

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

<b>Panel Reference</b>	2018HCC038
<b>DA Number</b>	DA-2018/01109
<b>Local Government Area</b>	CITY OF NEWCASTLE
<b>Approved Development</b>	Concept Development Application for a mixed use development comprising retail, commercial, public spaces, residential apartments and associated car parking.
<b>Street Address</b>	Lot 100 DP1245750 854 Hunter Street, Newcastle
<b>Applicant/Owner</b>	Doma Interchange Development Pty Ltd / Hunter and Central Coast Development Corporation
<b>Number of Submissions</b>	Nil
<b>Recommendation</b>	Approval
<b>Regional Development Criteria (Schedule 4A of the Act)</b>	The proposal is listed within Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011, being general development over \$30 million.
<b>List of All Relevant 4.15(1)(a) Matters</b>	<p><b>Environmental planning instruments: s4.15(1)(a)(i)</b></p> <ul style="list-style-type: none"> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• State Environmental Planning Policy (Coastal Management) 2018</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy No. 55 - Remediation of Land</li> <li>• Newcastle Local Environmental Plan 2012</li> </ul> <p><b>Development Control Plan: s4.15(1)(a)(iii)</b></p> <ul style="list-style-type: none"> <li>• Newcastle Development Control Plan 2012</li> </ul>
<b>List all documents submitted with this report for the panel's consideration</b>	<p><b>Appendix A:</b> Recommended conditions of consent.</p> <p><b>Appendix B:</b> List of the documents submitted with the application for assessment.</p> <p>The key plans/documents of the proposed concept development are provided at <b>Appendix C to F</b>, listed below:</p> <p><b>Appendix C:</b> Newcastle Bus Interchange 'REF' Plan and Conditions of Approval</p> <p><b>Appendix D:</b> Concept Masterplan Architectural Design Report prepared by Bates Smart;</p> <p><b>Appendix E:</b> Clause 4.6 – Building Separation prepared by KDC</p> <p><b>Appendix F:</b> Clause 4.6 – Building Height prepared by KDC</p>
<b>Report by</b>	TCG Planning on Behalf of City of Newcastle Council

**Report date**

27 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**

This Concept Application relates to a site located within the Newcastle LGA which is formally identified as Lot 100 DP 1245750, 854 Hunter Street, Newcastle West ('the subject site'). The subject site contained 'The Store' in reference to listed former Co-Operative Store which was located on the land, with this building approved for demolition for the purpose of redevelopment of the site, specifically for the Newcastle Bus Interchange (NBI). The demolition works have previously been approved, independently from this application, under Part 5 of the EP&A Act 1979 by Transport for NSW. The Part 5 Review of Environmental Factors (REF), determined by Transport for NSW in November 2017, specifically permits demolition of existing structures, remediation of the site to an RL of -0.1, ground plane landscaping of the public domain areas, and the construction of a ground level NBI.

The site is owned by the Hunter & Central Coast Development Corporation (HCCDC) and has recently been consolidated into one allotment, that being Lot 100 DP 1245750. In April 2017, a separate DA was lodged with Council for a multi storey carpark located above the NBI (DA2018/00879) for Stage 1 of the Concept Application, with this carpark now approved. The proposed five level carpark will include 678 spaces and is located directly above the NBI. This application was lodged prior to this subject concept application to enable construction of the carpark in conjunction with the NBI.

#### **Proposed Development**

The Concept Application is submitted pursuant to Division 4.4 'Concept Development Applications' of the Environmental Planning and Assessment Act 1979.

The Concept Plan for the site entails:

- Stage 1: Multi storey carpark – 5 levels of parking located above the NBI comprising 678 spaces (DA 2018/00879);
- Stage 2: Concept Plan application;
- Stage 3: 12 storey commercial office building with a GFA of 16,689m<sup>2</sup> including one (1) basement carparking level with 40 carparking spaces (DA 2018/01107);
- Stage 4: Mixed Use building of 30 storeys comprising:
  - Retail use at the ground floor of the podium and commercial use at the upper three levels of the podium with a combined GFA of 6,012m<sup>2</sup>;
  - Two (2) residential towers from levels 4 – 29 with approx. 34,661m<sup>2</sup> GFA and 300 – 350 apartments (estimated at 343);
  - One (1) basement carparking level with 37 carparking spaces.

#### **Referral to Joint Regional Planning Panel**

The Concept Application 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 3 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 B3 Commercial Core. The proposed uses, which are defined as 'shop top housing', 'car park', and 'commercial premises' (including 'retail premises', 'office premises', 'business premises' which are a type of 'commercial premises'), all of which are permitted with consent within the B3 Commercial core zone. The proposal is not integrated development as no 'works' are proposed.

### Consultation

The application was publicly exhibited in a newspaper notice on 13 October 2018 and notified to adjoining and nearby properties on 12 October 2018, with the exhibition period extending from 13 October to 13 November 2018. The development application was exhibited concurrently with the DA for the commercial building (DA-2018/01107). No submissions were received from members of the public.

The application was also referred to WaterNSW, Department of Defence; Sydney Trains; Roads and Maritime Services; and Transport for NSW.

### Key Issues

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

- Visual impact on the Newcastle City Centre Heritage Conservation Area;
- Overshadowing impacts on adjacent buildings and heritage items;
- Built form including building height, street wall heights and upper level setbacks;
- Traffic and carparking;
- Relationship of the development with the Newcastle Bus Interchange and approved works.

### Recommendation

That the Joint Regional Planning Panel grant consent to DA-2018/01109, subject to the conditions contained in Appendix B.

## 1. Background

### Review of Environmental Factors – Newcastle Bus Interchange

The NSW Government's construction of the Newcastle Interchange (NI) in Wickham, which was completed in October 2017, was the first step in the establishment of a multi nodal and accessible interchange, linking heavy and light rail and passenger services in Newcastle.

This construction project was followed by approval of the Newcastle Bus Interchange (NBI), which will provide multi nodal access to bus interchange facilities on the southern side of the Newcastle Interchange and which will facilitate improved pedestrian and vehicular accessibility. Approval for the NBI on the land which is informally known as the Co-Operative Store ('The Store') site was granted by Transport for NSW in November 2017 as a Part 5 Approval under SEPP (Infrastructure) 2007.

A copy of the approved REF plan for the approved NBI is shown in **Figure 1. Appendix 1**, contains a copy of this plan and also the conditions of approval which were issued on 3 November 2017. The key components of the approved NBI are as follows:

- Removal of existing buildings on the site, including 'The Store' and open multi storey car park;
- Remediation of the site in accordance with a remediation action plan and excavation/filling of the site to achieve the required subgrade;
- Construction and operation of a new 'at grade' bus interchange to replace the existing interchange at Newcastle Station and to provide improved access and functionality;
- Access and egress from Hunter Street and Cooper Street, as well as Stewart Avenue via Beresford Lane. Cooper Street and Beresford Lane will become one way;
- Cooper Street and a section of Beresford Lane designated as a shared pedestrian and vehicle zone travelling north and west respectively;
- Two reduced mobility parking spaces and a loading zone to be located on the northern side of Beresford Lane east of Cooper Street;
- Provision of associated facilities including bus shelters, bike racks and signage;
- A driver's facility on the north west corner of the site which includes toilets, kitchenette and seating;
- Public domain works including landscaping, pedestrian pathways and upgrading of the footpath and roads along Cooper Street and Beresford Lane (paving, street furniture and street trees) to improve the link between Newcastle Interchange and Hunter Street / Stewart Avenue.

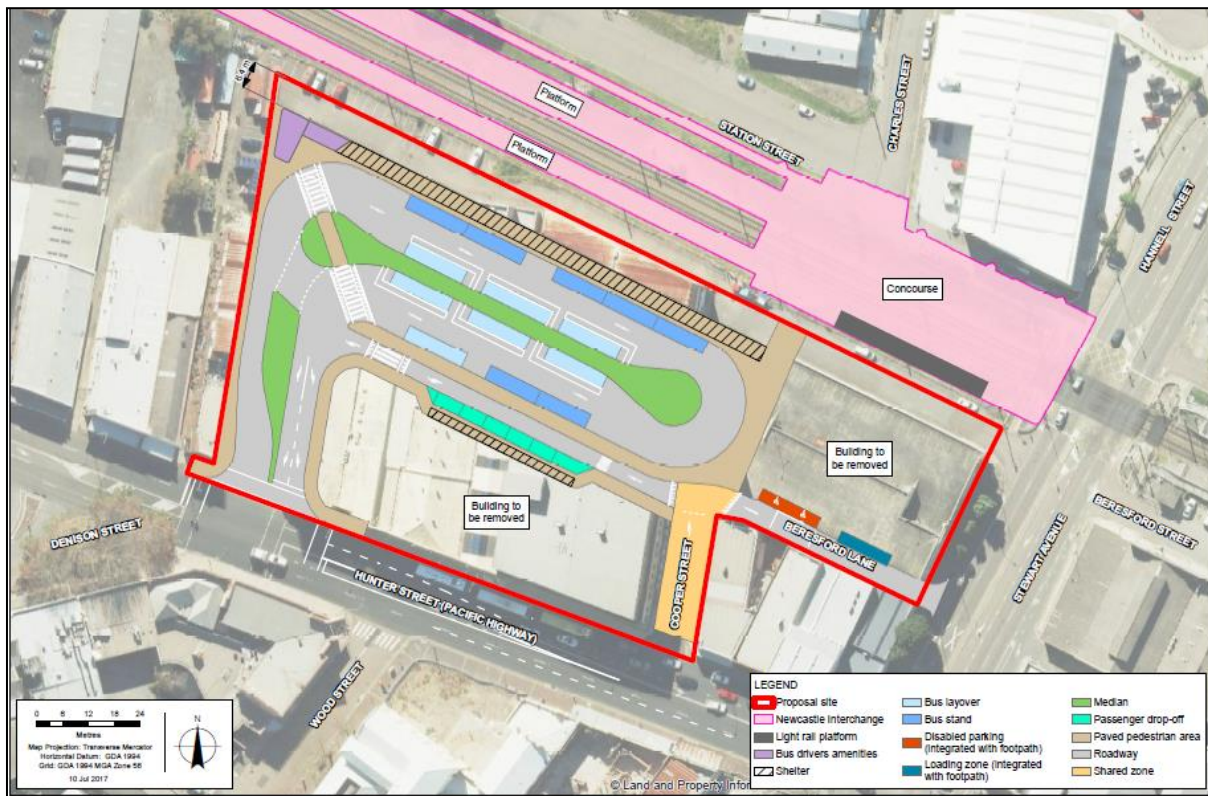
The NBI will be operated and managed by Newcastle Transport, with Hunter Development Corporation, as owner of the site, being responsible for the management of the balance of the land until it is developed or sold. The staging of works associated with the NBI comprises:

- Removal of services and contaminated material.
- Demolition of buildings in western section of site.
- Demolition of buildings in eastern section of site including the carpark.
- Ground preparation, followed by construction works.

The REF was informed by a number of Technical Papers being:

- 1) Transport and Access Assessment prepared by GHD;
- 2) Statement of Heritage Impact prepared by Artefact;
- 3) Aboriginal Archaeological Survey Report prepared by Artefact;
- 4) Noise and Vibration Assessment prepared by GHD;
- 5) Landscape and Visual Assessment prepared by GHD.

**Figure 1:** Approved NBI on the subject site (Source: Figure E.1 of REF dated July 2017)



Construction of the NBI will proceed after the demolition of all buildings within the site, including the heritage listed 'Co-operative Store' building and the carpark structure in the north east portion of the site and following site remediation.

### The Proposed Concept Application

Following an Expression of Interest process, Doma Interchange Development P/L was awarded the contract for redevelopment of the site, which is proposed to comprise a mixed use development on the land, to co-exist with the approved ground level bus interchange. The Concept Application has now been submitted to Council, seeking approval for such works. This application is the subject of the current report to the JRPP.

## **2. Site and Locality Description**

### (a) The Subject Site

The land to which the overall Concept Plan applies is known as Lot 100 DP1245750 and is located at No. 854 Hunter Street, Newcastle West, as shown in **Figure 2**. The site is bounded by the Newcastle Interchange to the north, Stewart Avenue/Cooper Street to the east, Hunter Street/Beresford Lane to the south, and commercial properties to the west. The total area of the site is 1.203 hectares, noting that the landholding does not include properties to the southeast of the site, bounded by Cooper Street and Beresford Lane. The site has a street frontage to Hunter Street of 108.938m and to Stewart Avenue of 39.94m. The site falls approximately 1.5m to the north from Hunter Street to the railway line located at the rear of the site.

Lot 100 previously contained the "Co-operative Store" building, which is a listed heritage item, with demolition of this building approved pursuant to the Part 5 approval. The eastern section of the site contains the carpark which was utilised in conjunction with The Store, with demolition of this structure also approved through the REF process. The site contains a signalised access road (referred to as Denison Lane) within the western portion of the site.



Beresford Lane and Cooper Street, which form the south-eastern border of the site, are identified as a private road and public road respectively in Council's road register.

#### Description of Surrounding Locality

The surrounding land is described as:

- North – The rail corridor containing the Newcastle Interchange (NI) which is the terminus for heavy rail and which is sited to the immediate north of the future light rail corridor into the City Centre (located on Lot 100). Further north of the rail line is predominantly residential development and a car sales yard.
- West – Further west along Hunter Street is a mix of commercial development of various scales and forms, including retail shops and offices of older style, as well as a new Kennards Self Storage building. The rear (north) of these sites is predominately car parking adjacent to the rail line.
- South - The southern boundary of the site is Hunter Street. The opposite side of Hunter Street contains the Quest Apartments, located in the state heritage listed former Castlemaine Brewery and the Cambridge Hotel, which is a locally listed heritage item. A multi storey building is under construction at No. 12 Stewart Avenue (corner Hunter Street) which will contain the Council offices and other commercial tenancies. The pocket of buildings bordered by Beresford Lane, Cooper Street, Hunter Street and Stewart Avenue (ie. No. 840 to 850 Hunter Street), which does not form part of the subject site, contains two storey retail/commercial building uses of older style. No. 834 Hunter Street, which is vacant, also does not form part of the development site.
- East – Stewart Avenue, which is a four to six lane road, forms the eastern boundary of the site. On the eastern side of Stewart Avenue are single and two storey retail/commercial buildings and beyond are a number of recently developed sites containing multi storey mixed use buildings.

**Figure 2:** Aerial photo showing the location of the subject site and surrounds ( *Source: Six Maps* )



### 3. Project Description

#### The Concept Development Application

Doma Interchange Development P/L has now lodged a Development Application (DA-2018/01109) seeking consent for a Concept Proposal for a mixed use development which is to co-exist on the land with the approved NBI. Landowners consent to lodgement of the application has been provided by Hunter and Central Coast Development Corporation in correspondence dated 24 January 2019. The proposal comprises a 'concept development' pursuant to Division 4.4 of the *Environmental Planning and Assessment (EP&A) Act 1979*. Accordingly, subsequent development applications have/will be lodged for approval of the various stages of the project, which must be in accordance with a development consent issued for the Concept Proposal (as required by Section 4.24 of the Act).

For the purposes of the Act a 'concept development application' is defined by subclause 4.22(1) as:

*".....a development application that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications."*

The Concept Application therefore comprises less detail than a standard development application, as the Concept Proposal seeks consent only for building envelopes and height, indicative land use mix and floor space allocation, but does not seek consent for any physical works. Such works will form part of the development applications for each of the stages (carparking, commercial, residential) and will be the subject of separate assessment reports.

The development is proposed to be undertaken in four (4) stages (with the Concept Application referred to in the applicant's documentation as a 'stage'). Separate development applications will be submitted for each stage, as shown in **Figure 3** and as summarised below:

Stage 1 Carpark DA: DA-2018/00897, was approved by Council on 7 December 2018. This consent granted approval for a multi storey carpark to be located above the NBI. The five level carpark will contain 678 spaces, with access provided via a new ramp from the internal access road leading from Hunter Street.

Stage 2 Concept Application: DA-2018/01109, which is referenced in the applicant's DA documentation as Stage 2 (noting that this application does not technically comprise a 'stage' for the purpose of Section 4.22 of the EPA Act).

Stage 3: Commercial Building: DA-2018/01107, which was lodged concurrently with the Concept Application, seeks approval for a twelve (12) storey commercial office building with ground floor retail. The building, which will front Stewart Avenue in the north-eastern sector of the site, is proposed to comprise a gross floor area (GFA) of 16,689m<sup>2</sup>, with one (1) basement carparking level containing 40 carparking spaces.

Stage 4: Mixed Use Development containing two (2) residential towers: This proposal will be the subject of a future development application for consideration by the JRPP. The Concept Plan indicates that this stage will comprise two x 30 storey mixed use buildings fronting Hunter Street.

A Development Application, which pertains to the subdivision of Lot 100 DP1245750 into two allotments, was also recently lodged with Council by DOMA Group Pty Ltd.

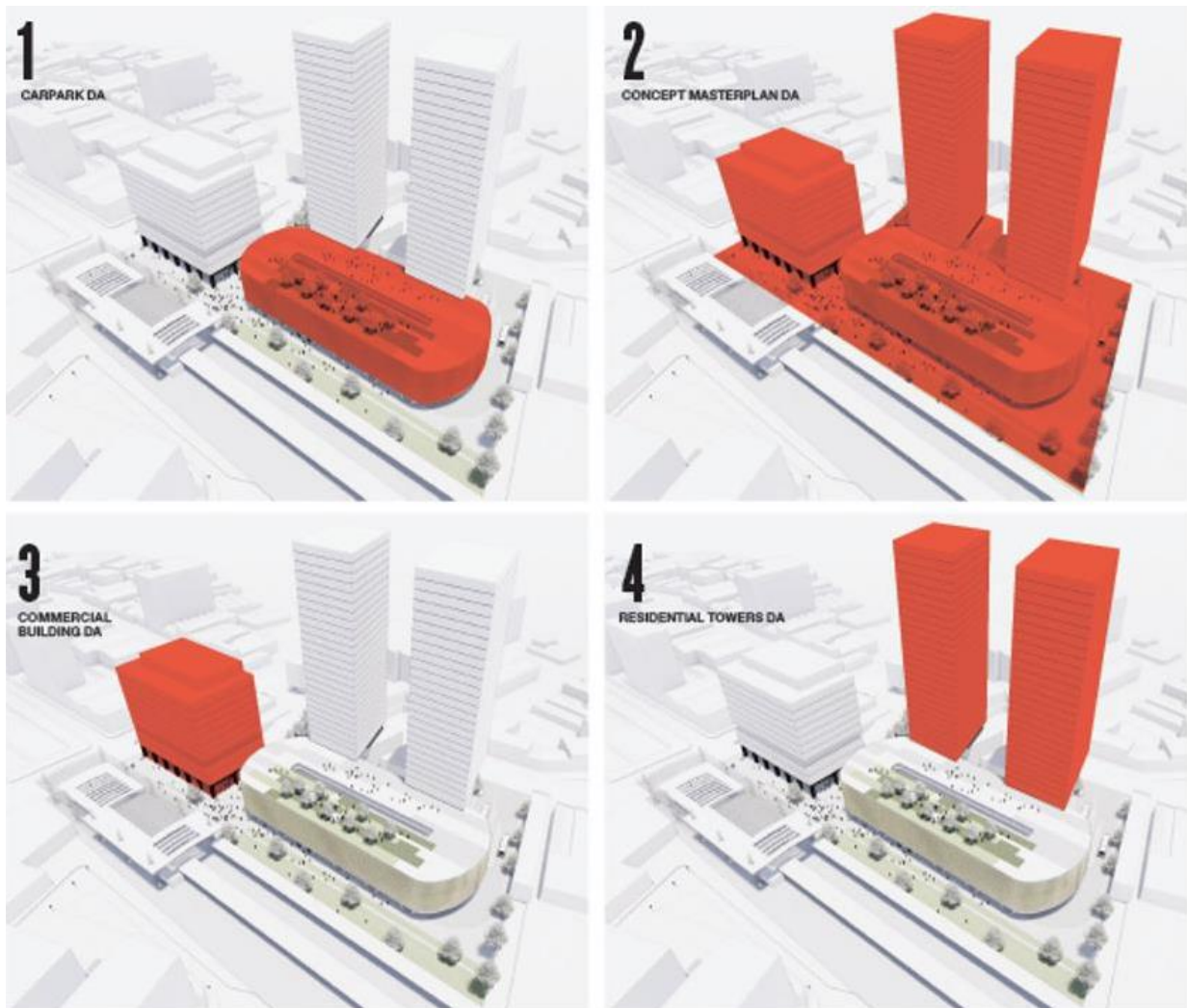
#### Development Application for Two Lot Subdivision – DA-2018/01507

This application seeks to create Lot 300, which will be a 1784m<sup>2</sup> lot with frontage to Stewart Ave and will contain the proposed commercial building. The balance of the land, to be known as Lot 301, is proposed to have an area of 1.0246Ha and will comprise the land which will contain the NBI, the approved multi storey carpark and the proposed residential



(shop top) housing towers. This development application was still under consideration by Council at the date of preparing this JRPP report.

