68:1). The proposed modified density for Block 2 and the overall site complies with the FSR development standard of NLEP 2012. Further detailed information to confirm the calculation of GFA for individual buildings and compliance with the definition of GFA will still be required at each stage of development.

Clause 5.10 Heritage Conservation

The site that is the subject of the concept proposal contains four heritage items of local significance listed within NLEP 2012 and the whole site is located within the Newcastle City Centre Heritage Conservation Area (Item C4). There is no alteration to the previously-assessed approved concept as it applies to heritage conservation, with the exception that the current modification application seeks changes to the building envelope (street wall heights), building heights and FSR within Block 2. Block 2 contains listed heritage items (former Lyrique Theatre, Masonic Hall and adjacent building; and retaining wall and sandstone steps), and several contributory facades/buildings. There are no changes to the already-assessed aspects of the concept development application with respect to historical archaeology and Aboriginal archaeology. A discussion on the impacts of the proposed modifications on heritage conservation within Block 2 are addressed at Section 8 of this report. Consultants GML Heritage assessed the modification application for CN, in the context of Clause 5.10 provisions, and confirms the provisions of this clause have been met/can be satisfied.

Clause 6.3 Serviced Apartments

This clause aims to "*prevent substandard residential building design occurring by way of converted serviced apartment development*" by requiring the design quality principles of State Environmental Planning Policy No. 65 and the Apartment Design Guide to apply to strata titled serviced apartments. This clause will apply for future stages at the time of identification and strata subdivision of serviced apartments.

Clause 6.5 Public Safety – Licensed Premises

This clause requires consideration of public safety prior to Council granting consent to a licensed premises. The Concept Application seeks to include "hotel or motel accommodation" (which can incorporate licensed premises under the *Liquor Act 2007*) as an optional use. However, should a licensed premises be proposed within any commercial space in future stages, 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

While the subject land is located within the Newcastle City Centre Map that is applicable to this land, the specific clauses do not apply as the application is to modify a Concept development. The specific provisions, however do apply to the development application(s) for the future stages of the development, including the concurrent development application for Stage 2/Block 2. In particular the design excellence provisions (Clause 7.5) will apply to that application, including the exemption for an architectural competition and as it seeks an exceedance to the building height control.

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

Newcastle Development Control Plan 2012 (DCP) is the applicable Development Control Plan and the Sections listed below are relevant to the proposed concept development.

6.01 Newcastle City Centre (as amended 17/4/2018)

4.04 Safety and Security

7.02 Landscaping, Open Space and Visual Amenity

7.03 Traffic, Parking and Access

7.05 Energy Efficiency

7.06 Stormwater

7.07 Water Efficiency

7.08 Waste Management

4.01 Flood Management

4.03 Mine Subsidence

4.04 Safety and Security

4.05 Social Impact

5.01 Soil Management

5.02 Land Contamination

5.03 Tree Management

5.04 Aboriginal Heritage

5.05 Heritage Items

5.06 Archaeological Management

5.07 Heritage Conservation Areas

7.04 Movement Networks

7.09 Outdoor Advertising and Signage

7.10 Street Awnings and Balconies

With the exception of Section 6.01 'Newcastle City Centre', which is relevant to the built form outcomes of the precinct, the modified Concept Proposal is considered to be generally consistent with the DCP (as detailed in the assessment report relating to that application), noting that the detailed provisions of the DCP need to be addressed for the individual DAs at each stage of the development. An overview of the relevant DCP matters were addressed in the previous reports to the JRPP on the previous approved Concept DA-2017/00701. To avoid repetition, only the key relevant headings and/or differences to this previous approved Concept DA are discussed in this section. The key issues within each section, where relevant, are discussed within the relevant heading under 'the likely impacts of the development' section later in this report.

NDCP 2012 - Section 6.01 'Newcastle City Centre'

A brief response to each of the relevant Elements/chapters contained within Section 6.01 (Newcastle City Centre - Locality Specific Provisions) is provided below:

Part 6.01.02 Character Areas - East End

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

The 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

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(1)(b) assessment.

B2 - Significant Views

Further discussion of views is contained in the following Section 4.15(1)(b) assessment.

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 heights range from 16m to 22m within this precinct. A setback of 6m is required above the street wall height. A number of variations have been identified within Block 2 of the Concept Proposal with such variations discussed in detail within the Section 4.15(1)(b) assessment of this report.

A2- Building Setbacks

This control specifies that buildings shall be sited on the boundaries up to street wall height and shall have a 6m side and rear boundary setback between street wall height and 45m. The proposed modification maintains the original zero building setbacks for the precinct and Block B, however, seeks a variation to the 6m setback above street wall height. This is discussed in detail within the Section 4.15(1)(b) assessment of this report.

A3 - Building Separation

The buildings are predominantly residential use above the ground and first floor commercial use, hence the building separation requirements of SEPP will prevail for future DAs. It is noted that the internal building separation within Block 2 is addressed in detail in the Stage 2 DA.

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 originally submitted indicative documentation for the Concept DA indicated compliance could be achieved. The detailed plans for Stage 2 indicate the proposed building for Block 2 to be generally compliant with some variations (as discussed in the Stage 2 DA report), which are considered to be justified.

A6 - Heritage Buildings

This clause provides requirements relating to heritage buildings and sight lines, which are discussed in detail in the report following Section 4.15(1)(b) assessment.

B1 – Access Network

The modification maintains the Block 2 through link.

B2- Views and Vistas

This clause provides requirements relating to views and vistas, which are discussed in detail in the following sections of the Section 4.15(1)(b) assessment.

B3 Active Street Frontages

Street activation is maintained for all buildings.

B6 - Sun Access to Public Spaces

Solar access will be achieved.

Section 94A Development Contributions Plan 2009

As no works are proposed by the concept DA, a levy will be payable to each future DA Stage of the development in accordance with this Plan.

(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

All likely impacts of the previous approved Staged Concept DAs (DA-2015/10185 and DA-2017/00701) were addressed/discussed in the previous reports to the JRPP. A list of the headings within those reports are provided below. There is no change to these aspects of the concept development (except for minor comments provided, where relevant).

- Aboriginal and Archaeological Heritage;
- European Heritage (except for comments on revised heights and street wall heights for Block 2. refer to Discussion under heading 'Heritage' and 'Street Wall Heights and Building Form')
- Public Domain and Publicly Accessible Private Land
- Acoustic Impacts
- Construction Management
- Service Infrastructure
- Flood Management
- Contamination
- Geotechnical Constraints
- Mine Subsidence

To avoid repetition, only the key relevant headings and/or differences to the previous approved Staged Concept DA are discussed in this section with respect to the current DA, and includes relevant comments from Council's specialist officers, including a response to issues raised in submissions.

Street Wall Heights and Building Form

Figure 6.01-29 (Hunter Street Mall Precinct Plan) contained in Section 6.01.04 of the DCP confirms the maximum street wall heights that are required within the Newcastle East precinct. An extract of the street wall heights within the precinct as it applies to the proposed modification/Block B is provided in **Figure 8** later in this section.

Performance criteria B3 for this precinct states "*Building form integrates with existing heritage character and retains contributory buildings.*" Figure 6.01-29 indicates that street wall heights of between 16m and 22m are required to the southern side of Hunter Street, across the whole Newcastle East Precinct site. The 'acceptable solutions' relating to this control states "*Street wall heights ensure a minimum of two hours of sunlight is achieved between 9am and 3pm mid winter*", in addition to the requirements for "*large scale new development (to be) articulated so that large expanses of building form are broken down into smaller elements to relate to the fine grain of the precinct.*"

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.

Background

The originally-submitted (now surrendered) Staged Concept DA-2015/10185 (and subsequent approved DA-2017/00701) sought several variations to the street wall heights and 6m setback above the street wall height which were assessed at the time.

In summary, the assessments acknowledged that while the variations sought to the DCP's street wall heights and setbacks may have merit, this can only be determined through more detailed design and analysis at each DA stage. An exception to this was the street frontage heights applicable to Thorn and Laing Street frontages (in Block 3) which were assessed and

deemed to be acceptable. Following consideration of this assessment, and so as to confirm the existing DCP controls, the JRPP resolved to impose the following conditions of development consents for DA-2015/10185 and DA-2017/00701:

12) For Blocks 2, 3 and 4, where the building envelope is above a retained heritage facade, then it shall be set back in accordance with Newcastle DCP 2012, being 6 metres.

13) For Blocks 2, 3 and 4, with the exception of the Thorn Street and Laing Street frontages of Block 3, where the building envelope exceeds the maximum street wall height identified in the Newcastle DCP 2012, then the section of any building above that height shall be set back in accordance with the DCP, being 6 metres.

It is noted that the development application for Stage 1/Block 1 (DA-2017/700) sought a variation to the street wall heights and 6m setbacks to Building A (Corner King and Perkins Streets) and Building D (Wolfe Street) which was supported and approved.