**Figure 3:** Concept Plan Staging. Source: Statement of Environmental Effects KDC October 2018



Key Aspects of the Concept Proposal:

The Concept Plan for the mixed use development has been informed by the approved design of the NBI, which has endorsed the need for bus access of 4.6m in height; access and manoeuvring arrangements; pedestrian linkages; and public domain improvements. The following summarises the key aspects of the Concept Plan for the site:

- A multi-level carpark containing 678 spaces, situated above the NBI (approved).
- A 12 storey commercial office building, containing ground level retail spaces and a total GFA of 16,689m<sup>2</sup>;
- Two (2) x 30 storey shop top housing buildings, containing retail premises at the ground floor level, 3 levels of commercial space within the 4 storey podium, and residential apartments within the towers above, with a combined GFA of 40,673m<sup>2</sup>;

The components of the project on a staged basis are summarised in **Table 1**:

**Table 1:** Overview of Concept Application Components (*GFA Source: Area Schedule, Bates Smart*)

<b>Stage 1: Carpark (DA-2018/00879)</b>	
Building Height	5 Levels (above approved NBI) Top of building RL25
Car parking	678 spaces
<b>Stage 3: Commercial Building (DA-2018/01107)</b>	
Commercial/Retail GFA	16,689m <sup>2</sup>
Residential GFA	N/A
Height	Top of building RL57.0. Height 52.3m
Levels	12 Storeys
Car parking	40 spaces (1 level basement)
<b>Stage 4: Shop Top Housing (DA not yet lodged)</b>	
Commercial/Retail GFA	6,012m <sup>2</sup> (4 levels)
Residential GFA	34,661m <sup>2</sup>
Height	Top of building RL103.0m. Height 99m
Levels	30 storeys (including 4 storey podium)
Car parking	37 spaces (basement)
Apartments	300 – 350 apartments (estimated at 343 apartments)

*NB. Concept Application has been referred to in submitted documentation as Stage 2*

#### Development Overview:

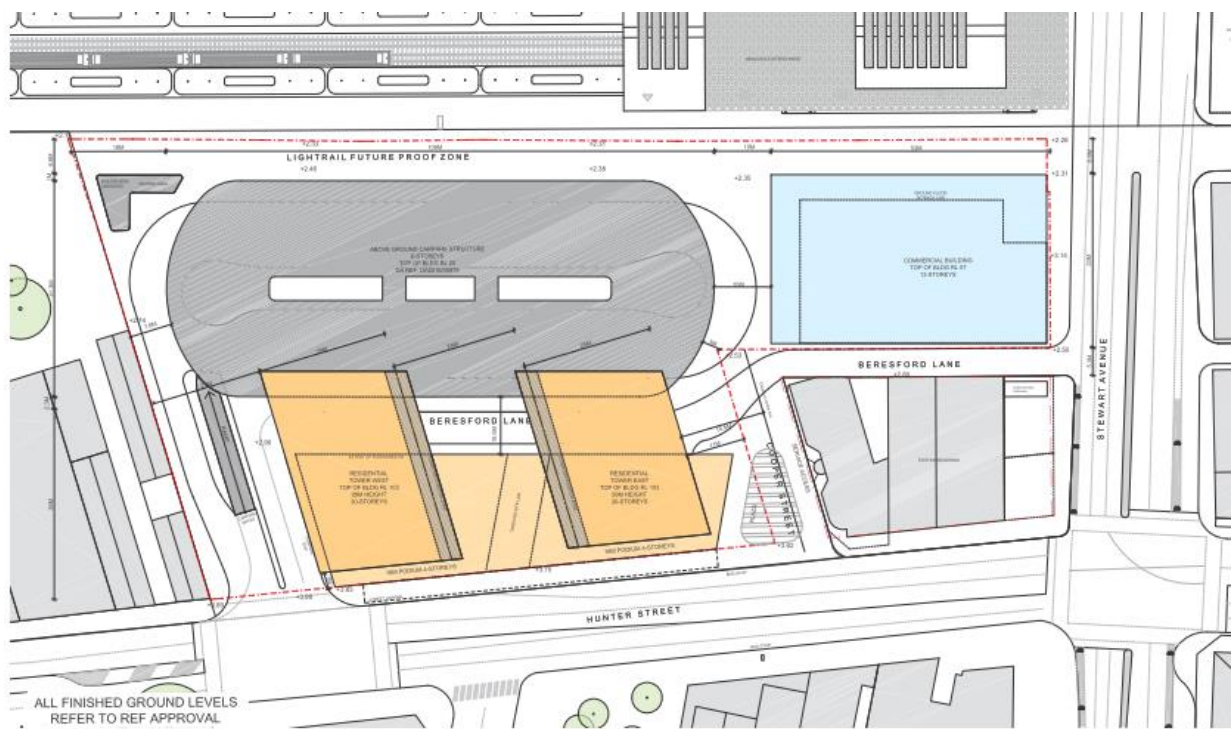
##### Built Form:

The proposed development comprises ground floor retail uses addressing Hunter Street, Beresford Lane and Cooper Street, which will provide connection between the NBI and the NI. A 4 storey (16m) street wall height is proposed to Hunter Street, with two residential towers located above the podium, providing an overall building height of 30 storeys addressing Hunter Street. Commercial spaces are proposed to be located above ground floor level in the 12 storey commercial building (addressing Stewart Avenue) and also above ground floor level in the upper podium levels of the 30 storey mixed use building. The proposed Concept Masterplan is shown in **Figure 4**, whilst **Figure 5** provides a 3-dimensional perspective of the proposed building envelopes on the overall site.

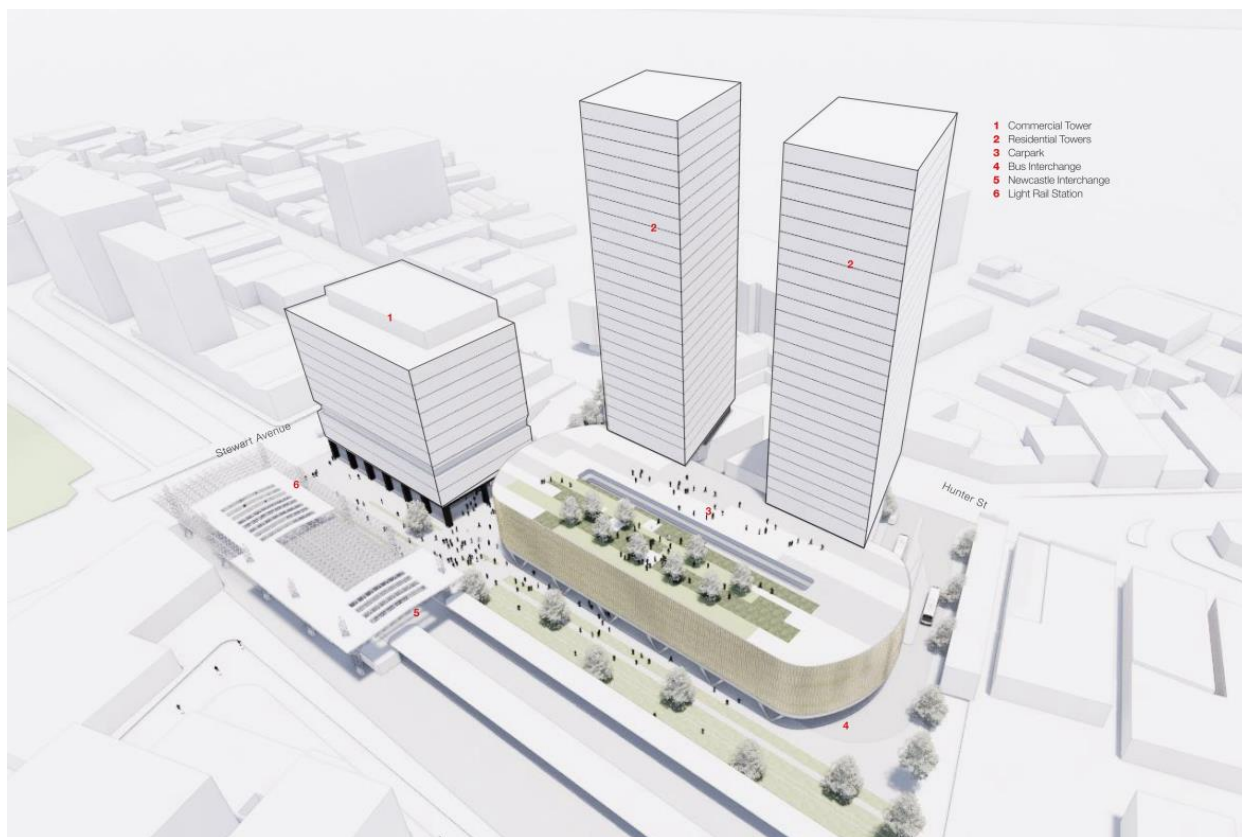
##### Height and Floor Space Ratio:

The commercial building is proposed to have an overall height of 52.3m (12 storeys), whilst the residential towers have an overall height of 99m (30 storeys). Approval is sought for exceedance of the 90m height control contained in clause 4.3 of NLEP 2012 in relation to the residential towers. The overall proposed FSR of the subject site, comprising all stages, is 4.93:1, below the 5:1 permitted by NLEP 2012.

**Figure 4:** Proposed Concept Masterplan (Source: Bates Smart)



**Figure 5:** View of the Proposed Building Envelopes in the Concept Masterplan (Source: Bates Smart)

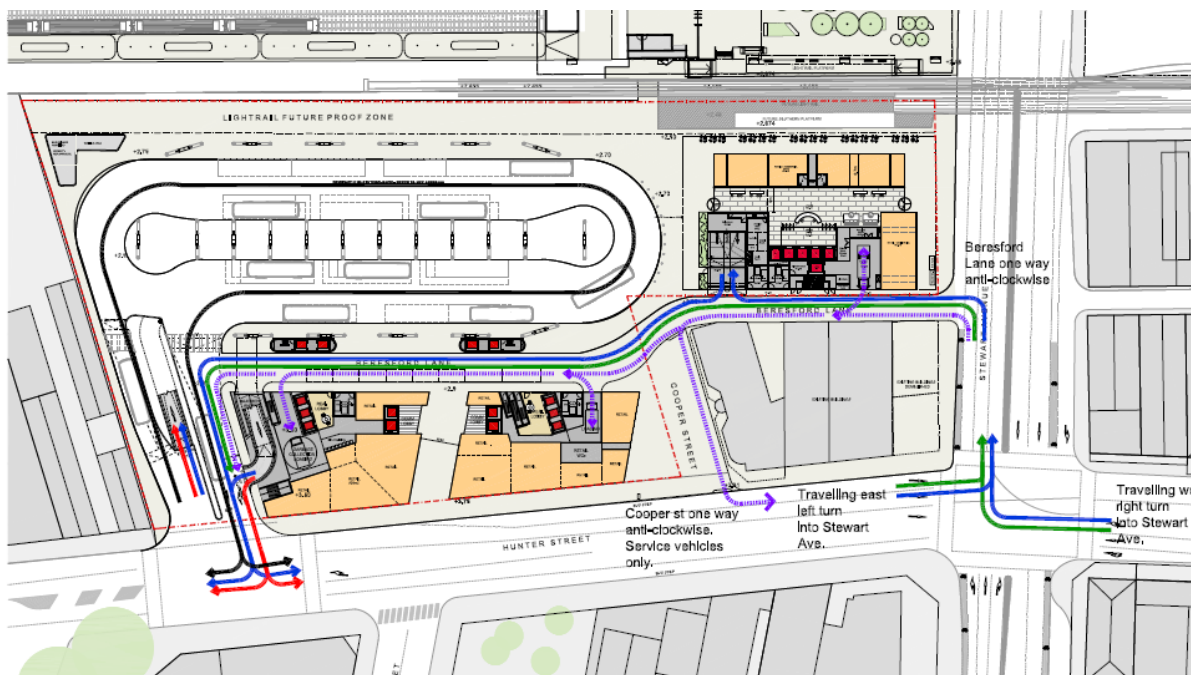


### Vehicular Access and Carparking:

Access to the overall site is proposed as shown in the proposed Traffic Movement Plan contained in **Figure 6**:

- The main access to the site will be via the signalised intersection at Hunter Street and Denison Lane. A new access ramp has been approved for construction adjacent to the NBI ingress/egress as part of the multi storey carpark above the NBI.
- Beresford Lane will provide one way entry off Stewart Avenue, accessed via a left in only. This will provide access to the basement carpark under the commercial and mixed use buildings and will also provide access for taxis, service vehicles and the 'kiss and ride' for the NBI.
- Cooper Street will be a shared zone, consistent with the NBI approval, however service vehicles are now proposed to utilise this street in a southern direction, rather than the northern direction as approved.

**Figure 6: Traffic Movement Plan** (Source: Concept Masterplan prepared Bates Smart)



A total of 755 carparking spaces are to be provided in the site. This will comprise parking located within a multi level carpark which will be sited above the NBI (678 spaces), in a basement carpark level below the commercial building (40 spaces) and at a basement level below the residential (mixed use) building (37 spaces).

### Heritage

The Concept Application does not include demolition of 'The Co-operative Store' building or the associated carpark, with the Part 5 approval for the NBI granting consent to the demolition of such buildings.

### Public Domain and Landscape Concept

The Concept Masterplan Architectural Design Report prepared by Bates Smart confirms that the ground level of the development is proposed to contain a number of interactive outdoor public spaces, as shown in **Figure 7**, being:

- Interchange Square, which will provide a link from the Transport Interchange to the NBI and the ground level retail spaces within the Concept Plan. This space will contain a high level of pedestrian traffic within a north facing plaza which can

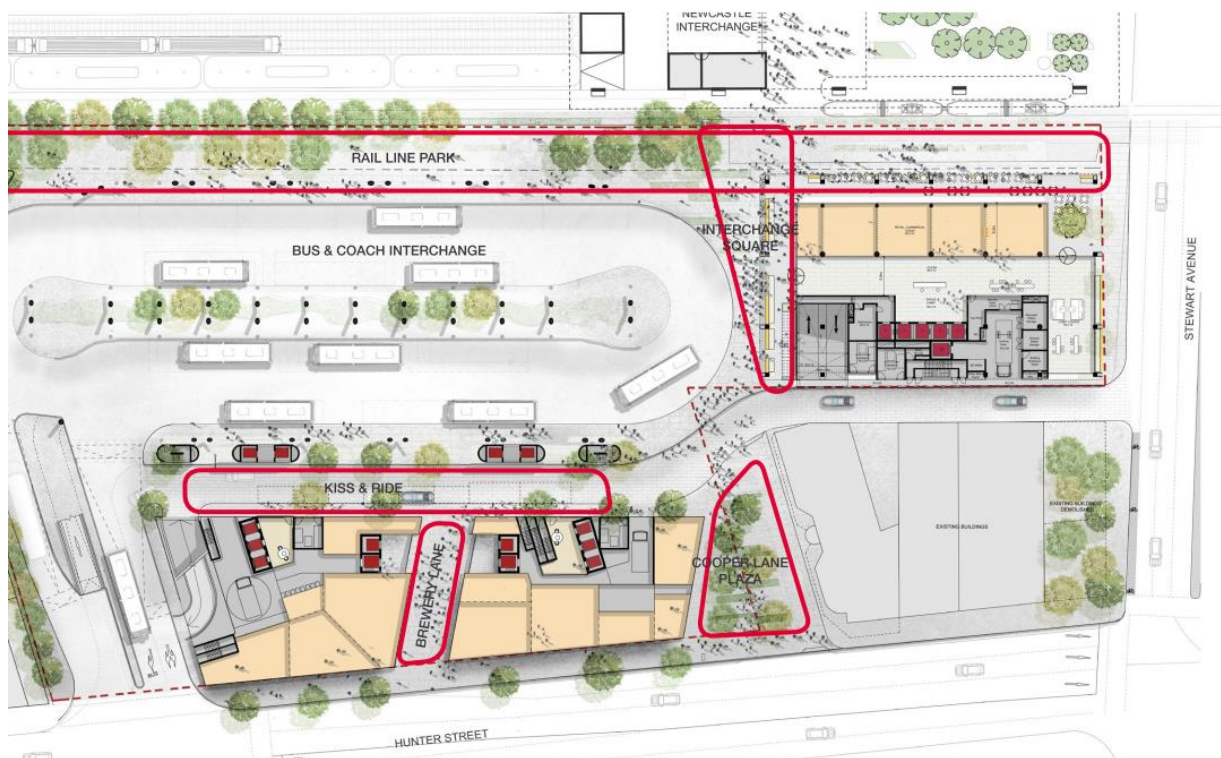


accommodate street theatre or public art. The western edge of the commercial building is proposed to contain ground level cafes which will open onto this plaza.

- Rail Line Park, which will extend along the northern boundary of the site and which will be a temporary tree lined park, until construction of a potential Light Rail extension to the west. Ground level retail spaces in the commercial building may contain cafes which are also proposed to open onto this space.
- Brewery Lane, which is located below the residential towers and which will provide a meeting place for residents or commuters, with possible quieter dining places.
- Cooper Lane Plaza which is proposed to be located to the east of the residential towers and which is intended to provide access from Hunter Street through to Interchange Square, the NBI and the NI. Retail tenancies in the mixed use building will also provide for activation of this space.

Landscaping and public domain works throughout the site are to be provided as part of the REF works and as part of the Concept Plan.

**Figure 7:** Identification of Ground Plane Spaces within the Concept Plan (*Bates Smart*)



**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:** Newcastle Bus Interchange 'REF' Plan and Conditions of Approval

**Appendix D:** Concept Masterplan Architectural Design Report prepared by Bates Smart;

**Appendix E:** Clause 4.6 – Building Separation prepared by KDC

**Appendix F:** Clause 4.6 – Building Height prepared by KDC



#### 4. Consultation

The application was publicly exhibited in a newspaper notice on 13 October 2018 and notified to adjoining and nearby properties on 12 October 2018, with the exhibition period extending from 13 October to 13 November 2018. The development application was exhibited concurrently with the DA for the commercial building (DA-2018/01107). No submissions were received from members of the public.

#### 5. Referrals

##### Government Agencies

Whilst development applications for the various stages of the development will be classed as integrated development (under Section 91 of the Water Management Act) the Concept Application does not seek approval for any 'works' and is therefore not integrated development. The following provides a summary of the external referrals which were received in respect of the Concept Development Application.

**Table 2: Summary of External Referrals**

Agency	Response
<p><b>Sydney Trains</b></p> <p>SEPP (Infrastructure) 2007 Clause 86</p> <p>Received: 01/11/18 &amp; 14/1/19</p>	<p>Sydney Trains requested the submission of additional documentation in its initial advice of 1/11/18:</p> <ol style="list-style-type: none"> <li><i>Geotechnical and Structural report/drawings including any potential impacts to the rail corridor (land and infrastructure; with information separated regarding impacts to the Heavy Rail and Light Rail Operations).</i></li> <li><i>Construction methodology with details pertaining to structural support during excavation.</i></li> <li><i>Detailed cross sectional drawings showing ground surface, rail tracks (heavy distinguished from light rail), sub-soil profile, proposed basement excavation and structural design of sub ground support adjacent to the Rail Corridor.</i></li> <li><i>Detailed Survey Plan by a registered surveyor showing the relationship of the proposed development with respect to the Rail Corridor (RailCorp's land, easements and infrastructure).</i></li> <li><i>Confirmation of any works proposed on or connecting to RailCorp owned land, including landscaping, paving, footpaths, drainage or if there is an upper level connection proposed.</i> <ul style="list-style-type: none"> <li><i>Land Owners Consent would be required for any proposed works on RailCorp land or connecting to any assets, which could affect how the proposed development(s) interact with the light rail and heavy rail interchange station. No Land Owners Consent for any proposed works can be provided until all stakeholders have been engaged and approvals obtained in writing.</i></li> <li><i>Responsibilities/Liabilities and future maintenance requirements of any potential connection or associated works between the sites needs to be confirmed. Approval for any works occurring on RailCorp land or connecting to any assets must be covered by a formal written agreement if and where required by Sydney Trains.</i></li> </ul> </li> </ol> <p>Sydney Trains in further advice dated 14/1/19 advised that the proposed development is now being assessed in accordance with Clause 86(4) of SEPP Infrastructure. Concurrence was granted to the proposed development subject to the following operational condition being imposed by Council:</p> <p><i>Any future application for any structure within 25 metres of the rail corridor shall have its Geotechnical, Structural and Drainage Engineering documentation, and Construction Methodology documentation endorsed by Sydney Trains prior to the issuing of any relevant Construction Certificate.</i></p>
<p><b>Transport for NSW</b></p> <p>SEPP (Infrastructure) 2007 Clause 85</p>	<p>TfNSW noted that the Concept DA does not propose any works however the Staged DAs will involve excavation near the light rail corridor and therefore subsequent DAs will require concurrence from TfNSW.</p> <p>TfNSW has provided recommended conditions of the Concept DA to ensure the protection of the Newcastle Light Rail Corridor during both during construction</p>

Agency	Response
<p>and 86</p> <p>Received: 15/01/19</p>	<p>and operation phases of the proposed development. These conditions include, but are not limited to, the submission of geotechnical &amp; structural drawings &amp; reports prior to the issue of the Construction Certificate; the preparation and incorporation of the acoustic assessment and electrolysis assessment; design, installation and use of lighting; currency of public liability insurance; preparation of an Interference Agreement with TfNSW; preparation of a consultation regime for siteworks; liaison with TfNSW; and general conditions regarding the relocation of TfNSW services/infrastructure and the cost of works and signage.</p>
<p><b>Roads and Maritime Services</b></p> <p>SEPP (Infrastructure) 2007 Clause 104</p> <p>Received: 29/01/19 &amp; 28/02/2019</p>	<p>Roads and Maritime Services raised a number of issues in its letter of 29/1/19 including, but not limited to, the following:</p> <ul style="list-style-type: none"> <li><i>Roads and Maritime raise concern regarding the submitted Transport Impact Assessment (TIA) and associated SIDRA intersection modelling for this application, undertaken by GHD dated September 2018, relies on incorrect modelling undertaken for the multi-story carpark.</i></li> <li><i>Roads and Maritime consider that there is an unacceptable impact to safety and efficiency of the road network if the development is to proceed as proposed and modelled.</i></li> <li><i>Roads and Maritime will require these matters to be resolved prior to the applicant entering into a WAD for the required road works.</i></li> </ul> <p>In addition to the above, Roads and Maritime recommends that the following matters should be considered by Council in determining this development:</p> <ul style="list-style-type: none"> <li><i>Roads and Maritime has no proposal that requires any part of the property.</i></li> <li><i>Council should ensure that appropriate traffic measures are in place during the construction phase of the project to minimise the impacts of construction vehicles on traffic efficiency and road safety within the vicinity.</i></li> <li><i>Council should have consideration for appropriate sight line distances in accordance with Section 3 of the Austroads Guide to Road Design Part 4A (Unsignalised and Signalised Intersections) and the relevant Australian Standards (i.e. AS2890.1:2004) and should be satisfied that the location of the proposed driveway promotes safe vehicle movements.</i></li> <li><i>Discharged stormwater from the development shall not exceed the capacity of the Stewart Avenue stormwater drainage system. Council shall ensure that drainage from the site is catered for appropriately and should advise Roads and Maritime of any adjustments to the existing system that are required prior to final approval of the development.</i></li> </ul> <p>RMS' response to the application is primarily concerned with the operation of the signalised site entry/exit intersection at Hunter Street and, to a lesser extent, the one-way entry from Stewart Avenue into Beresford Lane, noting that these intersections are to be upgraded in connection with the construction of the NBI. RMS raised particular concern regarding the submitted Transport Impact Assessment by GHD.</p> <p>Following the receipt of responses from RMS on 29 January 2019, updated and additional traffic modelling has been submitted to RMS by GHD. In particular, the modelling of the worst case scenario for the operation of the intersections, which involves the interim use of the approved multi storey carpark for private paid parking under commercial arrangements, has been accepted. In this respect, RMS has advised GHD that, based on the submitted report and modelling, they raise no objection to the intersection upgrades proceeding to a Works Authorisation Deed.</p> <p>A further response from RMS (28 February 2019) advises that they have received an updated Traffic Impact Assessment and they raise no objection to the application, subject to a recommended condition, to require that a further updated Traffic Impact Assessment, in accordance with the RMS Guide to traffic Generating Developments, be provided with the DA for the physical construction of the residential building, confirming the accuracy of the base case and the ultimate scenario and identify any road upgrade works which may be required.</p>