Proposed Modification to Block B Street Wall Height and Setbacks

The modification application (and Stage 2 DA-2018/00354) again seeks to revise the street wall heights and 6m setbacks (above street wall height), now within Block 2. The initially-submitted design was considered unsatisfactory having regard to the building envelopes (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.

Figure 8 illustrates how the controls apply to the site, and the proposed street wall heights. Table 4 below is a summary of the compliance with the DCP controls and Conditions 12 and 13 of Development Consent DA-2017/00701. **Figures 9** and **10** demonstrate the proposed street wall height in comparison with that required under the DCP.

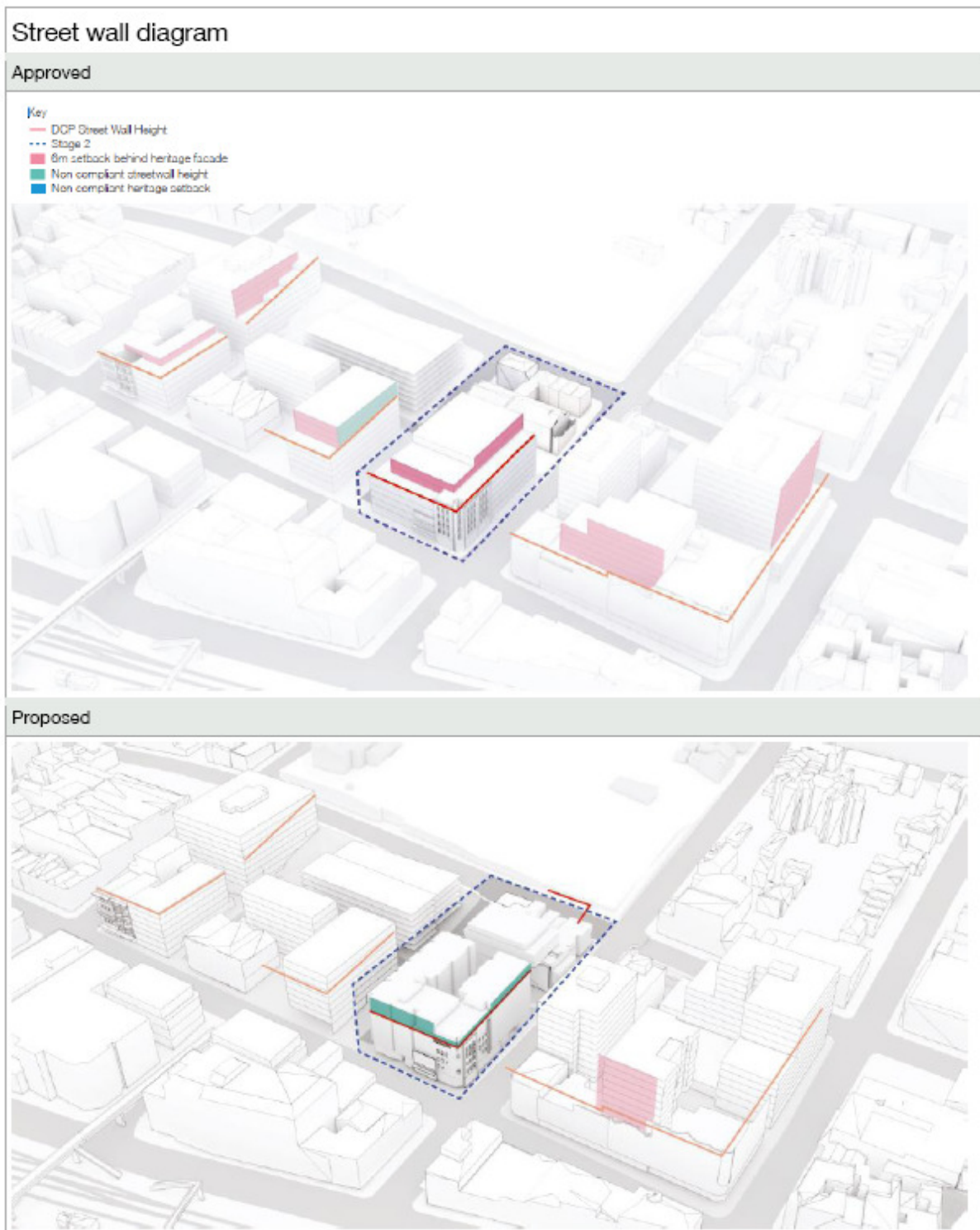
Table 4: Comparison of Block B Required and Proposed Street Wall Heights and 6m setbacks		
Block B Location	NDCP 2012 Street Wall Height (Provided)	6m Setback required?
<i>Northern half of site (north of pedestrian link)</i> Includes contributory heritage buildings Former Royal Exchange Building NW (corner 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 Streets 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 façade 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: 4.45 to balcony edge and 6.45 to building facade Level 7: 9m to building facade (non-compliance to balconies)