Agency	Response
	<p>The approval of the multi storey carpark (DA-2018/00879) was subject to conditions that require mitigation measures to be implemented in connection with the interim use of the carpark for private paid parking under commercial arrangements, to the extent necessary, to ensure that vehicle queueing lengths do not result in vehicle queues extending into Hunter Street.</p> <p>RMS specifically recommended that the following matters be considered by Council in the determination of the application:</p> <ul style="list-style-type: none"> <li><i>Roads and Maritime has no proposal that requires any part of the property.</i></li> </ul> <p>Comment: Noted</p> <ul style="list-style-type: none"> <li><i>Council should ensure that appropriate traffic measures are in place during the construction phase of the project to minimise the impacts of construction vehicles on traffic efficiency and road safety within the vicinity.</i></li> </ul> <p>Comment: The application is accompanied by a Site Management Plan prepared by BLOC (dated 24 May 18) which details construction methodologies and sequences, staging, site access/traffic control, and operational matters. BLOC estimate that during construction there will be 40-80 workers on site, with 15-20 deliveries and 35-40 concrete deliveries per day. Construction Staging Plans are also provided which confirm the location of site compounds, hoardings, cranes, temporary ramps and temporary protection for the various stages of the project.</p> <p>In order to manage the potential construction traffic impacts it is recommended that a condition be applied requiring the submission of a Construction Traffic Management Plan which details provisions for car parking and traffic control.</p> <ul style="list-style-type: none"> <li><i>Council should have consideration for appropriate sight line distances in accordance with Section 3 of the Austroads Guide to Road Design Part 4A (Unsignalised and Signalised Intersections) and the relevant Australian Standards (i.e. AS2890:1:2004) and should be satisfied that the location of the proposed driveway promotes safe vehicle movements.</i></li> </ul> <p>Comment: An issue of concern regarding sight line distances and safe vehicle movements is the reversing of vehicles into or out of service/loading bays from/to a relatively constrained one way traffic flow through the site.</p> <p>It is recommended that a condition be applied to require the design of the development to be modified to provide for vehicular servicing/loading to be carried out in a manner that involves forward movements only by those vehicles.</p> <ul style="list-style-type: none"> <li><i>Discharged stormwater from the development shall not exceed the capacity of the Hannell Street stormwater system. Council shall ensure that drainage from the site is catered for appropriately and should advise Roads and Maritime of any adjustments to the existing system that are required prior to final approval of the development.</i></li> </ul> <p>Comment: Following a request for the submission of additional information to confirm the approved NBI drainage arrangement and the manner of integration of the proposed development, the applicant submitted a Civil Drainage Plan for the overall site which was prepared for TfNSW.</p> <p>Detailed drainage plans for each stage of the development, which demonstrate integration of the drainage design with the NBI drainage design and compliance with the DCP, are required.</p>
<b>Department of Defence</b>	As the proposed 99m AGL building (103m AHD) will be located outside the OLS area for RAAF Base Williamtown/Newcastle Airport the Infrastructure Division of

Agency	Response
Referral due to building height & proximity to RAAF Base Williamtown  Received: 21/11/18 (Email)	<p>the Department of Defence have no comments to add. Notwithstanding, the following advice is provided:</p> <p><i>There is an ongoing need to obtain and maintain accurate information about tall structures so that this information can be marked on aeronautical charts.</i></p> <p><i>The information is held in a central database managed by ASA and relates to the erection, extension or dismantling of tall structures, RAAF requirements are:</i></p> <p>a. 30 metres AGL, that are within 30 kilometres of an aerodrome, and</p> <p>b. 45 metres AGL elsewhere.</p> <p><i>As the structure meets the requirement for reporting of tall structures, Defence requests that the applicant provide ASA 'as constructed' details.</i></p>
<b>Department of Primary Industries (Water Regulation Group)</b>  Water Management Act 2000, Section 91  Received: 12.12.18	<p>Notwithstanding that the proposed concept plan is not Integrated Development - under Clause 70 of EP&amp;A Regulation 2000 – no works proposed - Water NSW have confirmed that the proposed development requires a licence under Part 5 of the <i>Water Act 1912 (WA)</i>: “Groundwater at the site is subjected to the <i>Water Act</i> as current water sharing plans do not apply to the development footprint. Part 5 of the <i>WA</i> applies to integrated developments under the transitional provisions.” General Terms of Approval for a licence under Part 5 of the <i>WA</i> are appended to the correspondence.</p>

### Internal Referrals – Newcastle City Council Officers

The Concept Application was referred to Council's Engineering Officer (Traffic) who provided the following response. No other referrals were provided as other matters will be responded to at the various stages of the development, when works are proposed.

### Traffic Engineer dated 26/02/2019

The primary concerns raised in respect of traffic and parking relate to:

- Safety concerns regarding vehicles reversing into the proposed loading docks and the potential congestion resulting from this practice.
- Safety concerns regarding vehicles entering the basement car parks, due to the proximity of the roller door to the property frontage.
- The proposed parking allocation being inconsistent with the provisions of the DCP, in terms of the ratio of spaces allocated to the commercial and residential components of the proposed development. This matter is discussed in detail within the Section 4.15(1)(b) assessment of this report.

It is considered that these concerns can be addressed by way of appropriate conditions of consent, apart from the issue relating to the position of basement carpark access doors, which is more relevant to DAs for physical works. With respect to the reversing of vehicles, it is recommended that a condition be applied to require the design of the development provide for vehicular servicing/loading to be carried out in a manner that involves forward movements only by those vehicles.

### Design Review Panel

The concept application was reviewed by the Government Architect's Design Review Panel (DRP) on five occasions (16 January, 15 May, 29 May, 6 July and 7 August 2018) prior to lodgement of the application. The DRP provided advice on the overall concept for the site in the absence of a Government Architect's Office design competition, which was waived on 16 July 2018, given that the design of the project had previously undergone a 'competition like' process. This waiver was dependent on the following conditions, which are recommended to be attached as a condition of any consent (in a modified form):

*“A process of design integrity is to be established to ensure the competition winning scheme retains design excellence through to construction. This should include continuing review through design development by the DRP. A record of this process including DRP meeting minutes and proponent’s responses should form part of the final development application to Council.*

*In response to a request to clarify the role of the Design Review Panel past the lodging of the Development Applications we provide the following information;*

*The role of the Design Review Panel continues through to construction unless deemed unnecessary by the design Review Panel themselves. The DRP should continue to review the proposal through the documentation period to review;*

- *public domain design development*
- *materials and detailing,*
- *heritage interpretation strategies*
- *other issues arising through the design documentation phase.*

*Any significant changes (as would require a Section 96 modification application) should be reviewed by the Design Review Panel.*

*The Design Review Panel can also be reconvened at the request of the proponent, Newcastle Council, Hunter Development Corporation or Transport NSW.”*

A summary of the key issues raised at the DRP meetings is provided below:

#### DRP Meeting 16 January May 2018

Bates Smart were advised to continue working on 4 key areas being adaptability of the buildings and particularly the carpark; pedestrian movements within the site; further enhancement of the public domain and consideration of overshadowing; optimisation of commercial spaces and ground floor activity.

#### DRP Meeting 15 May 2018

Discussions focused on the location of the ‘kiss and ride’ and pedestrian movements across the site. The panel suggested investigating pedestrian pathways focused on Cooper Street, rather than through the centre of the site, as well as investigating the decreasing importance of the Hunter Street plaza and opening up Cooper Street. The DRP also noted the need for the consideration of heritage in the design and for the preparation of a heritage interpretation strategy to retain the social history of the site.

#### DRP Meeting 29 May 2018

The DRP supported the move “to put a larger public domain space at Cooper St, to re-configure the residential towers to create better view and solar access outcomes and to make a greater separation from the car park to the residential tower.

*Further development is expected for the residential towers, the decisions on public domain treatment, particularly in Brewery Lane and the Heritage Interpretation. The proponent team should confirm the cross ventilation for all apartments and present a design for the soffits of both the car park over the bus interchange and the residential towers.”*

#### DRP Meeting 6 July 2018

- The massing of the residential towers was supported, although solar access diagrams were questioned, however, noting that a 70% compliance with the ADG could be achieved.
- The relocation of the car park entry and shortening of the car park building was supported.



- The design of Brewery Lane was supported, however, additional solar studies including the upper connecting levels between the commercial buildings were required, in which the DRP may retract support should shadowing become an issue.
- The one way traffic direction of Cooper Street onto Hunter Street was supported.
- The general street wall heights and setbacks were supported and the heritage considerations were positive, particularly the street awning, however a more 'playful' parapet was suggested to link the proposal to the heritage elements of the locality. Furthermore, a street awning for the commercial building fronting Stewart Avenue should also be investigated.

#### DRP Meeting 7 August 2018

- The reduced setback of 3m to Hunter Street, instead of the required 6m by the DCP, was supported subject to submission of wind studies to show that the closeness of the towers will not create negative wind conditions in the public domain.
- The DRP did not object to the overall tower height, which is within the allowable 10% height provisions of a competition, however it was suggested that the design investigate different heights for the towers to ensure visual interest in the skyline.
- Consultation with the RAAF base should be undertaken regarding flight path restrictions.
- The panel also questioned how the podium can reference the scale of the Castlemaine Brewery and how the façade include a heavier element to the top for heritage reference.

#### **Urban Design Consultative Group Meetings (UDCG)**

The Concept Application was also reviewed by the Urban Design Consultative Group (UDCG) on two occasions (18 September and 11 December 2018). The UDCG advice focused on the residential (mixed use) building to which SEPP 65 applies.

#### DRP Meeting 18 September 2018

- *The master plan should provide detailed consideration of the interface with adjacent sites, including the unresolved future of the small buildings and sub station area to the east of the proposed podium.*
- *The Group supports the scale and set out of the three towers and associated podium. The podium is proposed to a lower height than the existing Stores Building fronting Hunter Street and currently being demolished. The slender forms and trapezoidal floor plan of the towers above the podium will maintain the podium form as the principal element seen from the immediate street level.*
- *The slender form of the proposed towers in the master plan is accepted as reducing apparent bulk and has an overall benefit to the public domain.*
- *The issue of outlook from the overlapping towers requires further assessment. There are opportunities to adjust the orientation of one or both towers to maximize outlook and to achieve the optimum orientation for solar access to apartments.*
- *As internal apartment layouts have not been included in the master plan it is recommended that these be tested in conjunction with resolution of tower orientation.*
- *The Group identified the opportunity for PC panels located over roof areas.*
- *Whilst not addressed at length in the master plan, the replacement of all existing fabric within the context calls for considerable landscaping, both hard and soft, within the areas covered by the master plan. Street tree planting to existing and new street frontages is important to enhance the existing urban framework.*
- *Roof top areas are considered a key area for establishment of landscaping particularly the roof of the podium and the peripheral roof of the car park.*
- *At street level landscaping will be critical to the quality of movement areas about the building and at the link with the transport interchange and the new office and retail areas to the north and south of the site.*
- *Provision for the ongoing maintenance of the temporary landscaping zone in the "future light rail extension" land should be addressed to ensure that it is maintained at an appropriate standard.*

*Amenity:*

- *Whilst floor plans were not presented a number of amenity issues were discussed namely:  
Orientation of the apartment towers to maximize solar access, outlook and view sharing by the overlapping towers.  
Wind studies should be provided to enable design of apartment balconies at the proposed heights.*
- *The kiss and ride area was identified as requiring careful resolution as to pedestrian movement, traffic congestion, interface with bus and car access to the car park and exit onto main roads. Nighttime surveillance of the kiss and ride and other shared areas in close proximity to the transport interchange is identified as a key safety issue.*
- *The concept of twin towers raised the issue of varying the height of the towers or other distinguishing articulation and finishes to mitigate the impact of such strong visual elements on the skyline, and this approach is strongly supported. The visual treatment of the towers bridging Cooper Street will be a key aspect of aesthetics, the soffits set above a busy public area.*
- *The master plan makes reference to heritage aspects of the site. These should be addressed in a heritage Interpretation Plan accompanying the master plan.*

*The panel noted that “Acknowledging the broad scale nature of the master plan the above comments should be addressed in refinement of the master plan and detailed design of the podium, residential towers and public areas.” In summary the panel confirmed that “the application is supported, subject to the issues raised above being resolved at the next stage of design development.”*

#### UDGC Meeting 11 December 2018 (Post DA Lodgement)

*The applicant has amended the form of the two towers incorporating notched corners to the south-east and north-west corners of both towers. This reduces the width of the building facade immediately above the podium thereby increasing the apparent slenderness of each tower. This articulation is further emphasised by continuation of the outer building face up and over the rooftop as an open framed feature enclosing roof top plant and lift overruns. The group noted changing the materials/colour of the projecting face would further break up the massing of the towers and enhance slenderness.*

*These design elements combine to compensate for the limited setback of the towers from the outer edge of the podium.*

*Variation in the height of the towers has provided a three storey height difference. The western tower at 90m complies with the max height allowance of 90m whilst the eastern tower exceeds this with a height of 99m. Both towers have architectural roof features exceeding these heights but not contributing to FSR. The Group supported the variation in height, and considered the height of the “architectural feature” element of the towers to be appropriate.*

*The previously discussed recess to the foot of each tower has been varied in height to the eastern and western towers. The Group noted that the junction of the base of the western tower with the podium appeared less resolved than that of the eastern tower, while accepting that the two need not necessarily be identical. The interface of western façade of the western tower with its base was not visible in montages, but was considered to have potential for further refinement. This issue is particularly important in the light of the reduced street setback of the tower elements, which the Group considered to be adequately balanced by the two-storey “notching” of the base of the eastern tower.*

*The Panel also made a number of comments with regards to density, noting that the proposed FSR of 4.86:1 is less than the 5.1 permitted under NLEP 2012; and that 389 apartments are proposed, comprising a combination of 1, 2 and 3 bedroom units. The Panel noted that parking is located in the adjacent multi storey car-park above the bus terminal. However, the Panel noted that parking in the basement carpark remains unresolved.*

In terms of landscaping, the panel commented that the opportunity for substantial planting on the podium roof would emphasise the lower form as seen from the street. *“Landscaping of the extensive area of the roof of the car park has great potential which should be exploited, and will require careful consideration when the proposal moves beyond the master plan stage”.*

The Panel concluded that *“Acknowledging the broad scale nature of the master plan the above comments should be addressed in refinement of the master plan and detailed design of the podium, residential towers and public areas”.* On this basis, the summary recommendation from the Panel was *“The application is supported subject to the issues raised above being resolved and referred to the Panel at the DA stage”.*

## **6. 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 Wickham Precinct and West End Precinct have been identified as key sites for development. The plan stipulates that, with regards to the Wickham Precinct, Newcastle City Council is to align local plans to:

- *Facilitate the long-term expansion of the city centre towards Wickham*
- *Increase opportunities for transit-oriented development around Newcastle Interchange*
- *Respond to development constraints including mine subsidence and flooding*
- *Provide floorspace for emerging new economy industries and business.*

With regards to the West End Precinct, the following desired outcomes are provided:

- *Newcastle City Council will align local plans to increase commercial and accommodation floorspace surrounding the Newcastle Interchange*
- *Hunter Development Corporation will promote the West End as a location for professional, finance and office employment.*

The plan provides guidance which *“reinforces the role of the city centre in providing professional, financial and office employment by increasing commercial floor space in the West End to enable growth and relocation of businesses”.* The Metropolitan 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 West End precinct as it will provide increased floorspace for commercial and retail purposes, in addition to residential development, which will promote the West End as a location for employment and living.

### **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 relevant to the West End including:

- *Continue revitalisation to create an exciting place that attracts people, business and investment, domestically and from across the Asia-Pacific.*
- *Strengthen connections between the city and the waterfront and improve civic spaces.*
- *Monitor commercial floor space to assist with planning for growth in service industries and the projected increase in jobs from 25,000 to 33,000 in the next 20 years.*

- *Monitor residential development activity to assist with planning for 6,000 new dwellings.*
- *Deliver the Newcastle Light Rail from Wickham to Pacific Park to provide frequent, reliable and comfortable travel through the city centre.*
- *Deliver the new transport interchange at Wickham that will integrate trains, buses, taxis and light rail, as well as pathways for cyclists and car drop-off and pick-up points. This is an important gateway into the city centre and is the backbone of future extensions of the transport network.*
- *Focus investment in infrastructure to alleviate pinch points that will deliver large-scale renewal projects such as site amalgamation and remediation costs. The NSW Government will lead by example, and partner with others to deliver landmark infrastructure projects.*

The proposed Concept Development will accord with such priorities through the provision of both commercial and retail premises, and residential development in a location which will revitalise the West End and provide increased activation of 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 Strategy identifies a number of neighbourhood specific visions and objectives to guide future growth and development.

With regards to the Wickham area, the strategy highlights that “*The area around the train line has been identified as the new city centre for Newcastle in the Newcastle Urban Renewal Strategy 2012 prepared by the NSW Department of Planning and Environment*”.

The strategy contains the following strategic directions and actions for infrastructure, which reference future development in the Wickham/West End area with regards to rail corridors and surrounding development:

- *Implement the Residential Growth Precincts, in particular continue to locate higher densities in proximity to rail stations.*
- *Any change to the Newcastle rail line that results in the cessation, partial closure or reduced services may require reconsideration of land use and density controls around these stations. In particular a new masterplan for the Wickham area may be required to ensure integration with proposed transport interchange.*

The proposed Concept Development is consistent with the visions and objectives of the strategy for the Newcastle West areas as it will provide for mixed-use development in close proximity to the waterfront with safe and activated spaces. The strategy also seeks to ensure that future development of the Wickham/West End area is sympathetic with the small scale development and character provided by remaining heritage buildings. This issue is discussed in the section 4.15 (1)(b) section of this report.

## **6. Section 4.15 Considerations**

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

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

### **Draft Remediation of Land State Environmental Planning Policy**

The proposed Remediation of Land SEPP is intended to repeal and replace *State Environmental Planning Policy No. 55 – Remediation of Land*. 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 the approval process for remediation discussed in the SEPP 55 section of this report to the JRPP.

#### **State Environmental Planning Policy (State and Regional Development) 2011**

The Concept Application 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 3 DA for physical work exceeds \$30 million and is therefore captured within Schedule 7 for 'Regionally Significant Development').

#### **State Environmental Planning Policy (Infrastructure) 2007**

Division 15 "*Railways*" Subdivision 2 (Development in or Adjacent to rail Corridors and Interim Rail Corridors – Notification and other requirements) is also applicable. Clause 85 (Development Adjacent to Rail Corridors) and Clause 86 (Excavation In, Above, Below or Adjacent to Rail Corridors) applies. Where the clause applies, the concurrence of the rail authority is required to be obtained prior to the granting of consent.

Whilst the Concept Application will not grant consent to any 'works', irrespective of this, the application was referred to Transport for NSW and Sydney Trains given the proximity of proposed buildings within the Concept Plan to the existing heavy and future light rail corridors.

Transport for NSW (TfNSW) acknowledged on 15 January 2019 that the Concept DA does not propose any works, although future DAs will involve excavation near the Newcastle light rail (NLR) corridor and therefore any subsequent DAs will require concurrence from TfNSW under the SEPP. However, TfNSW also advised that the Concept Application had been reviewed and suggested conditions are provided consent to ensure protection of the NLR corridor both during the construction and operation phases of the development.

Sydney Trains advised in their latest response (dated 14 January 2019) that the proposal has been considered under the requirements of Clause 86(4) of the SEPP to determine the effects on the safety, structural integrity and operations of the existing and proposed rail corridor. Sydney Trains has provided concurrence, subject to the imposition of a condition which requires their endorsement of geotechnical, structural, drainage engineering documentation and construction methodology for any structure within 25m of the rail corridor, prior to the issuing of a Construction Certificate. This requested condition has been incorporated as a recommended condition of consent, noting that it will be relevant to the various stages of the development, when physical 'works' are proposed.

Clause 87 (Impact of Rail Noise or Vibration on Non-Rail Development) applies to development for residential accommodation which is adjacent to a rail corridor. The consent authority may not grant consent unless it is satisfied that appropriate measures will be taken to ensure that the specified noise levels are not exceeded in various rooms within residential accommodation. Whilst the Concept Application will endorse the form, height and scale of the buildings on the site, it does not seek approval for the construction of such buildings, with detailed design works regarding the placement of rooms to be part of the Residential DA. Compliance with Clause 87(3) will therefore form part of the assessment of the Stage 4 (Residential) DA. A condition should be attached to any consent issued for the Concept Approval requiring that the Stage 4 Residential DA be accompanied by documentation addressing potential noise impacts on residential premises.



Division 17 'Roads and Traffic' Subdivision 2 (Development in or Adjacent to Road Corridors and Road Reservations) of the SEPP is applicable, with Clause 101 (Development with Frontage to Classified Road) requiring feasible access from a road other than a classified road. Further, the safety, efficiency and operation of the classified road must not be impacted by any vehicular access, emissions or traffic movements. Hunter Street is a Regionally classified Road and Stewart Avenue is a State Classified Road as listed on the Schedule of Classified Roads and Unclassified Regional Roads. The main access to the site will be provided via the signalised intersection at Hunter Street/Denison Lane (to the NBI and proposed carpark), with a further point of access provided from Stewart Avenue via Beresford Lane (to the proposed commercial and residential buildings). The positioning of such access points was endorsed as part of the REF approval. An additional lane will now also be incorporated within the access driveway leading from Hunter street to provide ingress to the proposed carpark. The positioning of this lane was approved as part of the Stage 2 Carpark DA. Consideration of the suitability of the Concept Development with respect to vehicular movements and noise, as required by Clause 101, is discussed in the later sections of this report.

Clause 102 (Impact of Road Noise or Vibration on non-road development) applies to development for the purpose of residential accommodation on land adjacent to a road with an annual average daily traffic volume of more than 20,000. Before determining a development application Council must take into consideration any guidelines that are issued by the Secretary and must not grant consent to the development unless appropriate measures will be undertaken to ensure that specified noise levels are not exceeded. According to the RMS online Traffic Volume Viewer, there are only two counter stations located in Newcastle West. The closest station (#05593) being located approximately 160m south from the intersection of Hunter Street and Stewart Avenue. The most recent data available is 2010 with the average daily traffic count being 18,990 vehicles. This issue will be further considered, if relevant at the time of assessment of the Stage 4 Residential DA.

Clause 104 requires development specified in Column 1 of the Table to Schedule 3 (Traffic generating development to be referred to the RMS). The development proposed to incorporate approximately 343 residential apartments and proposes a retail/commercial GFA of 22,701m<sup>2</sup>, with access to a classified road and will therefore exceed the referral criteria of 75 dwellings and retail GFA of 500m<sup>2</sup> with access to a classified road. Therefore, referral to the RMS is required and was undertaken, with the advice obtained discussed in a later section of this report [Section 4.15(1)(b)]. The provisions of the Infrastructure SEPP are met or can be met via appropriate conditions of development consent.