Table 4: 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?
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

Figure 8: Figure 6.01-29 (Hunter Street Mall Precinct) of Section 6.01 of NDCP 2012 showing street wall heights which apply to the subject site



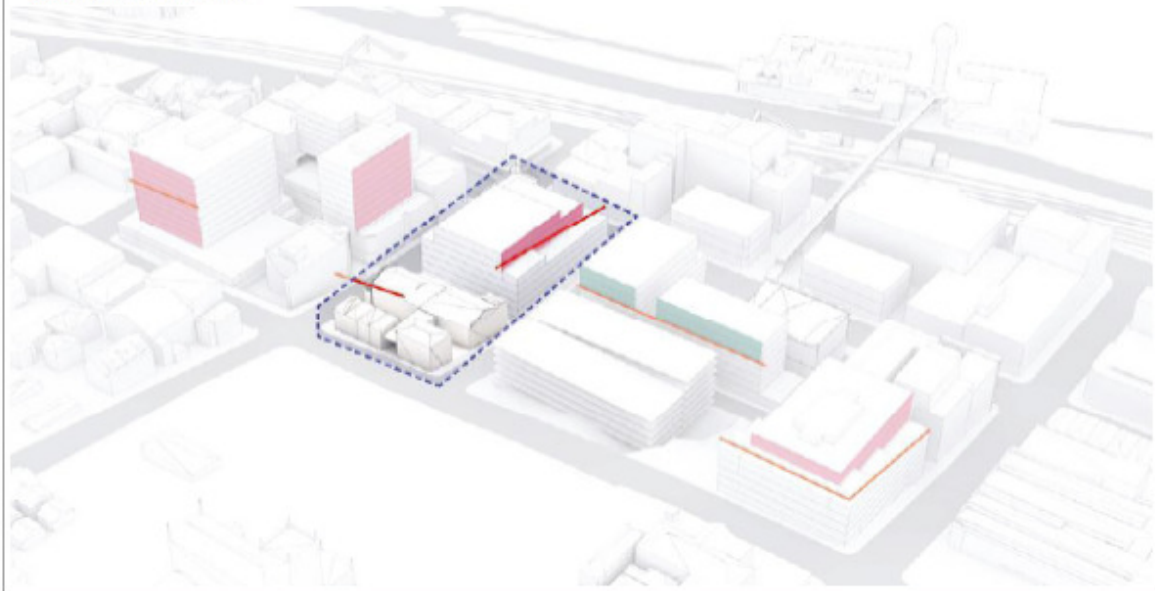
Figures 9 and 10: Comparison of proposed street wall height with street wall heights required under NDCP 2012.