### **State Environmental Planning Policy (Coastal Management) 2018**

*State Environmental Planning Policy (Coastal Management) 2018* came into effect on 23 March 2018 and replaces the Coastal Protection Act 1979 and State Environmental Planning Policy No. 71 – Coastal Protection. The Coastal Management SEPP aims to protect, manage and preserve natural, cultural, recreational and economic attributes of the NSW Coast and marine area. Clause 5 indicates that the Policy applies to land the whole or any part of which is within the 'coastal zone'. The subject land is mapped as being within the 'coastal environment area'. Clause 13 of the SEPP states that development consent must not be granted to development on land that is within the coastal environment area unless the consent authority is satisfied that the proposed development will not cause an adverse impact on: the integrity and resilience of the biophysical, ecological and hydrological environment, including surface and groundwater; coastal environmental values and processes; water quality of any sensitive coastal lakes; marine vegetation, native vegetation and fauna and their habitats; existing public open space and access to and along the foreshore; and Aboriginal cultural heritage. As the subject development is located within a well-established dense urban setting, there are no likely impacts to this environment,

especially with regards to the biophysical environment and coastal processes and maintaining public access to the foreshore.

### **State Environmental Planning Policy 55 - Remediation of Land**

A 'Report on Stage 1 Targeted Site Investigation (Contamination)' was prepared by Douglas Partners in May 2016 over all lots which are the subject of the Concept Application and was submitted in conjunction with the REF for the NBI. This report has again been submitted in conjunction with the Stage 3 Commercial DA. Douglas Partners confirm that *"the results of the site history review and site inspection indicated a long history of commercial landuse and potential contaminant sources at the site and adjacent sites, including possible vehicle servicing, blacksmith, chemical storage, wash bay, grease trap, demolition of structures, imported filling, adjacent commercial landuse and adjacent fuel storage....The investigation identified widespread fill materials across the site with minor soil and groundwater impacts."*

This investigation and testing indicated the following:

- *The presence of PAH impact in soils, likely to be attributed to imported filling containing coal, ash and slag;*
- *The presence of building rubble in filling at several locations, including asbestos containing materials in filling at Bore 1 in the south-western portion of the site;*
- *Minor exceedances of adopted groundwater investigation criteria for heavy metals and PAH, likely to be attributed to regional conditions;*
- *Only minor propensity of PAH impacts in soil to leach into groundwater. It is noted, however, that the water leach testing method is a conservative method of assessing leachability and is not representative of in situ leaching mechanisms;*
- *The presence of potential acid sulphate soils on the site from a depth of approximately 2 m below the ground surface across the central and northern portions of the site. Disturbance of acid sulphate soils and associated groundwater would require treatment/management during excavation works.*

Douglas Partners conclude that the potential for gross contamination from off-site land uses was generally considered to be low. They conclude that *"The site is considered to be generally suitable for the proposed development, subject to some remediation and/or management of identified impacts"*. This includes:

- *Remediation and/or management of filling containing elevated PAH concentrations. The impacted filling was generally encountered within the top 1 m to 2 m of the soil profile. Remediation options generally include excavation and off-site disposal, or on-site management of impacted soils;*
- *Remediation and/or management of asbestos containing materials within filling. Remediation options include excavation and off-site disposal, or on-site management of impacted soils;*
- *Management of acid sulphate soils where disturbed, in accordance with a site specific acid sulphate soil management plan.*

Douglas Partners acknowledge that excavation of a basement level may also be proposed and note that if this is the case then *"excavation of PAH and asbestos impacted filling plus excavation of acid sulphate soils may be required as part of basement construction works."* Further, they recommended that *"the presence and extent of identified impacts is further assessed following demolition of site structures which currently cover a significant portion of the site. Site remediation and management should be conducted in accordance with a site-specific Remediation Action Plan (RAP) which would present remediation strategies, procedures and validation criteria for remediation of the site for the proposed landuse."*

Douglas Partners conclude *"On the basis of the investigation, the site can be made suitable for the proposed development subject to localised remediation of the identified contamination in accordance with a site-specific RAP. Additional investigation is also*

*recommended following the demolition of site structures in order to confirm remediation requirements.”*

#### Provisions of SEPP 55 and Conclusion

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

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

The Statement of Environmental Effects prepared by KDC indicates the following with respect to the timing of site remediation:

*“Any necessary management and remediation works associated with the potential for contamination at the site is to be undertaken as part of the Part 5 Approval for the NBI. The recommended mitigation measures for the REF works will be adopted for the ground and sub-surface construction works as a precautionary approach to minimize potential contamination impacts.”*

*“Site remediation and management would be conducted in accordance with a site-specific RAP detailing remediation strategies, procedures and validation criteria for onsite remediation.”*

Council’s Regulatory Services Officer has reviewed the application and background documentation and has advised of the following:

*“Given the separation of the approvals, consideration needs to be given to ensuring that the remediation requirements for the multiple projects are appropriately coordinated. The retail and commercial development SOE indicates evidence of contamination and the need for specific management and further investigation following the completion of demolition of site structures is required to adequately characterise the potential for contamination (Douglas Partners, 2016) (S5.8.3).*

The SOE goes on to state:

*‘There is the potential that any remediation required may be defined as ‘category 1 remediation’ under clause 9 of SEPP 55. Category 1 remediation work requires consent. However, clause 19 of SEPP 55 provides that if another SEPP permits remediation work without development consent, then SEPP 55 does not impose a consent requirement on a proposal.*

*Environmental management works are permitted without consent under clause 79(2)(d) of the Infrastructure SEPP. Any remediation work required for the proposal would meet the definition of environmental management works, and therefore does not require consent.”*

Reference to NBI REF (Section 13.4.1) confirms that contamination remediation works will be required and site remediation and management should be conducted *“in accordance with a site-specific remediation action plan (RAP) detailing remediation strategies, procedures and validation criteria for onsite remediation.”*

The NBI Condition of approval No.33 provides that detailed investigation into contamination is to be undertaken prior to construction commencing and that specific requirements for further investigation, remediation or management of any contamination shall be included within the Construction Environmental Management Plan CEMP (with the preparation and implementation of a CEMP addressed by other conditions).

Regulatory Services Unit's typical approach to DA assessment when a RAP is needed is to require the submission of the RAP document with the application, so that Council may appreciate feasibility of the proposed works and compatibility with the development plans. The State-issued approval for the NBI provides an alternative approach (i.e. providing an approval which accepts that the remediation requirements will be subsequently determined and implemented without seeing the RAP up-front). Considering the following factors:

- the relationship between the approvals (and that approval for NBI has already been issued),
- the NBI accounts for the bulk of the land area for disturbance,
- the requirement contained in the NBI approvals for the subsequent further assessment/remediation,
- the commitment for the retail and commercial development to adopt the remediation requirements identified for the NBI, and
- the relatively low risk of contamination impacts associated with the proposed retail and commercial use,

It is considered satisfactory to condition the approval such that a RAP can be prepared prior to commencement of the construction, and for that RAP to be then adopted for the subsequent works. “

Recommended conditions have been provided by RSU which should be applied to any consent issued for the Stage 3 Commercial Building.

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

The Concept Proposal does not include detailed design or floorplans of residential dwellings as approval is sought only for three dimensional building envelopes and land uses. However, the provisions of this SEPP will apply to the Stage 4 Development Application which will incorporate residential accommodation. BASIX Certificates will be required to accompany this stage to demonstrate the list of commitments which are proposed to achieve appropriate building sustainability.

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

Stage 4 of the development includes two x 30 storey towers, with a 4 storey retail/commercial podium and residential levels above, to which the provisions of SEPP 65 will apply. As the Concept Application does not seek approval for detailed apartment/building design or configuration, the application of the SEPP at this time is limited. However, in order to ensure that the Concept Proposal has been prepared having regard to the principles of SEPP 65 and the Apartment Design Guide, the applicant was requested to provide a ‘high level’ SEPP 65 report which identifies the design principles of the Concept Proposal and which confirms how the future towers can address the broader design principles of the SEPP. KDC responded (on behalf of the applicant) by confirming that *“the Concept Plan proposes built form envelopes. Based upon the information to date, the extent of any future residential Development Applications will be contained within the Concept Plan envelopes. SEPP 65 and the Apartment Design Guide will be considered at the time when a detailed Development Application is submitted to Council”*.

Whilst the submission of a greater level of information at the Concept Stage is preferable to ensure that the 3 dimensional building envelope can support compliant floor plates, it is noted that the design for the residential (mixed use) building continues to be progressed in consultation with Council's UDCG. It is therefore accepted that the level of compliance of the residential towers with the ADG Criteria can be considered at the Residential DA stage, noting that should any areas of non-compliance be identified at this stage (which are not supported by the JRPP), then modification of the Concept Application will be required at that

time. However, consideration of criteria such as separation distances, which are applicable to the 3-dimensional buildings envelopes within the Concept Application are discussed in the assessment below. The following assessment also gives consideration to the other key Design Criteria of SEPP 65, with respect to the proposed residential towers, noting that the level of detail available at this stage is limited.

Communal Open Space: Communal open space for the Stage 4 Residential Development is proposed to be located on the roof of the approved 5 level Stage 1 carpark, which is above the NBI. The UDGC at its meeting of 11 December 2018 endorsed the positioning of this space and noted that *“Landscaping of the extensive area of the roof of the car park has great potential which should be exploited, and will require careful consideration when the proposal moves beyond the master plan stage.”* The Stage 4 Residential DA will be required to provide details regarding the area and landscaped treatment of this space, together with access arrangements for residents.

Visual Privacy: The ADG requires that for a building of up to 12m (4 storeys) a minimum of 12m separation is required between habitable rooms and balconies; 18m for buildings of up to 25m (5-8 storeys); and 24m for buildings of over 25m (9+ storeys).

The Concept Application provides for the following separation distances between buildings within the site:

- Approx. 24m between the 30 storey residential towers; and
- 21m between the eastern residential tower (30 storeys) and the commercial building (12 storeys).
- 10m between the commercial building and the 5 level carpark (above the NBI).

Separation between the residential towers meets the 24m separation requirement of Objective 3F-1 of the ADG. The 21m separation between the eastern residential tower and the commercial building will be less than the specified 24m separation, however, this separation is considered to be acceptable as the reduced distance is measured from the corner of each building, with the majority of the residential building providing a compliant level of separation. In addition, the upper levels of the residential towers will have no direct interface with the commercial building, which is limited to 12 storeys in height. It is considered that the spatial separation provided between the buildings is acceptable and that privacy and sunlight access will not be unreasonably impacted by the minor variation of the corners of each building, being the only point where there is an interface between habitable and non-habitable functions. Separation between the building envelopes as identified in the Concept Plan is therefore considered to meet the Design Guidance of the ADG.

With respect to separation to the adjacent site to the east (No. 834 to 850 Hunter Street) the proponent has provided a number of possible concepts for future development of this site, which suggest that a lower commercial building of approximately 10 storeys is the most likely development on this land, rather than a slim residential tower. A separation distance of approximately 22m is proposed from the eastern residential tower to the western boundary of No. 850 Hunter Street. When coupled with setbacks for future development on this adjacent site the recommended separation controls of the ADG can be met.

Similarly, with respect to the existing development on the site to the west at No. 876 Hunter Street (which contains a two storey building), the required separation distances (of 24m) to the residential tower are also met, due to the separation provided by the access driveway.

Solar and Daylight Access: The ADG requires that living rooms and private open spaces of at least 70% of apartments must receive a minimum of 2 hours direct sunlight between 9 am and 3 pm on June 21. Whilst a “Shadow Study” accompanies the Concept Application, this information provides clarity around the impact of shadow on adjacent properties but does not provide sufficient information to confirm whether the solar access criteria of the ADG will be



met for the proposed apartments. The 'Concept Masterplan Architectural Design Report' indicates that 11 of an average 15 apartments per floor will achieve in excess of 2 hours of sunlight, meeting the 70% criteria. Whilst this cannot be categorically confirmed at this stage, the orientation of the towers and the absence of taller structures to the immediate north indicates that this requirement will most likely be able to be met, subject to detailed design work. Further, the DRP at its meeting of 6 July 2018, although questioning the solar access diagrams, was of the opinion that a 70% compliance with the ADG could be achieved. Based on the DRP advice it is therefore considered acceptable that compliance with this standard be demonstrated at the DA stage for the residential towers.

**Natural Ventilation:** The ADG requires that at least 60% of apartments be naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. With respect to this criteria, the proponent has provided an indicative floor plate for the two residential towers which show that the western tower would contain an average of nine (9) apartments per floor and the eastern tower would contain seven (7) apartments per floor. However, from the 'typical' floor plan provided with the Concept Application it appears that only four (4) of the apartments in the western tower and four (4) in the eastern tower have a dual orientation which would achieve cross ventilation. Whilst the submitted documentation indicates that cross ventilation would be achieved through detailed design, it is considered that the level of information which has been submitted in conjunction with the Concept Application is not sufficient to provide certainty that the cross ventilation requirements can be met. Irrespective of this, it is noted that the UDCG acknowledged that detailed design of the residential towers would continue to be developed in the detailed design, to support the Stage 4 (Residential) DA. Documentation which has been provided to the UDCG at recent meetings in respect of the future residential DA shows additional articulation of the towers, which will assist in meeting cross ventilation criteria. It is also noted that if compliance cannot be achieved at the DA Stage, or if variation cannot be justified, then modification to the Concept will be required at that time.

**Private Open Space:**

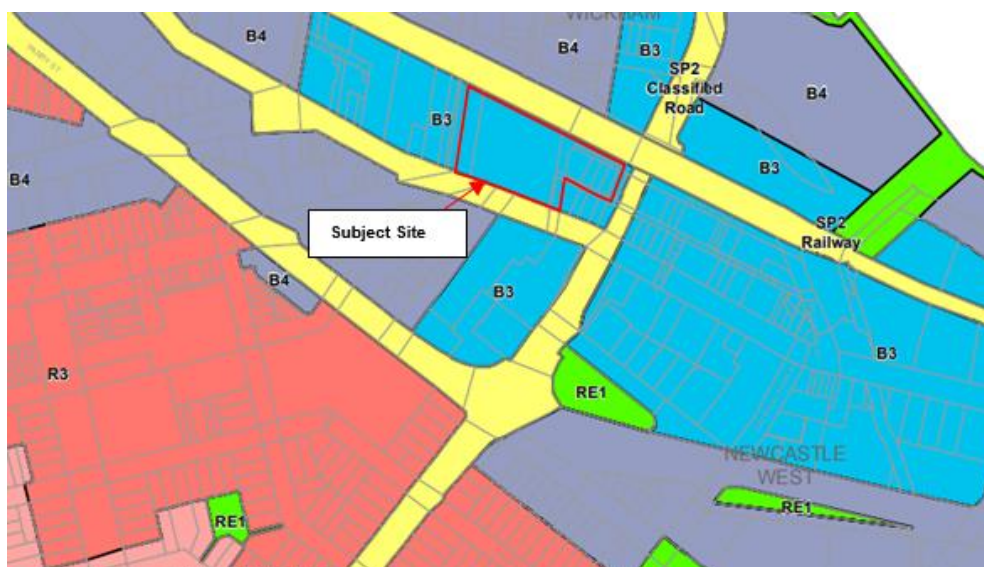
The submitted documentation which accompanies the Concept Application does not contain detailed information regarding dimensions of private open space areas but indicates only the general placement of such spaces in the concept floorplate. It is noted that the proposed separation distances to the residential tower can be met, subject to the placement of balconies within the outer footprint of the residential tower, rather than as projection to the façade of the building. Accordingly, it is considered that this level of information is sufficient to accompany the Concept Application, with further detailed information regarding areas and dimensions of private open space to be provided at the DA stage for the Stage 4 residential building.

With respect to the other design criteria of SEPP 65 which are not addressed within the above table (such as ceiling heights, apartment sizes, common circulation, apartment depth and storage etc.) it is noted that this will be assessed when detailed design plans are submitted for the Stage 4 residential building.

**Newcastle Local Environmental Plan 2012**

This assessment only addresses provisions of NLEP 2012 that are relevant to the application.

**Figure 8:** Extract of Land Zoning Map showing the site being a B3 Commercial Core Zone (LZN\_004G). Property boundary shown edged in red.



#### Clauses 2.1 to 2.3: Zoning and Land Use Table

The subject property is included within the B3 Commercial Core zone under the provisions of the *Newcastle Local Environmental Plan (NLEP) 2012*.

#### *Zone Objectives*

The objectives of the B3 zone are:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To provide for commercial floor space within a mixed use development.*
- *To strengthen the role of the Newcastle City Centre as the regional business, retail and cultural centre of the Hunter region.*
- *To provide for the retention and creation of view corridors.*

The proposed uses within the Concept Application accord with the zone objectives as the development will provide a range of compatible commercial, retail and residential land uses in a highly accessible location, which will support the revitalisation of the Newcastle City Centre and particularly the West End. The development will benefit from its proximity to public transport services provided by the bus interchange, rail interchange and potential future light rail within the immediate locality.

#### *Permissibility*

The proposed uses for each stage are as follows:

**Table 3:** Summary of Permissibility of Uses

Stage	Definition	Permissible
Stage 1- Carpark (approved)	'Car park' <b>car park</b> means a building or place primarily used for the purpose of parking motor vehicles, including any manoeuvring space and access thereto, whether operated for gain or not	Yes
Stage 3 Commercial Building	'Commercial premises' <b>commercial premises</b> means any of the following: (a) business premises, (b) office premises, (c) retail premises.	Yes

Stage	Definition	Permissible
Stage 4 Mixed Use Building (Inc. Res Towers)	<p><i>'Shop top housing'</i></p> <p><b>shop top housing</b> means one or more dwellings located above ground floor retail premises or business premises.</p> <p><b>Note.</b> Shop top housing is a type of <b>residential accommodation</b>—see the definition of that term in this Dictionary.</p>	Yes

All of the above uses are permitted with development consent within the B3 Commercial Core zone of NLEP 2012. It is considered that the residential units can be correctly classified as shop top housing as they are sited at a level higher than the topmost part of the lower level retail/commercial premises, despite the fact that there is a lateral displacement between commercial and residential levels.

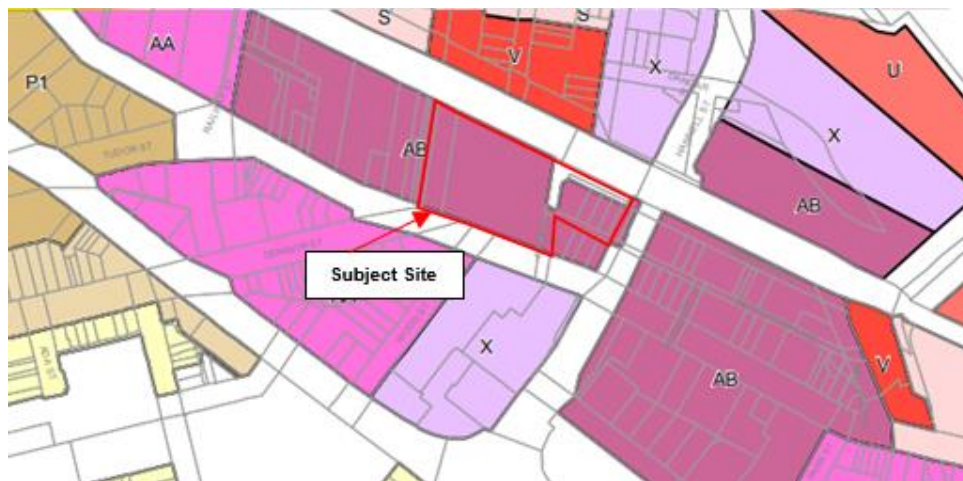
#### Clause 2.7: Demolition

Not applicable: Demolition of structures on site were approved under Part 5 of the EP&A Act 1979 by Transport for NSW.

#### Clause 4.3: Height of Buildings

This clause limits buildings heights to that shown on the 'Height of Buildings' Map (refer **Figure 9**). The 'Height of Buildings' Map specifies permissible building heights on Lot 100 of 90m (shown as 'AB' on the map), except for an area of land which extends along the north-eastern boundary and to the north of Cooper Street, which does not have a mapped height. The approved carpark has a height of 22.8m and the commercial building has a height of 52.3m, both of which are compliant with the overall 90m height control. The proposed residential (mixed use) towers have a proposed overall height of 99m which is not compliant with the 90m height restriction. A Clause 4.6 Variation to Development Standard Statement prepared by KDC accompanies the Concept Application and is discussed in a later section of this report.

**Figure 9:** Extract of Height of Buildings Map showing permissible heights applying to the subject site (HOB\_004G)



#### Clause 4.4: 'Floor Space Ratio (FSR)' & Clause 7.10 Floor Space Ratio for Certain Development in Area A

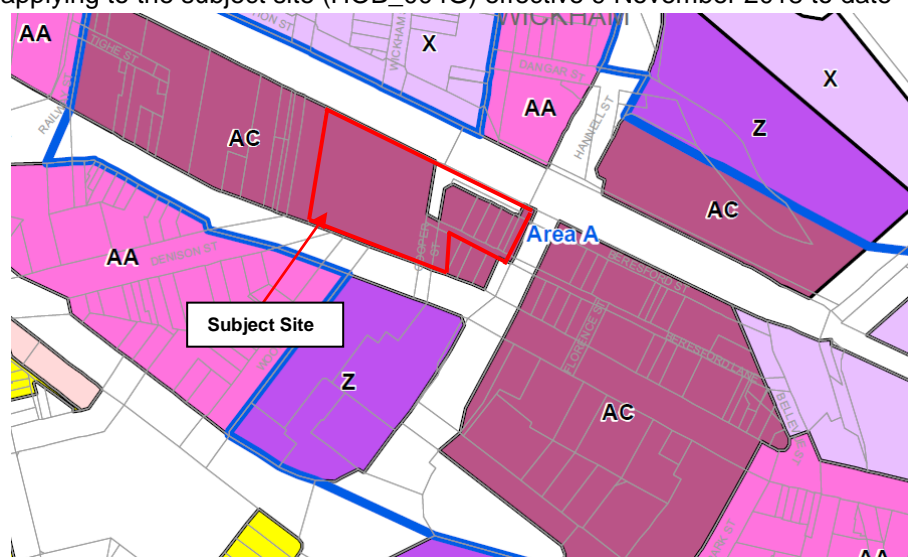
The controls contained in Clause 4.4 which limit floor space ratio on the site are as follows:

- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*
- (2A) *Despite subclause (2), the maximum floor space ratio for a building on land in any zone in this Plan is to be determined as if the area of the access laneway of a battle-axe lot were not part of the area of the lot.*

Clause 4.4 limits the FSR of a development to that shown on the 'Floor Space Ratio' (FSR) Map. The FSR Map (FSR\_004G) indicates that a maximum FSR of 8:1 is permissible on the

site as shown in **Figure 10**. The area of all allotments may be included in the FSR calculation as the combined site is not considered to be a battleaxe allotment to which clause 4.4(2A) applies.

**Figure 10:** Extract of Floor Space Ratio Map showing permissible FSR applying to the subject site (HOB\_004G) effective 9 November 2018 to date



However, Clause 7.10 limits the floor space ratio in Area A as shown on the Floor Space Ratio Map (by the blue outline) to the following:

- (2) *The maximum floor space ratio for a building other than a commercial building on land with a site area of 1,500 square metres or more is as follows:*
  - (a) *where the Floor Space Ratio Map identifies a maximum floor space ratio of 6:1 (or greater)—5:1,*
  - (b) *where the Floor Space Ratio Map identifies a maximum floor space ratio of 5:1—4:1,*
  - (c) *where the Floor Space Ratio Map identifies a maximum floor space ratio of 4:1—3:1.*
- (3) *In this clause:*

**commercial building** means a building used wholly for either or both of the following purposes:

  - (a) *commercial premises,*
  - (b) *tourist and visitor accommodation that is not subdivided under a strata scheme.*

The subject site is located in Area A as shown in **Figure 10** and therefore the provisions of clause 7.10(a) apply, which limits the overall FSR for the site to 5:1 as the site is greater than 1,500m<sup>2</sup> in area (at 12,028m<sup>2</sup>) and the Concept Application proposes a building other than a commercial building.

The Concept Application seeks approval for gross floor areas as detailed in **Table 4**:

**Table 4:** Proposed Gross Floor Areas (Source KDC SEE)

Component	Gross Floor Area (GFA)
Residential	34,661m <sup>2</sup>
Commercial/Retail	22,701m <sup>2</sup>
Surplus parking (58 spaces)	752m <sup>2</sup>
NBI Amenities	120m <sup>2</sup>
<b>Total:</b>	<b>58,234m<sup>2</sup></b>

The site has an area of 12,028m<sup>2</sup>, which, based on a maximum FSR of 5:1, may be developed with a maximum GFA of 60,140m<sup>2</sup>. Table 4 confirms that a maximum GFA of 58,234m<sup>2</sup> is proposed, which equates to an FSR of 4.84:1, and which is therefore compliant with clause 7.10 of NLEP 2012. This calculation includes a GFA of 752m<sup>2</sup> for 58 parking spaces which are surplus to Council's requirements.

#### Clause 4.5 'Calculation of FSR and site area'

Clause 4.5(4) excludes the following land from the calculation of site area for the purpose of determining floor space ratio:

- (a) land on which the proposed development is prohibited, whether under this Plan or any other law,*
- (b) community land or a public place (except as provided by subclause (7)).*

With respect to clause 4.5(4)(b) any community land or a public place is excluded from the calculation of site area for the purpose of determining FSR. A public place is defined under the Local Government Act, 1993 as:

- (a) a public reserve, public bathing reserve, public baths or public swimming pool, or*
- (b) a public road, public bridge, public wharf or public road-ferry, or*
- (c) a Crown reserve comprising land reserved for future public requirements, or*
- (d) public land or Crown land that is not:*
  - (i) a Crown reserve (other than a Crown reserve that is a public place because of paragraph (a), (b) or (c)), or*
  - (ii) a common, or*
  - (iii) land subject to the Trustees of Schools of Arts Enabling Act 1902, or*
  - (iv) land that has been sold or leased or lawfully contracted to be sold or leased, or*
- (e) land that is declared by the regulations to be a public place for the purposes of this definition.*

The subject site (Lot 100) is entirely zoned B3 Commercial Core on which the proposed uses are permissible, thereby meeting 4.5(4)(a). The existing western access road (known as Denison Lane) forms part of Lot 100 and is therefore included in the site area calculation. However, this land is not defined as a public place, as specified by Clause 4.5 and therefore is not required to be excluded from the site area for the purpose of determining FSR.

#### Clause 4.6 'Exceptions to Development Standards'

The Concept Application is accompanied by a 'Clause 4.6 Variation to Development Standard Statement' prepared by KDC which seeks variation to the 90m building height in respect of both residential towers. Clause 4.6(8) does not exclude the application of this clause for the purpose of varying clause 4.3 – Height of Buildings. Therefore, a Clause 4.6 variation to this standard may be considered, as discussed in Section 4.15(1)(b) assessment of this report.

#### Clause 5.10 Heritage Conservation

The subject site contained the heritage listed Newcastle Cooperative Store, with approval for the demolition of this building (and the carpark) granted as part of the Part 5 approval for the NBI. A number of other heritage items are located in proximity to the site including the former Castlemaine Brewery (now the Quest Apartments) located to the immediate south at No. 787 Hunter Street (state listed item) and the Cambridge Hotel located to the immediate southwest at No. 789 Hunter Street (local listed item). The subject site is also located within the Newcastle City Centre Heritage Conservation Area as mapped by NLEP 2012. A Statement of Heritage Impact prepared by Artefact (dated September 2018) accompanies the development application. Further discussion of the manner in which Clause 5.10 of NLEP 2012 and relevant provisions of NDCP 2012 are met is contained in the Section 4.15(1)(b) assessment of this report.



#### Clause 6.1 Acid Sulfate Soils

Whilst the subject site does have potential to contain acid sulfate soils, the Concept Application does not propose the undertaking of any works and therefore the submission of a Management Plan is not required at the Concept stage. An Acid Sulfate Soils Management Plan accompanies the Stage 3 Commercial DA and is discussed within the separate report to the JRPP for this application.

#### Clause 6.2 Earthworks

An objective of this clause is “(a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.” The commercial building will involve excavation to a depth of RL-0.1 to facilitate the construction of the basement car park. The residential (mixed use) building will include one basement level, with the depth of this basement to be confirmed at the DA stage.

The applicant has also indicated that as the site contains acid sulfate soils (deemed as contaminated soils under the *Lands Management Act 1997*), all contaminated soils are proposed to be removed from the site (as described in the Review of Environmental Factors for the Newcastle Bus Interchange). The documents submitted with the application for the Aboriginal Heritage Impact Permit (AHIP) did not anticipate excavation, therefore a variation to the AHIP will be required and is recommended as a condition of consent for the Stage 3 commercial building (refer discussion under heading ‘Aboriginal Heritage Impacts’).

#### Clause 7.3: Minimum Building Street Frontage

This clause requires buildings within the B3 Commercial Core zone to have at least one frontage of 20 metres. The buildings within the Concept Application have a frontage to Beresford Lane of approximately 52 metres, approximately 39 metres to Stewart Avenue and approximately 109m to Hunter Street, in compliance with this clause.

#### Clause 7.4: Building Separation

This clause specifies the following:

- (1) *A building on land to which this Part applies must be erected so that the distance from the building to any other building is not less than 24 metres at 45 metres or higher above ground level.*
- (2) *For the purposes of this clause, a separate tower or other raised part of the same building is taken to be a separate building.*

The Concept Application includes two residential (mixed use) towers (at 99m in height) and a commercial building which exceeds 45 metres in height (at 52.3m) and therefore this clause applies. The following building separation is proposed:

*Residential (mixed use building):* A separation of 24m is proposed between the 2 residential towers, which is compliant. The residential towers do not have an interface with existing development to the west, south and east above 45m in height and provide adequate separation to the west and south to ensure that the required 24m separation continues to be provided. It is noted that future development on land to the east of Lot 100 may have an interface with the residential towers, if this future development extends above 45m in height. However, an approximate 22m separation is currently provided from the eastern residential tower to the boundary of the adjacent lot to the east. This 22m setback, coupled with upper level setbacks to this adjacent building will also provide for compliance with the 24m separation distance.

*Commercial Building:* It is noted that only the upper level of the commercial building exceeds 45m in height (comprising plant, which does not include windows and is set back from the main building façade at the west, north and eastern edges). The remaining floor levels for commercial use are less than 45m high.

The proposed commercial building does not comply with the building separation distances to the following proposed/future building envelopes:

- 21m to the future residential tower on the same land;
- 6.1m to the future buildings located on the corner of Stewart Avenue and Hunter Street (on the southern side of Beresford Lane), only if they are higher than 45 metres.

Therefore, a Clause 4.6 Variation Statement is provided with the application. Refer Appendix E.

Separation distances to other existing adjacent buildings (Light Rail Interchange and recently approved multistorey car park on the Bus Interchange site, not yet constructed) are not relevant to this clause, as these buildings do not exceed 45 metres in height.

#### Clause 7.5 Design Excellence (Newcastle City Centre)

Clause 7.5 applies to the erection of a new building or to significant alterations to an existing building and states that a consent authority must not grant consent to development within the Newcastle City Centre unless the development exhibits design excellence. Subclause (4) states that development consent must not be granted for development having a capital value of more than \$5,000,000 on a site identified as a “Key Site” (ie. Lot 100) unless an architectural design competition has been held. This clause does not apply if certified by the Director General. In correspondence from the NSW Government Architect’s Office (as a delegate of the Director General) dated 16 July 2018, the need for a design competition was waived subject to the whole-site redevelopment following a specified process to ensure that the design will achieve design excellence.

This process has involved consultation with the Government Architect’s Design Review Panel and will also comprise continued review by Council’s Urban Design Consultative Group. As the Concept Application only pertains to three dimensional building envelopes, detailed consideration of a number of matters identified in clause 7.5 will be required at the time of assessment of the staged DAs. Notwithstanding this, **Table 6** below addresses how this Clause is satisfied, with respect to the broader provisions relevant to the Concept Application.

<b>Table 5: Compliance with NLEP 2012 Clause 7.5 Design Excellence</b>	
<b>Clause 7.5 Provisions</b>	<b>Comment</b>
<b>(3) <i>In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters:</i></b>	
<i>(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,</i>	Will be subject to consideration for each stage of the project.
<i>(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,</i>	Will be subject to consideration for each stage of the project.
<i>(c) whether the development detrimentally impacts on view corridors identified in the Newcastle City Development Control Plan 2012,</i>	Satisfied. Refer Section 4.15(1)(b)- Views of this report.
<i>(d) how the development addresses the following matters:</i>	
<i>(i) heritage issues and streetscape constraints,</i>	Satisfied. Refer Section 4.15(1)(b) - Heritage of this report
<i>(ii) the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,</i>	Satisfied. Refer SEPP 65 section of this report.
<i>(iii) bulk, massing and modulation of buildings,</i>	Satisfied. Refer Section NDGP 2012 and SEPP 65 sections of this report.
<i>(iv) street frontage heights,</i>	Satisfied. Refer Section 4.15(1)(b)- Street Frontage Heights of this report
<i>(v) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,</i>	Satisfied. Refer Section 4.15(1)(b) – Overshadowing and Wind Impacts of this report.



<b>Table 5: Compliance with NLEP 2012 Clause 7.5 Design Excellence</b>	
<b>Clause 7.5 Provisions</b>	<b>Comment</b>
(vi) <i>the achievement of the principles of ecologically sustainable development,</i>	Will be subject to consideration for each stage of the project.
(vii) <i>pedestrian, cycle, vehicular and service access, circulation and requirements,</i>	Satisfied. Refer Section 4.15(1)(b)-Traffic of this report.
(viii) <i>the impact on, and any proposed improvements to, the public domain.</i>	Identification of spaces satisfactory, subject to further detail provided for each stage. Refer Section 4.15(1)(b)-Landscaping and Public Domain of this report.
<b>(4) Development consent must not be granted to the following development to which this Plan applies unless an architectural design competition has been held in relation to the proposed development:</b>	
(a) <i>development for which an architectural design competition is required as part of a concept plan approved by the Minister for a transitional Part 3A project,</i>	N/A
(b) <i>development in respect of a building that is, or will be, higher than 48 metres in height,</i>	Applies. Refer (5) below
(c) <i>development having a capital value of more than \$5,000,000 on a site identified as a "Key Site" and shown edged heavy black and distinctively coloured on the Key Sites Map,</i>	Applies. Refer (5) below
(d) <i>development for which the applicant has chosen to have such a competition.</i>	N/A
<b>(5) Subclause (4) does not apply if the Director-General certifies in writing that the development is one for which an architectural design competition is not required.</b>	The application is accompanied by correspondence from the Office of Government Architect, as a delegate of the D-G which grants exemption to the requirement for a design competition for the site subject to the implementation of a design excellence process.
<b>(6) The consent authority may grant consent to the erection or alteration of a building to which this clause applies that has a floor space ratio of not more than 10% greater than that allowed by clause 7.10 or a height of not more than 10% greater than that allowed by clause 4.3, but only if the design of the building or alteration has been reviewed by a design review panel.</b>	Applicable to the residential towers for which a 10% variation has been sought. Complies – the Concept Application has been reviewed by the DRP and the Residential Building continues to be the subject of review by the UDCG.

#### Clause 7.6: Active Street frontages in Zone B3 Commercial Core

The objective of this clause is to promote uses that attract pedestrian traffic along street frontages in Zone B3 Commercial Core. The commercial building design incorporates an active street frontage comprising retail premises and the lobby area of the commercial uses at ground floor fronting Stewart Avenue. While not "street frontages", active uses are also provided to the light rail corridor to the north and bus interchange to the west. The residential building will provide active retail functions at the ground floor level addressing Hunter Street and Cooper Street.

#### Clause 7.9 Height of Buildings (Newcastle City Centre)

This clause is not applicable as the provisions relate to areas identified within Areas A, B or C of the Height of Buildings Map. Lot 100 is not located in area A, B or C on the Height of Buildings Map.

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

This clause specifies maximum floor space ratios for sites with an area of less than 1500m<sup>2</sup>. The total site to which the Concept Proposal relates has a site area of 1.203Ha and the proposed lot which is to contain the commercial building (and which is the subject of a separate DA) has a proposed site area of approx. 1784m<sup>2</sup>. Therefore, the provisions of this clause do not apply.

**(a)(iii) any development control plans**

**Newcastle Development Control Plan 2012**

*Newcastle Development Control Plan 2012* 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)

6.02 Heritage Conservation Areas

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

Section 6.01 'Newcastle City Centre' provides the relevant built form outcomes for this precinct. The key issues within each section, where relevant, are also 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 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 - West 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 'West End'.

The following Principles apply to the West End Precinct:

- 1. New public spaces are created to meet the demands of the future CBD and existing public open spaces are improved, such as Birdwood Park and Cottage Creek. Opportunities for new publicly accessible spaces are identified.*
- 2. Birdwood Park is recognised as an important element in the public domain network and as the western 'gateway' to the city centre.*
- 3. New development fronting Birdwood Park addresses the park edge and promotes a sense of enclosure by being built to the street alignment. Any new development ensures adequate midwinter lunch time sun access to Birdwood Park.*
- 4. Development along the former rail corridor, Cottage Creek, lanes or through-site links provide a building address to encourage activity, pedestrian and cycleway movement, and improve safety.*
- 5. Building entries are inviting with activate frontages that allow visual permeability from the street to within the building.*

6. *Distinctive early industrial, warehouse and retail buildings that contribute to the character of the area are retained and re-purposed.*
7. *Heritage items and their setting are protected.*

DCP Principle - Development along the former rail corridor, Cottage Creek, lanes or through-site links provide a building address to encourage activity, pedestrian and cycleway movement, and improve safety: The proposed development will achieve this principle through the provision of ground level retail space which will activate street frontages and pedestrian paths through the site.

Discussion of the ability to meet the other principles and desired future character for this precinct (as per section 6.02 of the DCP) is contained in the following sections of this report which address landuse, views, heritage and circulation spaces.

### **Section 6.01.03 - General Controls**

#### A1 - Street Wall Heights

The required street wall heights range from 8m for development fronting Hunter Street (as referenced in the Street Wall Heights Plan of the DCP) to the 'default'/standard 16m street wall height to Stewart Avenue and Beresford Lane. Any development above the street wall height is required to be setback a minimum of 6m.

The Concept Plan proposes variation to the street wall height addressing Hunter Street for the Residential (mixed use building) and to Stewart Avenue and Beresford Lane for the commercial building. 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. Above 45m in height, a 12m setback is required. The setback to the western boundary for the residential building exceeds the nil setback due to the positioning of the NBI approved access driveway. The setbacks at the upper levels of the residential building to the western boundary are compliant.

Further, this control requires that a 10m setback from the commercial building to the northern boundary for the light rail corridor as indicated in Figure 6.01-14 of the DCP. A 6.6m setback is proposed to the commercial building, which does not comply with the required 10m. With respect to the variation to the required 10m setback to the north, the applicant provides the following justification for the reduced setback *"the proposal better meets the performance criteria of the DCP as the proposed 6.6m setback of the commercial building not only appropriately defines and addresses the frontage and public domain space to the north but it is also consistent with the setback of the (approved) NBI building to the east"* (NB. which is set back 7.6m).

The reason for the 10m controls has been requested and is unclear. The applicant provided the following additional advice with respect to the requirements of this 'future proof zone' in its correspondence of 22 February 2019:

*The 6.6 metre 'Future Proof Zone' along the northern boundary that was required by Hunter and Central Coast Development Corporation (HCCDC) and Transport for NSW (TfNSW) tender documentation. The TfNSW Newcastle Bus Interchange Definition Design that was part of the State Governments tender documentation provided for this Future Proof Zone.*

*Doma have worked with Transport for NSW to ensure that they are comfortable with the proposed setbacks. The proposed commercial building includes an internally accessible*

*walkway to the northern façade to allow building maintenance without entering the TfNSW 'Future Proof Zone.'*

An extract of the TfNSW briefing document and Doma's Project Delivery Agreement with HCCDC that outlines the requirement for the Future Proof Zone was provided and is contained as an appendix to the report to the JRPP for the Stage 3 Commercial Building.

### A3 - Building Separation

This clause applies to buildings within the same site and specifies for buildings:

- up to 16m: nil separation
- between 16m and 45m: 9m building separation
- above 45m: 21m building separation

The required 9m separation is achieved between the proposed commercial building and the lower levels of the Stage 4 residential (mixed use) building. A variation is sought between these buildings above 45m (refer to discussion under NLEP 2012 Clause 7.5 and Clause 4.6), which is supported.

The DCP also specifies that *"building separation distances may be longer for residential and mixed-use developments to satisfy SEPP 65 guidance."* Separation between the residential towers is discussed in the SEPP 65 section of this report.

### A4 - Building Depth and Bulk

This clause specifies the following:

- Residential floor plates above street wall height - maximum GFA of 900m<sup>2</sup> per floor and maximum building depth of 18m.
- Commercial tower Above street wall height – maximum GFA of 1200m<sup>2</sup> per floor and maximum building depth of 25m.

#### *Residential Towers:*

The proposed residential towers have indicative floor plates of 824m<sup>2</sup> (eastern tower) to 952m<sup>2</sup> (western tower). The eastern tower complies with the specified maximum floor plate, however the western tower exceeds the permitted floor plate by an anticipated 52m<sup>2</sup>. (ie. 5.7%). This variation is considered to be acceptable, as the difference in the footprint of the towers will provide variation in the built form outcome, which has been a desired principle of the UDCG.

Further, the proposed towers exceed the permitted building depth of 18m, having a depth of 24m. The UDCG, when considering the application at its meetings of 18 September and 11 December 2018, was supportive of the slenderness of the towers however, the panel noted that further testing of internal apartment layouts should be undertaken in conjunction with resolution of tower orientation *"to maximise outlook and to achieve the optimum orientation for solar access to apartments"*.

The building depth which is proposed remains an issue of concern, with the applicant not providing justification for this variation but being reliant on further detailed design to confirm whether solar access, cross ventilation and residential amenity can be adequately achieved. It is considered that the ongoing involvement of the UDCG will be essential if such issues are to be adequately resolved. Subject to this occurring, the recommended approach as suggested by the UDCG is considered to be acceptable, whereby the panel acknowledged the *"broad scale nature of the master plan"* and indicated that *"the above comments should be addressed in refinement of the masterplan and detailed design of the podium, residential towers and public areas"*. Accordingly, detailed consideration of building depth and SEPP 65 matters will need to be resolved and closely assessed in conjunction with the staged DAs.

### Commercial Building:

The proposed commercial building has a building floor plate of 1,482m<sup>2</sup> above street frontage height and a building depth of 31.4m, which exceed both the maximum floor plate and building depth requirements of clause 6.01.03 (A4) of NDCP 2012. The DCP notes that *“the size of building floor plates has a direct impact on building bulk and urban form. Setting a maximum size of floor plates is also important to allow for ventilation, daylight access, view sharing and privacy in neighbouring development and the public domain.”*

The applicant provides the following justification for the non-compliance with this control:

*“The proposed development will be consistent with the masterplan and is architecturally designed with specific vertical expressions to break up the bulk and scale of the development.”*

It is considered that the building will achieve adequate daylight access (as the building is freestanding, open on all four sides). However, as discussed in the later sections of this report, the built form (larger floorplate, lack of setbacks above street wall height) will limit/restrict solar access to the properties to the south (on the other side of Beresford Lane).

### A5 – Building Exteriors

This clause will be applicable to the staged DAs as the Concept Application seeks approval for a building envelope only.

### A6 - Heritage Buildings

This section applies to the assessment of building or alteration work (including demolition) of heritage items listed in Schedule 5 of the Newcastle LEP 2012 that requires development consent. The Co-operative Store building and associated carpark was approved for demolition under Part 5 and therefore the provisions of this clause do not apply to the Concept Application.

### A7- Awnings

Awnings are required along the Stewart Avenue frontage and ‘highly desired’ along the Hunter Street frontage. The commercial building provides a colonnade treatment to the Stewart Avenue frontage which addresses the objectives of this clause. The treatment of any awning for the Stage 4 residential (mixed use) building will be addressed at the detailed DA stage.

### A8 – Design of Parking Structures

The multi storey carpark, which forms Stage 1 of the Concept Approval, has been approved by Council. The commercial and residential buildings each contain basement parking which meet the requirements of this clause.

### A9 – Landscaping

The Concept Application identifies the location of a number of communal/public access spaces. Landscaping of such spaces will be undertaken as part of the REF process and/or as part of individual stages of the project, with detail to be provided in conjunction with each stage. Landscaping to be undertaken in conjunction with the Stage 3 - commercial development is addressed within the concurrent report to the JRPP.

### B1 – Access Network

The DCP identifies a requirement for new pedestrian connections, which include a north/south linkage from Hunter Street extending north from Cooper Street to the NI and also east/west links extending along Beresford Lane and along the future light rail corridor. The Concept Application incorporates the pedestrian connections as intended by this DCP.