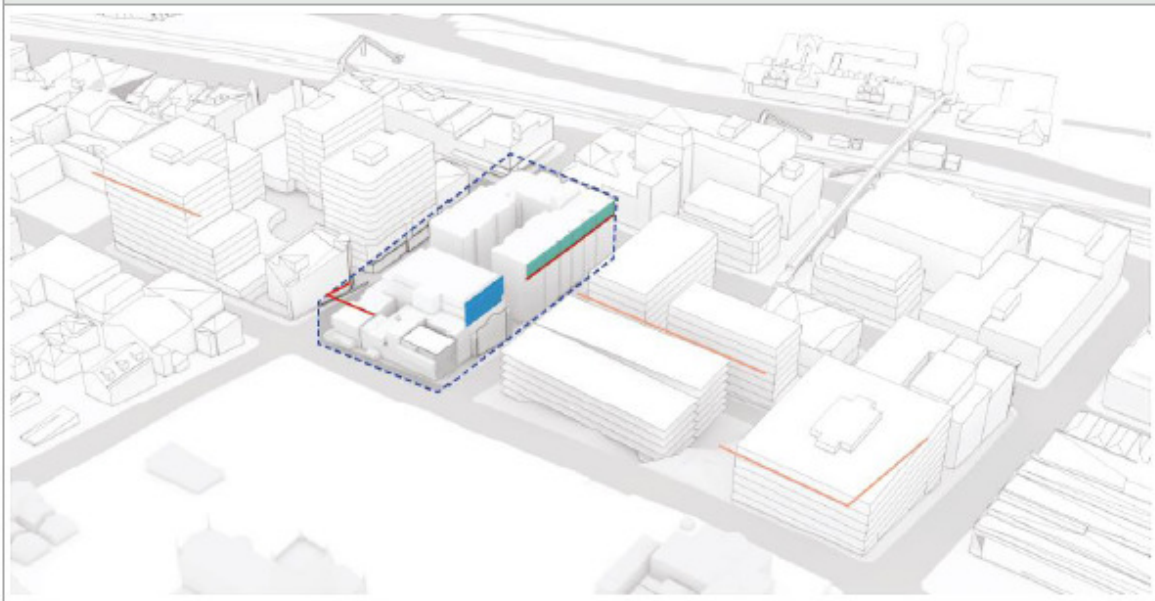
Street wall diagram

Approved

- Key
- DCP Street Wall Height
 - - - Stage 2
 - 6m setback behind heritage facade
 - Non compliant streetwall height
 - Non compliant heritage setback



Proposed



The applicant has provided the following summarised justification for the proposed street wall heights and upper level setbacks (p60 and p81-83, SoS, SJB Planning):

“Whilst the proposed envelopes do not comply with the street wall heights and 6m setbacks, it is considered to provide an appropriate alternative for the following reasons:

- *The alignment meets the objectives of the DCP in respect to strong street edge framing public spaces;*
- *The street wall heights were the outcome of a robust, site specific design excellence process that has been undertaken in the formulation of the Stage 2 DA. This process was undertaken in accordance with an approved Design Excellence Strategy. 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. 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.*
- *Appropriate scale relationships are maintained with buildings along the street and opposite.*
- *Views to the Cathedral from key vantage points are retained and accommodated (supported by Visual Analysis at Attachment 4) . The variation to the street wall height and upper level setbacks does not result in unreasonable impacts on view corridors.*
- *There will be no adverse overshadowing as a result of the variation in the street wall height (refer to the Shadow Analysis – Stage 2 at Attachment 5)*
- *The street wall heights respond to the heritage conservation policies outlined in the CMP and do not adversely impact on the heritage significance of setting of the heritage items or conservation area.*
- *As detailed in the Addendum HIS included at Attachment 3, the proposal Conservation Management Plan (CMP) prepared by City Plan Heritage 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 the...Policies 18 and 49 of the CMP.*
- *As detailed in the following extracts of the Heritage Impact Statement included as an appendix to Addendum HIS (refer to Attachment 3) the proposed street wall, building alignment and vertical extension from the existing heritage facades is an acceptable outcome and does adversely impact on the heritage and elements on site, nearby items of the conservation area.*

Current DA Assessment Comment:

In a similar approach to the assessment of the original concept application (now surrendered) and the current approved concept application (being that the approved built form of a Concept DA effectively supersedes the applicable built form controls until the site is fully developed), it is not appropriate to enable significant increased street wall heights and base the long term controls for such an important precinct based on the submitted conceptual documentation for the modification.

The statement in the DCP 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”* is supported. The sense of enclosure and consideration of human scale, together with the detailed elements of a proposed building design are also important factors to the streetscape, and the increases proposed to the current street wall heights (and removal of associated 6 metre setbacks above street wall height) should be considered in this context, rather than conceptual diagrams.

The original assessment approach is therefore maintained with respect to the street wall heights sought for this Staged Concept DA for Blocks 2, 3 and 4, being that while the variations sought to the DCP's street wall heights and setbacks for Block 2 may have merit, this can only

be determined through more detailed design and analysis at each DA stage. It is therefore recommended that the variations sought to the DCP's street wall heights for Block 2 not be granted at the concept stage (except for Thorn and Laing Street on Block 3, which has already been supported). Draft Conditions 12 and 13 of the Concept Approval have been amended to require compliance with the intended street wall height, unless varied by an application for an individual stage.

The variations sought to the street wall height and setbacks within Block 2 have been considered as part of the detailed assessment of the concurrently lodged Stage 2 DA-2018/00354. Refer to the separate report in relation to this DA. In summary, the report recommends that the proposed street wall heights and built form and massing are appropriate. In this regard, the proposal is an appropriate outcome for the site and the variation to the street wall heights for Block 2 are supported.

View Analysis and Impacts:

Background

As it was a key issue of the assessment of the original 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 issue has therefore been rigorously considered in the assessment of the previous and current approved concept plan.