### B2- Views and Vistas

This clause provides requirements relating to views and vistas, with the DCP identifying a view extending north along Stewart Avenue to the harbour. Views are discussed in detail in the following sections of the Section 4.15(1)(b) assessment.

### B3 Active Street Frontages

Street activation is proposed to Stewart Avenue for the commercial building and to Hunter Street for the mixed use building, as required.

### B4 – Addressing the Street

This is a detailed design matter which will be addressed for each staged DA.

### B5 – Public Artwork

This clause requires public and civic buildings, development on key sites and development over 45m in height to allocate 1% of the capital cost of development towards public artwork for development. This will be required as a condition of any consent for each stage of the project.

### B6 - Sun Access to Public Spaces

This clause requires that reasonable sunlight access be provided to new and existing significant public spaces. Sunlight access to public spaces is discussed in detail within the Section 4.15(1)(b) assessment of this report.

## **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**

### **Heritage**

Approval under Part 5 of the EP&A Act was granted for the NBI, which incorporated demolition of the Co-operative Store building and associated carpark. The REF was accompanied by a Statement of Heritage Impact prepared by Artefact to address the proposed demolition of the Co-operative Store and construction of the NBI. This was followed by the preparation of a Heritage Management Plan, also by Artefact (in August 2018) to address the NBI Conditions of Approval.

The Concept Application is now accompanied by a Statement of Heritage Impact (SoHI), also prepared by Artefact. This SoHI assesses potential heritage impacts that may result from the construction of the new commercial and residential buildings on the site and provides heritage management and mitigation measures. The SoHI confirms that the site is located within the Newcastle City Centre Heritage Conservation Area and that two heritage items are located within 100m of the site, being;

- The former Castlemaine Brewery located 25m to the south at No. 787 Hunter Street, which is a state listed item; and
- The Cambridge Hotel located 25m to the south at No. 789 Hunter Street which is a local listed item.

**Figure 11:** Location of Heritage Items within 100m of the site (coloured orange). Subject site outlined in red (Ref: Artefact SoHI, 2018)



There are a further 22 heritage listed items, including one heritage conservation area and two archaeological sites within 100m to 500m of the site. The heritage impact assessment contained within the report is comprehensive, with the following providing a summary of the key potential impacts, to the nearest affected items:

#### Impact on Heritage Conservation Area:

Artefact indicate that:

- The Concept Masterplan will result in a moderate direct physical impact to the Heritage Conservation Area, however this will be offset by the activation of the ground plane for public use which is characteristic of the area and its evolution and which would allow for additional public engagement within this part of the conservation area;
- The Concept Masterplan will result in a moderate visual impact to the heritage conservation area due to the construction of 2 x 30 storey towers which result in a “*visual departure for the traditional scale and character of the area*” and which will also “*result in impacts to distant heritage items that retain a visual connection with the proposed tower*”. However, Artefact also note that adverse visual impacts will be partially offset by the design of the podium which responds to “*the existing significant aesthetic qualities of this part of the conservation area*”.

#### Impact on former Castlemaine Brewery:

Artefact consider that the Concept Masterplan will result in a moderate indirect visual heritage impact due to the construction of the 30 storey towers, which will obscure and change views towards the Brewery from streetscape vantage points along Hunter Street, Wood Street to the south and Stewart Avenue to the north and will overshadow the Brewery. The towers would also diminish the streetscape, however Artefact note that the prominence and landmark qualities of the Brewery have previously been compromised by the block of high-rise to the east of the Brewery. Artefact also note that the impacts would be partially offset by the proposed through site link between the towers which will provide a view corridor towards the Brewery and which would strengthen connection between the two sites.



#### Impact on Cambridge Hotel:

Artefact note that the Concept Masterplan will result in a moderate direct visual impact to the Cambridge Hotel, as the four storey podium of the residential building would exceed the height of the traditional two – three storey development. Further, they consider that *“the two residential towers above the podium, reaching a height of 99metres at a shallow setback distance from the podium’s alignment, would dominate and overshadow the Cambridge Hotel”*. However, they also acknowledge that the contextual character of the hotel has already been significantly impacted by the nearby high-density developments.

#### Impact on Other Items:

Artefact are also of the opinion that the Concept Application will result in a neutral to minor direct visual impact to distant locally listed heritage items, including the former Wickham Station Group and the ‘Residence’ located at 15 Charles Street.

#### Conclusion:

Artefact conclude that:

*“.....with the existing high rise development in Newcastle West and Wickham, and the allowance for future high rise development in the area, the heritage values of the Newcastle City Centre Heritage Conservation Area are at risk of permanent and irreversible impacts. Visual interconnections between items of significant fabric are, and will continue to be, interrupted by new development in the area. Overall, the long-term preservation and management of the heritage values of the Newcastle City Centre Conservation Area are likely to be impacted by permissible development in Newcastle West and Wickham”*.

However, Artefact also note that:

*“The Newcastle Urban Renewal Strategy also identifies a number of potential redevelopment sites in the area in keeping with the initiative to position the west end as the city’s future CBD. The number of sites in the vicinity of the subject site identified as being earmarked for redevelopment suggests that the precinct is in the midst of considerable change, and presumably the heritage character of the area will continue to change.*

Whilst not dismissing the contribution which the Concept Proposal will have on this level of change and the resultant adverse heritage impact, Artefact also note that:

*“.....the Concept Masterplan would provide positive outcomes to offset identified impacts. This includes the improvement of the site access and development of an area that offers new public laneways, plazas, landscaping and small green spaces within a ground level plane that contains retail and commercial facilities. Activation of the subject site at a ground level plane would encourage increased public visitation and could allow for more people of engage with this part of the Newcastle City Centre Heritage Conservation Area. The design of the podium level of the proposed towers has been developed to define significant views to adjacent heritage items, including views out from the proposed through site link and public plaza towards the Castlemaine Brewery.”*

Clearly, the potential adverse heritage impact, primarily of the proposed 30 storey towers on the Conservation Area and nearby heritage items cannot be understated. However, the Newcastle Urban Renewal Strategy confirms the historic intention that this area be developed as a key transport hub for the Newcastle City Centre, with accompanying growth in the commercial and residential sectors. The NURS anticipated that new tower development would be up to 45m in height. However, the provisions of NLEP 2012 , which include a maximum height of 90m and maximum FSR of 5:1 to 8:1 on this site, reflect the intention that the Newcastle West End would become a key administrative hub.

There will clearly be a need to balance the competing demands of economic growth against heritage conservation, given the identified irrevocable impact of development of this scale on the heritage significance of the Newcastle City Centre Heritage Conservation Area. There will be a need for DOMA to work closely with Council’s UDCG to ensure that the lower levels



of the buildings provide a suitable 'human' scale at the ground floor plane and that buildings are well developed at the detailed DA stage to respond to their context and to ensure that the desired community benefits are realised. To facilitate this, Artefact therefore provide the following recommendations and mitigation measures, which should be included as conditions of consent;

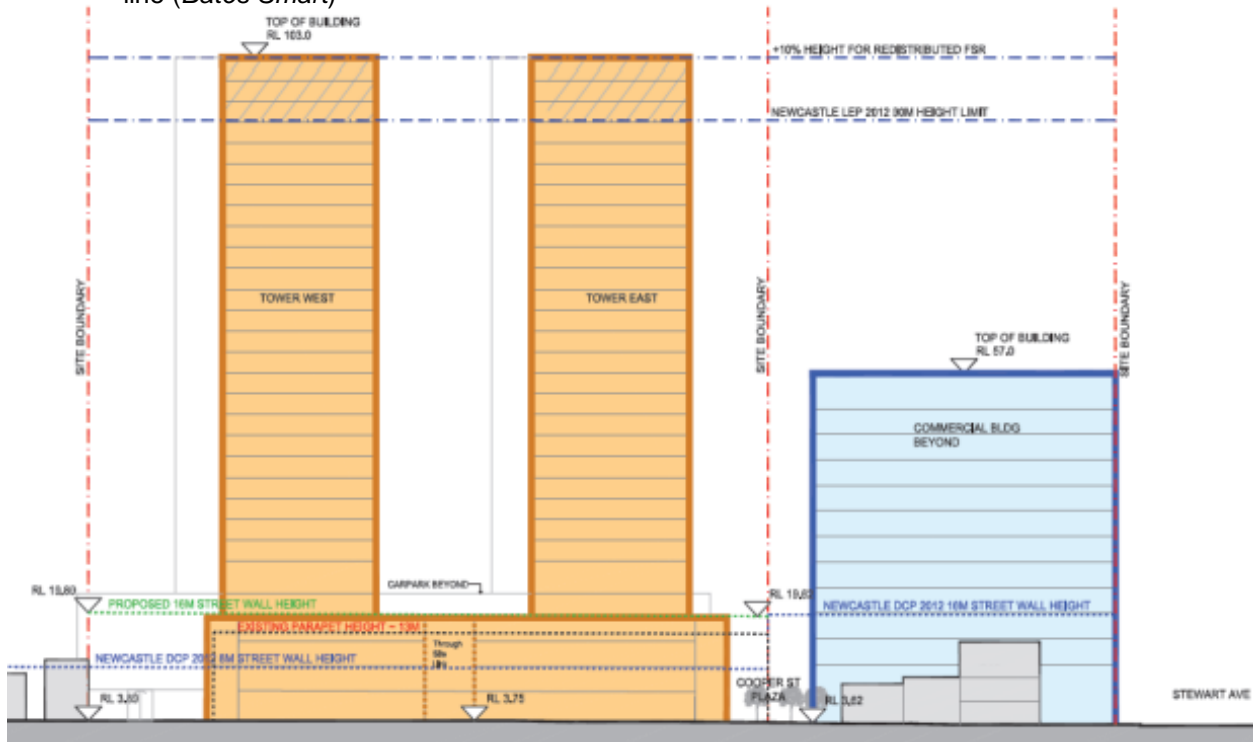
- Statement of Heritage Impact requirement for Construction DA: A separate SoHI to this document must be prepared and submitted to Newcastle City Council as part of any subsequent DA submitted to Council for all, or any part, of the subject site. That SoHI would address impacts associated with the detailed design of the Concept Masterplan.
- Approvals: As the Concept Masterplan has been assessed as resulting in a moderate indirect (visual) impact to the LEP listed Newcastle City Centre Heritage Conservation Area and also the Cambridge Hotel, consultation with Newcastle City Council would be required to provide information on the Concept Masterplan and to liaise with Council during design development
- Sympathetic design: The Future Construction DA should be developed to be as sympathetic as possible to the existing character of the surrounding streetscape, with the aim of minimising visual impacts to the Newcastle City Centre Heritage Conservation Area and nearby heritage items. This could be achieved through the following:
  - Utilise materials, colours, textures, tones and finishes that reference or respond to the historic nature of the Newcastle City Centre Heritage Conservation Area. New design should be discernible as new and contemporary
  - The apparent scale of the proposed buildings could be reduced by breaking walls into bays, arranging modulations and openings in the walls that reflect the structure and nature of the neighbouring buildings in shape and size
  - The scale of the Future Construction DA could be reduced by adopting appropriate setbacks to upper levels to create a transition between buildings of different scales, with the taller heights being further away from nearby heritage items
  - New development should allow, where possible, for retention of views and vistas to and from the heritage items in the vicinity. The proposed through site link within the podium structure should be developed to retain views south towards the adjacent State significant Castlemaine Brewery
- Visual connection with Castlemaine Brewery: The Concept Masterplan should maintain the visual connection between the site and the adjacent State significant Castlemaine Brewery. The proposed through site link and public plaza off Cooper Street should be retained and developed to enhance this visual connection
- Heritage Interpretation Plan: Based on the recommendations from the Heritage Interpretation Strategy (HIS) (Artefact 2018a), a heritage interpretation plan should be developed that addresses the detail of the interpretive approach and content for the Concept Masterplan, including identification of appropriate locations. This should occur at the design stage to ensure productive integration. The interpretive plan should include aspects which address the role of the former Store building within the Newcastle City Centre Heritage Conservation Area
- Heritage Management Plan: A Heritage Management Plan (HMP) for the Newcastle Bus Interchange has been previously prepared by Artefact Heritage (Artefact 2018b). This HMP provides detailed heritage management and mitigation measures for future development of the site. These management recommendations should be enacted before and during construction works
- Archival resources: Prior to commencement of the Concept Masterplan, a Photographic Archival Recording (PAR) should be prepared to record the setting and context of nearby heritage items that would experience higher levels of adverse heritage impact. This includes the State Heritage Register (SHR) listed Castlemaine Brewery, and locally listed Newcastle City Centre Heritage Conservation Area and

Cambridge Hotel. The PAR would be prepared prior to commencement of works, and would include a record of views that would be modified by the Concept Masterplan. The recording would be undertaken in accordance with the guidelines for Photographic Recording of Heritage Items Using Film or Digital Capture prepared by the NSW Office of Environment & Heritage. The PAR for Castlemaine Brewery would be submitted to the NSW Heritage Division, and a copy lodged with State Library NSW. The PAR for the Newcastle City Centre Heritage Conservation Area (including the would be submitted to Newcastle City Council, and copies retained as per the standards

### **Building Heights**

Clause 4.3 of NLEP 2012 limits the height of buildings on Lot 100 to 90m, except for an area of land which extends along the north-eastern boundary and to the north of Cooper Street, which does not have a mapped height. The approved proposed commercial building has a maximum height of 52.3m in compliance with this requirement, whilst the residential (mixed use) towers have a proposed overall height of 99m, which is not compliant with the 90m height restriction (refer **Figure 12**). A Clause 4.6 Variation to Development Standard Statement prepared by KDC accompanies the Concept Application, seeking a 10% variation to the permissible height.

**Figure 12:** Building Massing Diagram showing Height Exceedance – delineated by blue line (Bates Smart)



This Variation Statement seeks to justify contravention of the development standard contained in clause 4.3 on the basis of the following key considerations:

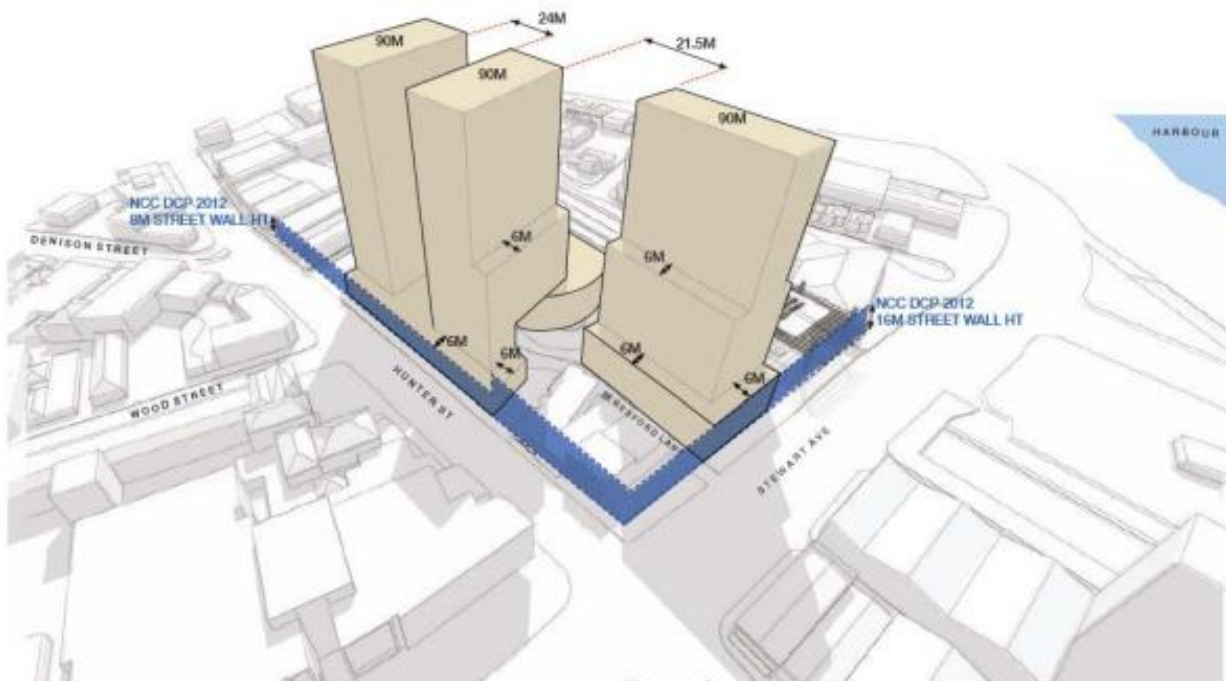
- Reasonable daylight access is provided to all surrounding developments. The proposed height variation will not result in any detrimental impact to any sensitive land uses, as illustrated in the shadow diagram analysis ... The development will not unreasonably overshadow either of the private lands to the south or west; and does not cause unreasonable shadowing of the public domain in comparison to a fully compliant proposal on the site.
- Whilst exceeding the building height standard for the site, the proposal still contributes positively to the locality incorporating through-site links which enable view

sharing, pedestrian connectivity and built form relief. The exceedance will be visibly difficult to detect....

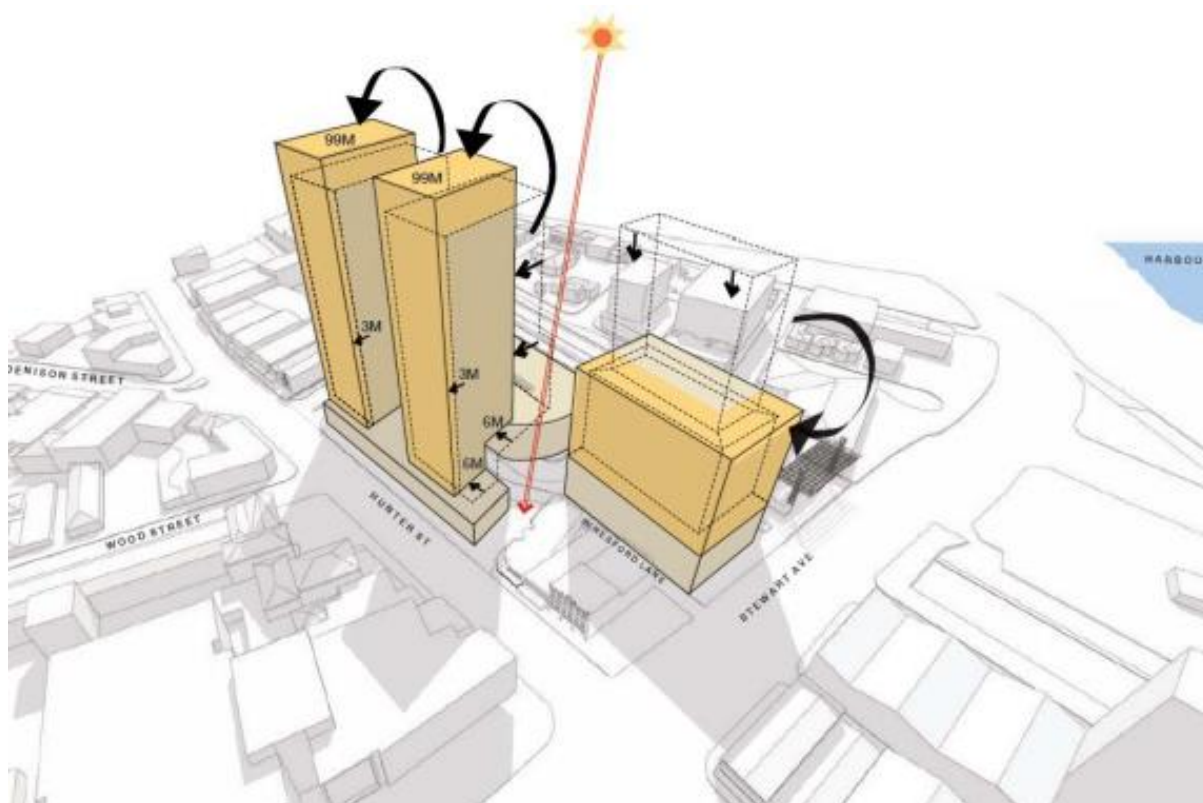
- An intensive design excellence process has ensued to arrive at the form and massing for the site; which is optimised to create a superior outcome for the public domain and for its appropriateness in context. The LEP envelope was tested and manipulated to arrive at the proposed massing.
- The prescribed controls would result in a design of three 90m towers, with numerous setbacks upper level setbacks and street wall heights that are not truly appropriate for the current context. By distributing the building mass, more slender residential towers emerge and a shorter more appropriate commercial building. The slender tower forms act as markers for the major transport interchange and result in built form that allows for daylight access to key public domain areas as well as maximising key views and outlooks for future residential occupants.

Figures 13 and 14 provide a comparison of the building mass and height if compliance with the 90m height control was achieved (**Figure 13**) in comparison to the height and mass which is now proposed (**Figure 14**).

**Figure 13:** Compliant Building Height Showing 3 x 90 Storey Towers (Ref: Bates Smart)



**Figure 14:** Proposed Building Mass With 10% Height Variation (Ref: Bates Smart)



The proposed height exceedance has been considered by the UDCG which supported the development of a design with varied heights between the towers. The UDCG noted the following at its meeting of December 2018:

*“Variation in the height of the towers has provided a three storey height difference. The western tower at 90m complies with the max height allowance of 90m whilst the eastern tower exceeds this with a height of 99m. Both towers have architectural roof features exceeding these heights but not contributing to FSR. The Group supported the variation in height, and considered the height of the “architectural roof feature” element of the towers to be appropriate”.*

Whilst the progression of the design for the Stage 3 residential development has advanced to allow differentiation in the heights of the towers, the applicant has not amended the documentation which accompanies the Concept Application. Therefore, whilst the latest plans for the residential towers which were considered by the UDCG in December 2018 show one tower at a compliant 90m height, this is not reflected in the Concept Plan application and variation is still sought to allow a 10% height exceedance for both towers. This clearly is not an ideal outcome, as in the event that the height variation is supported for both towers then the applicant is obviously in a position where they could seek pursue a scheme with both towers being non-compliant. This is not the outcome which was contemplated by the UDCG.

At the date of preparing this report to the JRPP in relation to the Concept Application the DA for Stage 3 has not yet been lodged. Therefore, the JRPP in considering the Concept Application and the height variation request for the residential towers, does not have the benefit of assessing the Stage 3 design response which has been considered by the UDCG. The applicant continues to seek variation to both towers, to allow flexibility as the design stage processes in consultation with the UDCG. Hence, in considering the height variation request there is a need to determine whether this variation is supported in relation to both

towers, based only on a consideration of building envelopes, rather than a detailed building design.

An assessment of the Clause 4.6 variation has been undertaken and the variation to the 90m height control to allow for a variation is considered to be warranted, particularly having regard to the positive outcome provided by a variation between the height of the commercial building and residential towers on the site. It is also noted that this form was supported by the UDCG which noted at the meeting of 18 September 2018 that *“the slender form of the proposed towers in the master plan is accepted as reducing apparent bulk and has an overall benefit to the public domain”*.

Further, solar diagrams have been submitted which demonstrate the shadow cast by a building of compliant height in comparison to the shadow cast by the additional 10% height in the equinox, winter solstice and summer solstice. Such diagrams confirm that whilst the length of the shadow cast by the residential towers extends over additional properties throughout the day, the additional shadow cast will not in itself result in an unreasonable additional level of overshadowing. With respect to the increased building height of the residential towers and overshadowing on June 21 the following is noted:

- The exceedance of height of the towers will not result in additional overshadowing of the properties immediately to the west at No. 880-882 Hunter Street.
- Additional properties to the southeast of the site (ie to the east of Stewart Avenue) will be affected by overshadowing as a result of the increased building height, however this impact will occur for only a limited period of the day and is therefore minor.
- To the south the increased building height will not alter the extent of overshadowing of the Cambridge Hotel.
- Further to the south a number of additional properties will be affected, including the TAFE, commercial properties at the southern end of Wood Street and a carwash in Stewart Avenue, however overshadowing will be limited to a short period of the day in the winter solstice.
- With respect to the former Castlemaine Brewery (now used by Quest for serviced apartments) which is located immediately to the south of the site, only the carpark to the south of this building will be impacted by overshadowing (for approx. 2 hours on June 21) as a result of the increased building height.
- The height exceedance will not result in any shadow being cast over Birdwood Park to the southeast of the site.

Therefore, the impact of additional overshadowing as a result of the proposed 10% height exceedance is considered to be minor. Further, the 10% variation in height which is sought will also not result in any additional loss of views to any property as the towers, if approved, will be the tallest in Newcastle and any loss of views from surrounding buildings would only pertain to a loss of skyline from lower level development.

Artefact, in the Statement of Heritage Impact (dated September 2018) also provided a commentary around an alternate design solution which incorporated 3 x 30 storey towers and provided the following advice with respect to heritage impacts:

*“Different design options were considered for the Concept Masterplan, including three 90 metre towers across the former site of the Store. In general, the other design options would have resulted in either a greater number of tall structures on the site, or wider and longer structures that would have been more prominent and obscured surrounding heritage items and the conservation area to a greater extent. The selected design option for the Concept Masterplan has the smallest footprint and profile of the proposed options for the site. “*

On this basis, variation to the 90m height requirement contained in clause 4.3 of NLEP 2012 is supported to allow for a 10% variation to this control, which will permit two residential



towers to a maximum height of 99m. However, continued consultation with the UDGC will need to occur to ensure that design excellence is achieved and that variation in the towers is provided if this continues to be the preferred outcome of the panel. This should include refinement to ensure that the top of the podium is further emphasised as recommended by the panel on 11 December 2018, “in order to reinforce this as a key streetscape element, resulting in the towers being less visually assertive”.

### **Street Wall Heights and Front Building Setbacks**

Section 6.01.03 (A1 - Street Wall Heights) of NDCP 2012 requires that the following be provided with respect to street wall height:

- A street wall height of 8m for development fronting Hunter Street (as referenced in the Street Wall Heights Plan of the DCP). This applies to the proposed residential building.
- A ‘default’/standard 16m street wall height to Stewart Avenue and Beresford Lane. This applies to the proposed commercial building.
- Any development above the street wall height is required to be setback a minimum of 6m.

The Concept Plan proposes variation to the street wall height addressing Hunter Street for the residential (mixed use building) and to Stewart Avenue and Beresford Lane for the commercial building. Specifically, the commercial building proposes a building height of 46.8m at the Stewart Avenue and Beresford Lane frontages, with no upper setbacks. The residential building proposes a 16m street wall height, with a 3m setback to Hunter Street above this height (refer **Figure 14**). Variation to the standard is therefore sought for both buildings, as summarised in **Table 6**:

**Table 6:** Summary of Street Wall Heights/Setbacks and Compliance

Location	Building	Street wall Height /Setback Required	Street Height/Setback Wall Provided	Compliance
Hunter Street	Residential (Mixed Use) Building	8m street wall height 6m setback	16m street wall height 3m setback	No
Stewart Avenue	Commercial Building	16m street wall height 6m setback	46.8m street wall height Nil setback	No
Beresford Lane	Commercial Building	16m street wall height 6m setback	46.8m street wall height Nil setback	No
Cooper Street	Residential (Mixed Use) Building	8m street wall height 6m setback	16m street wall height 6m setback	No Setback complies

The DCP includes the following ‘Acceptable Solutions’ for development that vary from the street wall height controls:

- *The street wall height of new buildings may vary if the desired future character is to maintain the existing street wall height of neighbouring buildings, such as heritage streetscapes.*
- *Deeper setbacks above the street wall height may be needed for heritage buildings or conservation areas to maintain the scale of the streetscape and the setting of heritage items.*

*Where it can be demonstrated that there will be no adverse impact in terms of overlooking, overshadowing, or streetscape appearance, a variation to the street wall height setback may be possible.”*

### Residential Building:

With respect to the residential building the applicant provides the following response to the proposed street wall heights (Statement of Environmental Effects, p44):

*"The required street wall height as per Section 6.01.03 of the DCP is 16m along Stewart Avenue and Beresford Lane and 8m along Hunter Street. It is unclear what the significance of this reduced figure along Hunter Street is, considering the existing parapet height of The Store building is approximately 13m.*

*Development above the streetwall height is to be setback a minimum of 6m. Side and rear setbacks are to be nil up to 16m in height and 6m above streetwall height up to 45m, and 12m above 45m.*

*In response to the DCP's streetwall height, the proposal creates a consistent podium height across the new precinct. The proposed envelope of the commercial building on Stewart Avenue is to be articulated to express 16m height within the fabric of the building's façade and composition. In particular, the first four levels will differ in architectural design, incorporating large expanses of glazing, solid horizontal aluminum reveals and perforated aluminum screening to give the appearance of a 16m streetwall height.*

*The mixed-use podium structure along Hunter Street is proposed to have a 4 storey/16m streetwall height and be generally consistent with the former The Store building. This proposal and scale of the podium is appropriate when viewed with taller residential towers over.*

*The resulting group of buildings are designed to read as a family of buildings and could have consistent façade treatments, materials and articulation.*

*The variation of the street wall height is also supported as the additional height will not cause any additional overshadowing impacts to adjoining sites or privacy impacts; will not result in pedestrians feeling overwhelmed and enclosed by the built form; and will retain a sense of human scale via the activation of the ground floor planes and large expanses of glazing which create a sense of interaction between the built form elements and public domain."*

### Comment:

The Statement of Heritage Impact prepared by Artefact in September 2018 raised concern regarding the proposed upper level setback for the residential building which has been reduced to 3m from the required 6m to Hunter Street:

*"The shallow setback of the towers is not in alignment with the principles of the Newcastle DCP 2012, which encourage a deeper setback above street wall height within conservation areas to maintain the scale of the streetscape."*

*"The two towers residential towers above the podium, reaching a height of 99 metres at a shallow setback distance from the podium's alignment, would dominate and overshadow the Cambridge Hotel."*

However, Artefact also note that:

*"The commercial and retail podium of the proposed development...shows a design that has been developed to respect and enhance the aesthetic qualities of the Newcastle City Centre Heritage Conservation Area and nearby heritage items. This includes the arched design and rhythm of the podium fenestrations, which reference the design and appearance of the former Store building, and the robust material palette, which references the traditional construction of nearby historic buildings. The use of metal features and structural elements would provide a sympathetic counterpoint to denote the contemporary nature of the development. These aspects of the Concept Masterplan would allow understanding of the significant aesthetic qualities of this part of Newcastle West, and would be in keeping with Newcastle DCP principles that require new development in the vicinity be respectful of nearby heritage items."*

It is apparent that the proposed street frontage height of the residential building and the upper level setback has been the subject of detailed consideration by the UDCG. The panel confirmed at its meeting of 17 October 2018 that *"the group supported the limited setback*

subject to the setback of the direct floor of the towers being extended to two floors to improve the interface of towers and podium". Further, the panel noted the following:

*"The applicant has amended the form of the two towers incorporating notched corners to the south-east and north-west corners of both towers. This reduces the width of the building facade immediately above the podium thereby increasing the apparent slenderness of each tower. This articulation is further emphasised by continuation of the outer building face up and over the rooftop as an open framed feature enclosing roof top plant and lift overruns. The group noted changing the materials/colour of the projecting face would further break up the massing of the towers and enhance slenderness. These design elements combine to compensate for the limited setback of the towers from the outer edge of the podium."*

The Group also noted that further design work was particularly important in the light of the reduced street setback of the tower elements, which the Group considered to be adequately balanced by the two-storey "notching" of the base of the eastern tower.

On the basis of the above commentary from the UDCG and having regard to the positive façade detailing treatment, as noted by Artefact, variation to the proposed street frontage heights and upper level setback of the residential towers is supported.

#### Commercial Building:

With respect to the commercial building the applicant provides the following response to the proposed street wall heights (Statement of Environmental Effects, p38):

*"The building incorporates architectural features and façade variations to break up the bulk and scale of the development. In particular the first four levels differ in architectural design, incorporating large expanses of glazing, solid horizontal aluminium reveals and perforated aluminium screening to give the appearance of a 16m street wall height."*

*The variation of the street wall height is also supported as the additional height does not cause any additional overshadowing impacts to adjoining sites or privacy impacts; as the proposed commercial/ retail building will be setback appropriately in to future residential buildings."*

*In addition, the proposed street wall height will not result in pedestrians feeling overwhelmed and enclosed by the built form; as the proposal will retain a sense of human scale via the activation of the ground floor plane and large expanses of glazing which creates a sense of interaction between the built form elements and public domain. The proposal will have a strong identity fronting Stewart Avenue and will act as a gateway to The Store. To create a sense of identity and human scale, a two storey lobby is proposed to bring transparency for users and pedestrians travelling northbound, so as to soften the corner between Stewart Avenue and Beresford Lane as the building comes to ground."*

*The forecourt is designed to accommodate landscaping and outdoor seating as a means to soften the strong edge of the building coming to the ground and its immediate interface to the light rail and NBI."*

In relation to the upper level setbacks and building separation to the adjacent land to the south of Beresford Lane, the applicant has stated that the proposed non-compliant setbacks *"will not cause an unreasonable shadowing or amenity impact, nor will it impede the development potential, from an amenity perspective, of the southern site."*

Variation to street wall heights and upper level setbacks for the proposed commercial building is considered in detail within the concurrent report to the JRPP for this building. This report concludes that having regard to overall urban form (including street wall heights and setbacks), the proposed commercial building is satisfactory and will provide a suitable scale and appearance in the context of the site and transport interchange/The Store redevelopment site.



### **View Analysis and Impacts:**

The Concept Masterplan Architectural Design Report prepared by Bates Smart (**Appendix D**) contains a Visual Impact Assessment in section 7.4. This assessment includes consideration of views from six (6) vantage points (as shown in **Figure 15**), being:

1. Looking west along Hunter Street from the corner of Hunter Street and National Park Street;
2. Looking north along Stewart Avenue towards the harbour;
3. Looking north along Wood Street
4. Looking northeast from Denison Street
5. Looking east along Hunter Street
6. Looking southwest from corner of Stewart Ave and Honeysuckle Drive.

**Figure 15:** Location of View Point Locations for Visual Assessment Purposes (Bates Smart)



### **NDCP 2012 – Identification of View Corridors and Discussion**

Chapter 6.01 (Newcastle City Centre) of NDCP 2012 contains a number of performance criteria and acceptable solutions pertaining to views and vistas including the following:

- A6.1: 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.
- B2.1: Public views and sight lines to key public spaces, the waterfront, prominent heritage items and landmarks are protected.
- B2.1: Open space and breaks in the built form align with existing streets and view corridors as identified in Figure 6.01-23.

Figure 6.01-23 of the DCP identifies a view corridor extending north along Stewart Avenue to the immediate east of the proposed Stage 3 commercial building towards the harbour. Similarly, a number of other similar view corridors are also identified along streets to the east of the site which extend north to the harbour.

The Visual Impact Assessment prepared by Bates Smart (refer **Figures 16 and 17**) shows that the lower podium levels of the residential building, which will be 4 storeys in height, will

obstruct lower level north and north-eastern facing views from buildings to the south and south-west of the site. However, it is noted that the lower levels of the mixed use towers will provide for the desired continuity of a commercial frontage along Hunter Street, with a viewing corridor provided along the widened Cooper Lane to visually link Hunter Street to the NBI and NI. In addition, it is noted that views have not historically been provided across the site due to the positioning of the Co-operative Store building along the Hunter Street frontage, together with the positioning of the associated above ground carpark in the east of the site.

The above conclusion is relevant to the Quest Hotel, which is located to the immediate south of the site, and which is 2-4 storeys in height. Given the limited height of the Quest building, the proposed podium of the residential building is unlikely to significantly increase the impact on existing view corridors, when compared to that of the Co-operative Store building. Whilst the towers will create additional highly visual elements when viewed from this building, the width and positioning of the two tower elements will allow for viewing between the structures.

Similarly, the proposed residential building, particularly at the upper levels, will impede the view corridor to the northeast from View Point 4 in Denison Street. However, the 2-3 storey façade of the Co-operative Store building previously interrupted views towards the harbour, as will be the case with the proposed development.

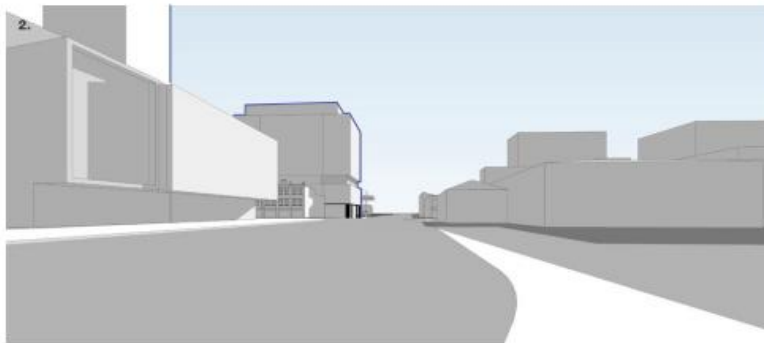
In addition, it is anticipated that the proposed development will impact on views from the approved multi storey building at No. 12 Stewart Avenue, located to the south of the site. Whilst the proposed residential towers are offset from this building, the proposed 12 storey commercial building is likely to have an impact on views, particularly given the wider footprint of this building and its positioning in the eastern portion of the site, in close proximity to a key viewing corridor toward the harbour. However, it is noted that the approved building at No. 12 Stewart Avenue is a commercial building, which does not contain residential accommodation and hence retention of views does not hold the same determining weight when considering the acceptance of impact.

With respect to the view looking north along Stewart Avenue (View Location Point 2), as identified in NDCP 2012, the Bates Smart assessment shows that the proposed commercial building, will not impact on views which extend along the road corridor, with this building effectively 'framing' the view corridor in a similar manner to development to the east of the street.

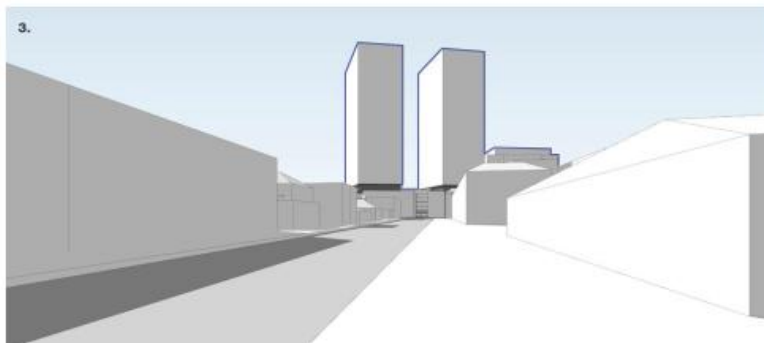


**Figure 16:**

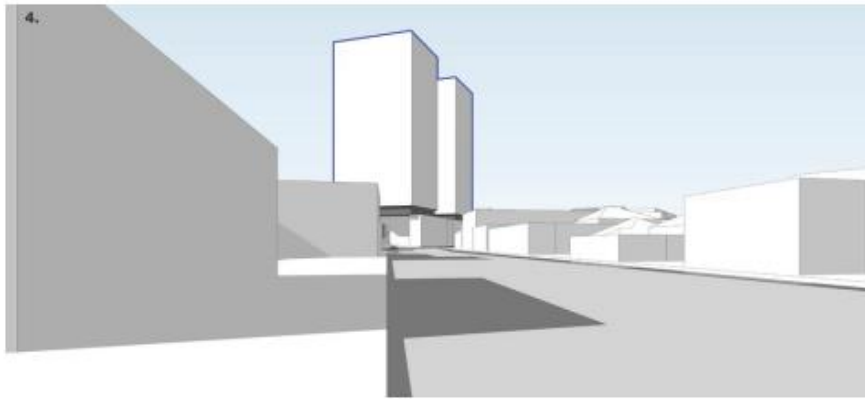
**View Point 1:** Looking west along Hunter Street from the corner of Hunter Street and National Park Street.



**View Point 2:** Looking north along Stewart Avenue towards the harbour.

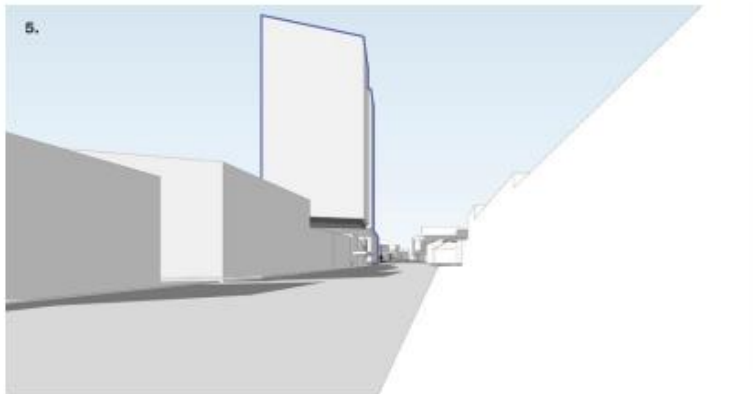


**View Point 3:** Looking north along Wood Street

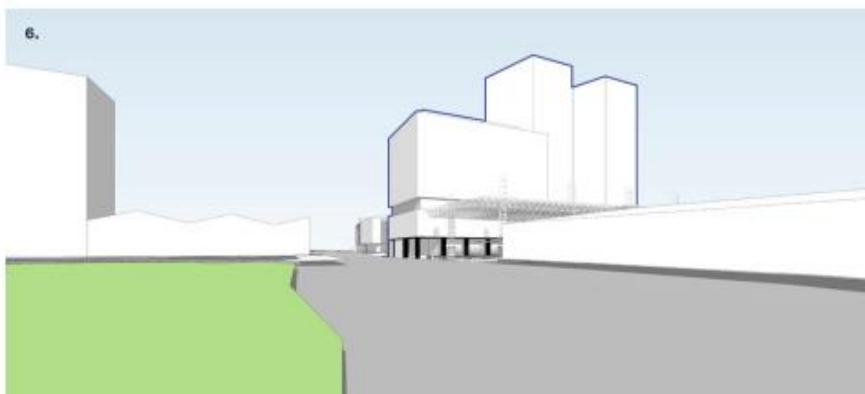


**Figure 17:**

**View Point 4:** Looking northeast from Denison Street



**View Point 5:** Looking east along Hunter Street.



**View Point 6:** Looking southwest from corner of Stewart Ave and Honeysuckle Drive

#### View Impact – Newcastle City Centre Heritage Conservation Area

The potential impact of views of the Concept Proposal on the Newcastle City Centre Heritage Conservation Area and state/local heritage items in the vicinity of the site is also considered within the Statement of Heritage Impact prepared by Artefact.

Artefact recognise that the proposed residential towers will be the tallest development in Newcastle and “...the Concept Masterplan would introduce two conspicuous contemporary elements within the skyline of the Newcastle City Centre”. Artefact also conclude that “...the Concept Masterplan would change the setting and interrupt view out from nearby heritage items including the Castlemaine Brewery, Cambridge Hotel and the wider Newcastle City Centre Heritage Conservation Area”. However, they also acknowledge that “...the Concept Masterplan would provide positive public outcomes to offset identified impacts. This includes the improvement of site access and development of an area that offers new public laneway, plazas, landscaping and small green spaces within a ground level plane that contains retail and commercial facilities”.

### Conclusion:

It is clear that the proposed residential towers will be highly visual in the skyline when viewed from numerous vantage points within the Newcastle City Centre. However, the slender nature of the towers has been supported by the UDGC at its meeting of 11 December 2018, with the panel noting that *“the Group supports the scale and set out of the three towers and associated podium”....“the slender forms and trapezoidal floor plans of the towers above the podium maintain the podium form as the principal element seen for the immediate street level”*. Further, the positioning of the buildings, including the commercial building with reduced upper level setbacks, will not prevent viewing north along Stewart Avenue towards the Harbour, which is a key viewing corridor as identified in NDCP 2012. In addition, whilst the podium levels of the towers will impact on views from development to the south (including the Quest Apartments), lower level views have historically been impacted by the Co-operative Store building and its carpark and will also be impacted by approved development in the form of the multi storey carpark, NBI and NI. It is anticipated that the multi storey commercial building to the south of the site (at No. 12 Stewart Avenue) will be impacted, particularly by the commercial building, however this affected building does not contain residential apartments which would warrant a higher level of protection with respect to view retention.

### Overshadowing and Solar Access

The Concept Masterplan Architectural Design Report prepared by Bates Smart contains diagrams which demonstrate the impact of overshadowing in the Equinox, Winter Solstice and Summer Solstice (as contained in **Appendix D** of this report to the JRPP).

### Impact of Overshadowing on Other Sites

The Statement of Environmental Effects prepared by KDC confirm that *“the proposal will create overshadowing, primarily to the south and east including overshadowing of the Heritage listed former Castlemaine Brewery primarily during the winter solstice”*.