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 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 (now surrendered) 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 NLEP 2012

(former existing and proposed reduced heights within the (then) current Planning Proposal, now gazetted) all enable this built form and, on balance, it is therefore assumed that the higher order LEP height control takes 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 Condition 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 Condition 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. Some non-compliances with Condition 13 of Concept Approval which requires 6m setback above the heritage items.

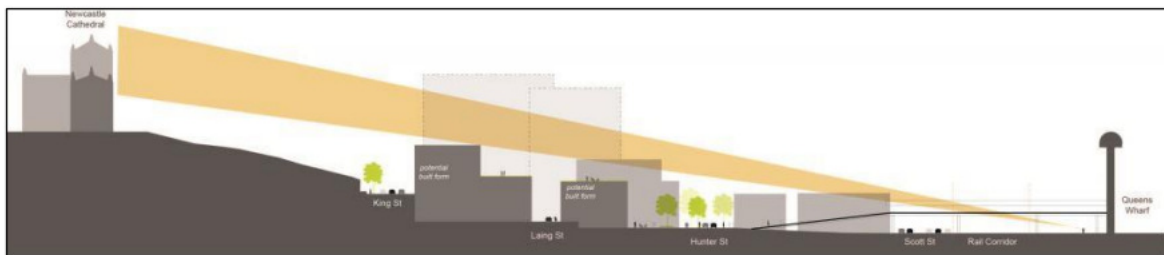
Table 5 below contains all view-related controls within Part 6.01 'Newcastle City Centre' of the DCP:

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

6.01.02 Character areas	
<i>F. East End</i>	
<i>Principles - East End</i>	<i>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. Vistas that terminate at significant heritage buildings are protected, such as Fort Scratchley Heritage items and their setting are protected. New buildings respect the setting of heritage buildings.</i>
6.01.03 General Controls - Building Form	
<i>A6. Heritage buildings</i>	
<i>Performance criteria</i>	<i>A6.1 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 11: 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 (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 E** of this report). This View Analysis provides a comparison of the view impacts 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).

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), whilst 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 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.*

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 Heritage Consultant that assessed the application for CN also confirmed that 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.

Heritage

The application was referred to a 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"*.

Refer to detailed assessment of heritage considerations within the concurrent report for Stage 2 DA-2018/00354.

Overshadowing

Overshadowing impacts of the originally intended building envelopes were considered for the approved Concept DA. As indicated elsewhere in this report, there is no proposed amendments to the as-approved street wall heights and building heights for Block 3 and 4 and hence there are no alterations to overshadowing impacts (which were satisfactory). Altered overshadowing occurs as a result of the proposed built form for Block 2, which is detailed in the separate assessment report for the Stage 2 DA. In summary, this assessment concludes that the level of sunlight access to be obtained by adjacent developments is acceptable, having regard to the comparative change between the level of overshadowing cast by the approved Concept and the Stage 2 application and the existing/approved functions of adjacent buildings. Further, the level of sunlight access achieved by the through-block link, whilst not ideal, is improved from that identified in the approved Concept and is also considered to be acceptable.

Public Domain & Publicly Accessible Private Land & Funding Arrangements

The approved Concept DA included an 'Indicative Public Domain Strategy' (Aspect Studios, June 2017) that provides a network of smaller activities, squares, routes and spaces within the site and along internal public road reserves within and immediately adjacent to the site. There is no change from the previously-approved scheme, with the exception of the shape/configuration of the Block 2 Wolfe to Thorn Street Link (which now excludes service vehicles and is pedestrian only). This link will be privately owned and maintained. There will be no change to the other aspects of public domain improvements, which will be funded by the developer at each stage of work at each frontage of the development sites.

The existing conditions of development consent DA-2017/00701 relating to Section 94 Contributions (40 and 41) and Public Domain (42-49) are considered to remain relevant to the revised Staged Concept DA and should be re-imposed for the current DA (with appropriate updating/edits).

Traffic, Parking & Access

Background:

The original approved (now surrendered) Staged Concept DA-2015/10185 allowed a significant shortfall of parking provided across the entire site/four blocks based on the number of apartments and gross floor area (refer Table 7 below). The application justified this shortfall on the basis of a surplus within the proposed Block 1 carpark, and retail and commercial demand could be met by on-street parking and the CN owned multi-deck car park at Laing/King Street which was intended to accommodate parking demands of the precinct. As this is an important issue, the assessment report discussed this matter as follows:

Council's Senior Development Officer estimates that *"around 25% of Council's 478 multi-level car park or 120 spaces will be required for this development. This would require a change to the current operational focus of the car park from long term / all day parking to*

short term parking encouraging regular turnover". In this regard he confirms that Council Management has advised the following:

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

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

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

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

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

A consistent approach was taken for the later (current approved) concept plan application DA-2017/00701 and the following conditions were imposed on the development consent with respect to car parking provision:

- 18) On-site car parking is to be provided for a minimum of 553 vehicles across the four (4) stages of the development and shall be generally in accordance with the details indicated on the submitted plans and documentation, except as otherwise provided by the conditions of consent.*
- 19) The number of car parking spaces shall be provided within each stage in accordance the requirements of Section 7.03 of Newcastle Development Control Plan 2012 (NDCP 2012) or the applicable standard at the date of lodgement of the application for each stage. The submitted plans and Traffic and Parking Impact Assessment for each stage shall detail the number and location of spaces required in accordance with this condition:*
 - a) 100% of car spaces required for residents are to be provided on site;*
 - b) A minimum of 25% of the required number of residential visitor parking spaces shall be provided for residential visitor parking in each of the car parks for each Block contained in Stages 1-4 inclusive. These spaces are not to be subdivided, leased*

- or controlled by or on behalf of particular unit owners or residents. Spaces cannot be allocated or deferred to different Blocks/stages. The remaining 75% is to be accommodated by the existing Council carpark and on-street parking.
- c) Stages 1 to 4 of the development shall each provide on-site car parking for the parking for commercial and retail staff at the rate of 50% required by Council's DCP for commercial and retail use. The remaining 50% is to be accommodated by the existing Council carpark and on-street parking.

It is understood that no progress to future car parking management has occurred.

Current Modification: Comparison to Approved Concept DA-2017/00701

A comparison of the key traffic and parking aspects of the approved concept DA and the current modification is as follows (refer also **Table 6** for parking spaces):

- **Traffic Generation and Impact:** The submitted Traffic Addendum indicates that a marginal increase of between 11 and 16 vehicle trips in the AM and PM peak hours will occur respectively. Such an increase is expected to have a minor impact on the key surveyed intersections in the '2015 post development scenario'.
- **Servicing and Access** locations are the same as previously approved, with the only change being to Block 2, where vehicle access to the basement car park is relocated to Thorn Street (previously from the central access lane which will not be pedestrian only). Servicing (also previously in the lane/link) is now proposed form Wolfe Street. The existing on-street loading will be relocated further north. **Refer Figure 12.**
- **Parking** capacity across the site has increased across the site (from 553 spaces to 614 spaces), largely due to the increased parking provision for Stage 2/Block 2 parking.

Table 6: Comparison Between Approved and Proposed		
Original Concept DA (DA2015/10182) surrendered	Approved Concept DA-2017/701	Current Proposed Modification to DA-2017/701
491 Spaces (approx.)	553 spaces	663 spaces
Block 1: 233 (149 in Perkins/King St; 84 in Wolfe St)	Block 1: 273	Block 1: 273
Block 2: 76	Block 2: 76	Block 2: 143 (+67 spaces)
Block 3: 88	Block 3: 88	Block 3: 88
Block 4: 94 (72 Newcomen St; 22 in Morgan St)	Block 4: 112	Block 4: 114 (indicative)

Figure 12: Servicing and Parking Concept Plan (SJB Architects). The red arrow indicates the previous parking access location.



Table 7 shows, on a block by block basis, the number of parking spaces required under the NDCP and proposed as part of the development.

Table 7: Car Parking Requirements by NDCP 2012 and Concept DA Provision (As-approved vs Modification)						
					Total Parking	
Car Spaces Required	Block 1	Block 2	Block 3	Block 4	Approved Concept DA	Proposed Mod
1 Bed Units <i>0.6 spaces x 264 units (approx.)</i>	41 <i>69 units</i>	22.2 <i>37 units</i>	34 <i>56 units</i>	57 <i>95 units</i>	160	159
2 Bed Units <i>0.9 spaces x 265 units (approx.)</i>	118 <i>132 units</i>	69.3 <i>77 units</i>	13 <i>14 units</i>	35 <i>39 units</i>	216	238
3 Bed Units <i>1.4 spaces x 57 units (approx.)</i>	34 <i>24 units</i>	9.8 <i>7 units</i>	39 <i>28 units</i>		73	80
Total Residential Parking Required	193 <i>225 units</i>	102 <i>121 units</i>	86 <i>98 units</i>	92 <i>134 units</i>	449	477
Residential Visitor Spaces Required (1 for first 3 dwlgs, + 1/5 thereafter)	45	25	20	27	113	118
Retail/Commercial GFA	3650	1510	2951	1012	8935	9123
Required Retail/Commercial spaces (1/60m2 GFA)	61	25	49	17	149	152
Total Car Spaces Required	299	152	155	136	711	742
Total Car Spaces <u>Provided</u>	273	137 (-15)	88	114	553 Shortfall:162	614 Shortfall:131
Residential	198	117 (+15)	85	92	454 Excess: 5	492 Excess:21
Residential Visitor	45	7 (-18)	3	20	68 Shortfall: 45	75 Shortfall: 43
Retail/commercial	30	13 (-12)	0	0	30 Shortfall: 106	43 Shortfall: 111

Traffic Generation: Both the Concept DA and Stage 2 development applications were accompanied by documentation by GTA Consultants that addresses traffic, parking and intersection impacts. In summary, 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 CN 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 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 that are proposed. A condition has been recommended requiring the full upgrade of the public domain across each frontage of the site.
- Other conditions were recommended to be imposed for the Stage 2 Development Consent.

(c) the suitability of the site for development

The report for the previous Concept DA confirmed that the site is suitable for the proposed staged development, subject to the submission of further detailed investigations, documentation and strategies to comprehensively address contamination, mine subsidence, geotechnical constraints, retaining wall construction, acid sulphate soils, groundwater and flooding in conjunction with each stage of the development.

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

Section 4 of this report contains a summary of the issues raised within public submissions (mostly relevant to the Stage 2 DA). A response to the concerns raised regarding building height and views, being matters relevant to the concept plan modifications, is contained in Section 8 of this report.

(e) the public interest

The Concept Proposal (proposed to be modified) will facilitate the achievement of CN's vision for the Hunter Street Mall as contained within the DCP (Section 6.01). The modifications will maintain the ability to deliver the urban design outcomes contemplated by the strategy.

It is recognised that there is potential for short to medium term economic impacts on businesses and amenity impacts on residents. Subject to the submission of further detailed information to clearly address mitigation strategies and ongoing management in conjunction with future Development Applications, it is considered that the overall economic and social benefits of the Concept Proposal are in the public interest.

9. Conclusion

The proposed modifications to the approved Concept Proposal apply to Block 2 which are detailed in a concurrent Development Application for development works (DA-2018/00354).

The modifications to the approved Concept Proposal, while containing the fundamental principles of the development does not, nor are required, to provide the level of detail that is necessary to allow for complete assessment of the proposed development works for Stage 2. Therefore, this report should be read in conjunction with the separate report for DA-2018/00354 which assesses the development with respect to the detailed controls of NLEP 2012, the DCP and relevant state environmental planning policies.

The proposed modifications to the approved concept DA with respect to Block 2 principally relate to increased building heights (significantly in the southern portion of Block 2 which did not anticipate building above the heritage items, and to a lesser extent in the northern portion of the site) and related matters. Detailed assessment of these aspects has been undertaken as part of (and concurrent to) DA-2018/00354 and found to be acceptable with respect to amended building heights, footprints and street wall heights and setbacks, views and heritage impacts. The proposed modified parking arrangements/provision for Block 2 remain consistent with (marginally increased) compared to the approved concept plan.

Detailed consideration of Section 4.55 'Modification of Consents' is provided in this report, and it is considered that the modifications to the approved concept plan are substantially the same development as the development for which consent was originally granted.

On balance, it is considered that the modifications to the approved Concept Proposal (limited to Block 2) will achieve the overall built form and heritage outcomes anticipated for this precinct and will promote the revitalisation of the East End of Newcastle. Accordingly, approval of the proposed modifications to the Concept Proposal is recommended.

10. Recommendation

That the Hunter & Central Coast Joint Regional Planning Panel grant consent to DA-2017/701.01, subject to the conditions contained in **Appendix A**.

APPENDICES

Appendix A: Recommended conditions of consent.

Appendix B: List of the documents submitted with the application for assessment.

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

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

Appendix D: Comparative Diagrams

Appendix E: View Analysis – Stage 2 (SJB Planning)

Appendix F: Background Report: 'Plan Finalisation Report for Draft Newcastle Local Environmental Plan 2012 Amendment No. 26' (Newcastle City Centre Building Heights prepared by NSW Department of Planning and Environment)

Appendix G: Correspondence from NSW Department of Planning and Environment dated 16 March 2018 advising Draft Newcastle Local Environmental Plan 2012 Amendment No. 26' has been made.

Appendix H: Development Consent DA2017/00701