The buildings which will be affected by overshadowing will be those located to the south of Hunter Street (by the 30 storey residential towers and commercial podium levels) and the development to the south of Beresford Lane (by the 12 storey commercial building). With respect to the impact of overshadowing of buildings to the south of Hunter Street the submitted Sun Studies demonstrate the following impacts during the winter solstice:

- The adjacent 2 storey building to the west (at No. 876 Hunter Street) will be marginally affected by overshadowing from the residential (mixed use) building in the early morning period during the winter solstice, however this building will achieve full sunlight access by late morning and therefore the impact is considered to be minor.
- Properties on the eastern side of Stewart Avenue (north and south of Hunter Street) will be affected by overshadowing from the commercial and residential buildings after approx. 12.30pm in the winter solstice but will not be impacted prior to this time. The impact is therefore considered to be minor, as in excess of 3 hours of sunlight is achieved in the morning period.
- The multi storey commercial building to the southeast of the site at No. 12 Stewart Avenue is affected by overshadowing from the proposed commercial building in the morning period and by the residential towers from midday to approximately 2pm. This building will only achieve sunlight access to limited sections of the building during the day and therefore the impact of overshadowing is significant. However, it is noted that this building is wholly commercial, with Council being the main tenant, predominantly in the southern half of the building. This impact is therefore considered to be acceptable, given the absence of permanent residential accommodation in this building.
- Properties to the southwest, including commercial properties on the eastern side of Denison Street and also the Cambridge Hotel (local heritage item) will be affected by overshadowing from the proposed residential (mixed use) building in the morning period in the winter solstice, however by midday the properties will be clear of

shadow from the proposed development, thereby allowing for the achievement of a minimum of 3 hours of sunlight during the day on June 21. This impact is therefore considered to be minor.

- The former Castlemaine Brewery located at 787 Hunter Street will be impacted by overshadowing from the proposed residential towers throughout the day in the Winter solstice. This building is a state listed heritage item which is now used by Quest for the purpose of serviced apartments. The Statement of Heritage Impact prepared by Artefact acknowledged the detrimental impact of overshadowing and also notes that this conflicts with the provisions of NDCP 2012 which seek to ensure that heritage buildings will not be unreasonably overshadowed.

With respect to the extent of shadow cast it is noted that the majority of the building is fully overshadowed between 9am and 11am in the winter solstice. By midday the southern section of the building regains sunlight access, with all of the southern extension fronting Wood Street obtaining sunlight access from 1pm onwards. Therefore, a significant number of rooms within the building, being those fronting Wood Street, will achieve 2-3 hours of sunlight access on June 21.

The most significant impact of overshadowing will be experienced by the front courtyard area and those parts of the building fronting Hunter Street, which will be in shadow through much of the day in the winter solstice. It is noted that during the equinox the impact of shadowing will be significantly less, with approximately 1.5 hours of sunlight access achieved to all parts of the building between 1.30pm and 3.00pm. Further, partial sunlight access will also be received by the forecourt area and that part of the building fronting Hunter Street in the early morning period.

Given that this building is not used for permanent residential occupation, the level of sunlight access achieved to the serviced apartments, whilst not ideal, is considered to be acceptable. However, the impact of overshadowing on the integrity of this State listed heritage item remains a moderate/significant impact. Clearly, there is a need for this impact to be closely weighted against the positive aspects of the project in terms of economic benefits, pedestrian and transport linkages and ground plane activation in this precinct.

- The buildings to the South of Beresford Lane (830-852 Beresford Lane) will be overshadowed by the commercial building as discussed in detail within the concurrent report to the JRPP regarding the Stage 3 commercial building.

### **Public Domain and Publicly Accessible Private Land**

#### **Site Landscaping:**

The Concept Application is accompanied by Landscape Drawings prepared by Sydney Design Collective (refer **Appendix D** of this report to the JRPP). A copy of the proposed Ground Plan is reproduced in **Figure 18**:

The Landscape Drawings confirm the provision of landscaping within the following key areas:

- Along the future light rail zone (Rail Line Park), which will be a minimum of 6.6m in width and which will extend along the northern boundary of the site until potential future construction of Light Rail.
- Along Cooper Lane Plaza which is proposed to be located to the east of the residential towers and which will provide access from Hunter Street through to Interchange Square, the NBI and the NI.
- Along Brewery Lane, which is located below the residential towers, extending from Hunter Street to the NBI;
- Centrally within the site to delineate the central median of the NBI;
- Within the medians located at the primary vehicular access leading from Hunter Street;
- Along the frontage of the site, adjacent to the commercial building fronting Stewart Ave, together with street trees along the Hunter Street frontage of the site.



**Figure 18:** Landscape Plan: Ground Floor Design and REF Update (Sydney Design Collective)



Landscaping will also be provided on the roof of the approved multi storey carpark and at the base of each residential tower, to accommodate the proposed communal open space area for the residential towers. Public domain works such as paving will be provided throughout the site, including within Interchange Square, which will link the Newcastle Interchange to the NBI and the ground level retail spaces within the Concept Plan. The level of detail provided at this stage is a 'high level' concept only due to the intricate relationship of the Concept Application with works to be undertaken in conjunction with the NBI. It has not been possible to obtain clarity around which works will be undertaken in conjunction with NBI and which works will be undertaken in conjunction with the Concept Application. With respect to this issue, the applicant has advised that detailed design plans continue to be developed as works progresses on the NBI and that more detailed documentation will accompany each stage of the project.

From a review of the approval issued for the NBI it is clear that this reflects the approach adopted for this project, whereby condition 43 required submission of the "an urban design and landscaping plan (UDLP) which demonstrates design excellence in the essential urban design requirements of the Project, as evident in the following matters:

- a) the appropriateness of the proposed design with respect to the existing surrounding landscape, built form, behaviours and use-patterns
- b) materials, finishes, colour schemes and maintenance procedures including graffiti control for new walls, barriers and fences
- c) location and design of pedestrian and bicycle pathways, street furniture including relocated bus and taxi facilities, bicycle storage (where relevant), telephones and lighting equipment
- d) landscape treatments and street tree planting to integrate with surrounding streetscape
- e) design detail that is sympathetic to the amenity and character of heritage items located within or adjacent to the Project site
- f) opportunities for public art created by local artists to be incorporated, where considered appropriate, into the Project

- g) *total water management principles to be integrated into the design where considered appropriate*
- h) *design measures included to meet TfNSW's NSW Sustainable Design Guidelines - Version 4.0 (TP-ST-114)*
- i) *identification of design and landscaping aspects that will be open for community input*
- j) *any other matters which the conditions require the UDLP to address.*

It is recommended that a condition be attached to the Concept Approval which requires the submission of additional information regarding landscaping and public domain works to be undertaken in conjunction with the Stage 4 Residential Building. A detailed urban design and landscaping plan (UDLP) should then be provided prior to the release of the Construction Certificate for any stage. Consistent with the condition applied for the NBI, this UDLP is required to be prepared in consultation with Council and relevant stakeholders; be prepared by a registered architect and/or landscape architect; and be accepted by TfNSW's Urban Design Team.

With respect to the Stage 3 Commercial DA it is noted that works to be undertaken in conjunction with this stage comprise only landscaping of the eastern section of the potential future light rail zone; landscaping along the Stewart Avenue frontage; and forecourt paving etc. The level of detail submitted with the Commercial DA (which is discussed in the separate report to the JRPP) is considered to be adequate for this stage given the limited extent of works proposed. A condition should be attached to any approval issued for this any stage of the project which requires the submission of a comprehensive landscape design plan and specification, prior to the release of the Construction Certificate. This plan should include details of levels, plant species, retaining walls, surface treatments. Details will also be required regarding maintenance of such spaces, particularly the light rail future proof zone, which was identified as an issue of concern by the UDCG.

With respect to the general principles and the general positioning of landscaped/public spaces which are proposed within the Concept Plan it is noted that such spaces:

- Meet the requirements of NDCP 2012 with respect to pedestrian access corridors through the site;
- Allow for retention of the visual connection between the site and the adjacent state listed Castlemaine Brewery as recommended by Artefact in the Statement of Heritage Impact dated September 2018;
- Provides a landscape treatment which has generally been supported by the UGCG, with the panel noting that "*roof top areas are considered key areas for establishment of landscaping.*" and that "*at street level landscaping should serve to enhance to quality of movement areas about the buildings and at the link with the transport interchange and the new office and retail areas to the north and south of the site*". In brief, the panel confirmed at its meeting of December 2018 that "*the landscape plan is considered to be heading in the right direction*".
- 

A condition should also be attached to any consent issued requiring a contribution of 1% of the capital cost of development to be allocated towards public artwork in accordance with Newcastle Development Control Plan 2012, Section 6.01.03 - General Controls, Part B5- Public Artwork. The development is over 45m in height and is on a key site.

#### Sunlight Access to Public Spaces:

The principal public spaces within the site is Cooper Street Plaza which will lead north into Interchange Square and the NBI and NI, together with Brewery Lane which extends between the towers from Hunter Street to the NBI. Changes which have previously been requested by the DRP included a reduction in the depth of the towers and a varied alignment to increase sunlight access with the site.

The level of sunlight access to Brewery Lane will be limited due to its positioning between the two tower elements. The DRP has previously recognised this and has suggested that usage of this space “*should acknowledge that it may be a better summer, or even evening space, than a winter daytime space*”.

With respect to sunlight access to Cooper Street Plaza the proposed commercial building will partly overshadow this space at 9am on June 21, with the residential (mixed use) building and the carpark resulting in overshadowing from 10am through to the afternoon. The level of sunlight access is therefore limited, with sunlight only being obtained by a limited area of this space between 9am and 12 midday. Despite this, it is apparent that the applicant has been working closely with the UDGC/DRP to address the level of sunlight access, with the panel supportive of the widening of Cooper Street to create a wider plaza and a greater level of sunlight access. This widened area will allow for additional sunlight access to this space during the 10am to 11am period in the winter solstice.

Whilst the level of sunlight access to spaces within the site is not ideal, it is considered to be acceptable given the site’s inner city context, the availability of 3 hours of sunlight access to at least part of the public spaces on June 21; and the increased level of sunlight access which will be available in the morning period for the remainder of the year.

#### **Staging of Works:**

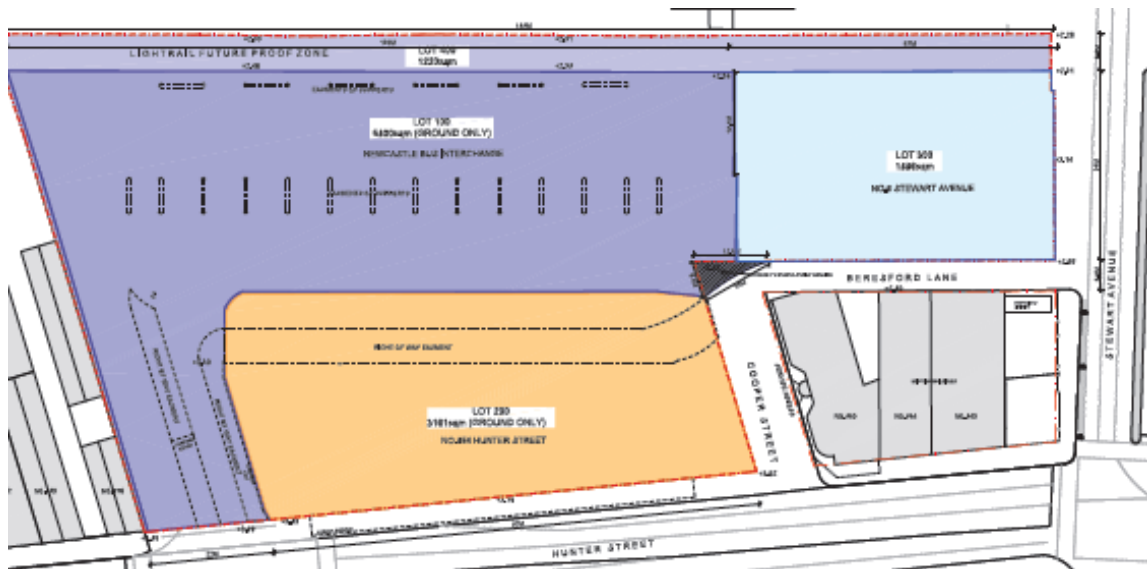
A separate development application is currently under consideration by Council which seeks approval for the excision of one allotment in the north-eastern corner of Lot 100 DP1245750, to allow for the excision of the land which will contain the proposed Stage 3 commercial building.

A ‘Subdivision Strategy’ is also contained in Section 7.1 of the Concept Masterplan prepared by Bates Smart which confirms that Lot 100 is intended to eventually be subdivided into 4 lots (as shown in **Figure 19**) to facilitate the stages of the project which are as follows:

- Lot 100: Which will contain the approved multi level carpark above the NBI;
- Lot 200: Which is intended to contain the Stage 4 residential (mixed use) building, with frontage to Hunter Street;
- Lot 300: Which is intended to contain the Stage 3 commercial building, with frontage to Stewart Avenue.
- Lot 400 which is the 6.6m wide light rail future proof zone.

Subdivision of the land does not form part of the current application. However, given the interrelationship of the NBI and the Concept Plan there will be a need to ensure that all works are undertaken in an appropriate order, to ensure that buildings have immediate access to constructed roads and that public domain works are undertaken in a sequential manner. Accordingly, it is recommended that a condition be attached to any approval issued for the Concept Application which requires the undertaking of stages in a sequential order and which requires that an Occupation Certificate for any building not be released until that building has constructed road access.

**Figure19:** Subdivision Strategy prepared by Bates Smart



Further, there is a need to ensure availability of ongoing public access through the site. Accordingly, a condition should be attached to the Concept Plan approval requiring that pedestrian/vehicular laneways on the site be the subject of an appropriate reciprocal '*right-of-public access*', with Newcastle City Council to be nominated as the body to vary this restriction on the Section 88B instrument. In addition, a restriction will need to be nominated on the Section 88B instrument in respect of the approved multi storey carpark to allow continued use of this carpark by occupants of the commercial and residential buildings, as both stages are partially reliant on carparking which is intended to be located on a separate site. Whilst this condition is more relevant to any future application for subdivision, it should be referenced in the Concept Approval to ensure that future documentation for subdivision correctly references a requirement for ongoing access to this shared carpark.

Whilst not a consideration of the current application (as it does not pertain to subdivision) it is noted that Council will need to ensure that the FSR and setback requirements etc. are met independently for each allotment.

### **Traffic, Parking & Access**

The traffic that is generated by the proposed development will integrate with that of the separately approved (by TfNSW) NBI. The application was referred to RMS under the infrastructure SEPP and, while initially raising concerns regarding the Traffic Impact Assessment, RMS has since advised that they have received an updated Traffic Impact Assessment and they raise no objection to the application, subject to a recommended condition, to require that a further updated Traffic Impact Assessment, in accordance with the RMS Guide to traffic Generating Developments, be provided with the DA for the physical construction of the residential building, confirming the accuracy of the base case and the ultimate scenario and identify any road upgrade works which may be required.

Pedestrian access to and through the site is primarily dictated by the arrangements established by the separately approved (by TfNSW) NBI.

The primary concerns of Council staff in respect of traffic and parking relate to:

- Safety concerns regarding vehicles reversing into the proposed loading dock and the potential congestion resulting from this practice.

- Safety concerns regarding vehicles entering the basement car park, due to the proximity of the roller door to the property frontage.
- The proposed parking allocation being inconsistent with the provisions of the DCP, in terms of the ratio of spaces allocated to the commercial and residential components of the proposed development.

The DCP includes a flat car parking rate of one parking space for every 60m<sup>2</sup> of gross floor area of non-residential development in the City Centre. The establishment of this parking rate recognises the locational advantages of the City Centre in relation to public transport access.

On the basis of the DCP's City Centre parking rate for non-residential development, 378 parking spaces should be allocated to the commercial components of the proposed development.

The SOE provides for a total of 218 parking spaces to be allocated to the commercial components of the development, representing a shortfall of 160 parking spaces when compared to the requirements of the DCP. The SOE seeks to highlight the excellent access to public transport, for the office component of the proposed development in particular. However, the DCP's parking rate for the City Centre already recognises advantages with respect to access to public transport.

It is considered that these concerns can be addressed by way of appropriate conditions of consent, apart from the issue relating to the position of basement carpark access doors, which is more relevant to DAs for physical works. With respect to the reversing of vehicles, it is recommended that a condition be applied to require the design of the development provide for vehicular servicing/loading to be carried out in a manner that involves forward movements only by those vehicles.

### **Waste Management**

The Statement of Environmental Effect prepared by KDC confirms that each building will incorporate ground floor waste storage rooms for the residential, commercial and retail uses of the development. The waste collection areas for the residential (mixed use) building will be accessed via two points of entry leading south from the central access road. The commercial building will be serviced from a loading area accessed off the northern side of the central access road.

As the architectural plans which accompany the Concept Application only provide limited details of the buildings floorplates the functioning of the loading areas and the availability of manoeuvring will be determined at the detailed DA Stage. A condition will be applied to the Concept Approval requiring the submission of a Waste Management Plan for the various stages of development.

With respect to the Stage 3 Commercial Application, a Waste Management Plan prepared by KDC accompanies the application, which addresses the construction and operation stages of the development. The applicant was also requested to provide turning templates for the waste/service vehicle, with the adequacy of such documents discussed in the separate report to the JRPP for the Stage 3 development.

### **Construction Impacts**

Having regard to the scale of the project and the extended anticipated construction timeframe, there is potential for construction impacts. The Concept Application is accompanied by a Site Management Plan prepared by BLOC (dated 24 May 18) which details construction methodologies and sequences, staging, site access/traffic control, and

operational matters. BLOC estimate that during construction there will be 40-80 workers on site, with 15-20 deliveries and 35-40 concrete deliveries per day. Construction Staging Plans are also provided which confirm the location of site compounds, hoardings, cranes, temporary ramps and temporary protection for the various stages of the project.

The Concept Application does not include any 'works' and therefore potential construction impacts will be a consideration of applications for the individual stages of the project. In order to manage the potential parking, noise, vibration, dust, environmental and other construction impacts it is recommended that a condition be applied to future stages of the project requiring the submission of a Construction Management Plan (CMP) and a Construction Traffic Management Plan (CTMP) which detail the location of an off-site car parking area; traffic control; a soil and water management strategy; a dust management strategy; a community relations plan; and a noise and vibration management strategy. This is discussed in further detail within the concurrent report for the Stage 3 Commercial Building.

With respect to noise associated with ground works it is noted that the Conditions of Approval for the NBI also specify a requirement for the submission of a CEMP; submission of a construction environmental compliance report; preparation of a community liaison plan; implementation of a complaints management program; and implementation of noise and vibration mitigation measures; noise compliance monitoring; air quality monitoring; and submission of a traffic management plan.

### **Social and Economic Impacts**

The Statement of Environmental Effects prepared by KDC suggests that the project will provide a number of social and economic impacts including:

- Employment opportunities through project construction and during operation of the commercial component;
- The provision of housing opportunities in the Newcastle City Centre, which will improve housing affordability and which is highly accessible to alternate modes of transport;
- The provision of adaptable housing which will meet or exceed the required number of adaptable units;
- The payment of contributions towards community services and facilities;
- The inclusion of new meeting places and public spaces;
- Landscaping of public domain areas including street furniture and lighting.

It is agreed that the above benefits will be realised however there is potential for adverse construction impacts and/or parking impacts, which are discussed in the above section of this report to the JRPP.

### **Safety and Crime Prevention**

The Concept Application is accompanied by a Crime Prevention Through Environmental Design (CPTED) Statement prepared by KDC (September 2018). The assessment addresses the concept plan only for the four key principles of crime prevention and does not contain specific recommendations for design elements. The report comments on the large expanses of glass at street level, active street frontages, appropriate day and night lighting and the location of public domain areas which will encourage natural surveillance.

In regard to natural access control, the following elements have been considered in the report: delineated vehicular and pedestrian access points; inclusion of appropriate lighting and signage for occupants and service vehicles; active street frontages; street wall boundary to the south and eastern boundary; secure building access; and landscaping to encourage gathering in public spaces. The various elements across the site are connected by a pedestrian network and public spaces.



Territorial reinforcement has been acknowledged and the site has been designed to control access to private aspects. The built form of the various elements will create clearly defined boundaries, inclusion of CCTV and signage to control activities and movement across the site.

Robust materials are to be included in the construction of the building elements and vandalism and graffiti removed. The report comments that rather than 'target hardening' elements being included, elements for natural surveillance and self-policing have rather been incorporated.

The recommendations of this report will be included as conditions of consent, if approved.

### **Wind Assessment**

A Pedestrian Wind Environment Statement was prepared by Windtech (dated 4 September 2018), which addresses the design of the proposal and the impact upon the local wind environment on the outdoor areas within the site. Treatment strategies were included within the report to ameliorate the potentially adverse wind effects. Windtech conclude that:

*"The results of this assessment indicate that the subject development benefits from shielding provided by the subject and neighbouring building and the use of effective wind mitigating features in the building design such as tower setback from the podium edge and recessing balconies into the overall building footprint. There are however the majority outdoor trafficable areas within and around the subject development site are potentially exposed to a variety of adverse wind effects due to the interaction of the prevailing winds with the built form and detailed further within the report. It is expected that the potentially adverse wind effects identified in the report can be ameliorated through the treatment strategies summarised as follows:*

#### **Ground Level**

- *The retention of the proposed impermeable awnings along the frontages of Towers East and West as indicated in the Concept Masterplan Scheme.*
- *The retention of the proposed impermeable awnings along the Stewart Avenue frontage of the proposed commercial building as indicated in the Concept Masterplan Scheme.*
- *The inclusion of the densely foliating trees within and around the subject development as indicated in the architectural drawing; particularly those around the corner areas of the building and adjacent to the outdoor seating areas.*
- *The inclusion of additional densely foliating trees within Brewery Lane closer to the main entryway off Hunter Street.*
- *The inclusion of densely foliating vegetation such as trees or shrubs/hedge planting along the western boundary of the western outdoor seating areas of the commercial building.*

#### **Various communal terraces and open spaces**

- *The inclusion of impermeable screens along the perimeter edge of the various communal terraces and open spaces.*
- *The inclusion of localised wind mitigating devices within the communal terraces and open spaces such as baffle screening, pergolas and densely foliating vegetation such as trees or shrubs/hedge planting. In particular around the corner areas, intermittently along narrow spanning terraces and around areas intended for short duration stationary activities such as outdoor seating etc.*
- *The inclusion of impermeable awnings along the podium and tower façade.*
- *Consideration to relocating outdoor seating, BBQ areas etc. away from the corner areas of the tower and the perimeter edge of the terraces and open spaces.*

#### **Private Corner Balconies on Towers East and West**

- *The inclusion of full-height impermeable or louvered screens along one of the exposed perimeter edges of the balconies; preferably along the western or eastern perimeter edges.”*

Due to the size of the development and the complexity of the building form, wind tunnel testing is recommended in the detailed design phase and once landscaping design has been completed, to allow for a quantitative analysis of the wind conditions. Windtech confirm that this will then enable the development of more detailed wind mitigation strategies, including size and extent of treatment. Whilst the level of information is suitable for the commercial building and provides general principles for the wider site, detailed modelling will be required to address the residential towners and their podiums. Accordingly, a condition should be applied to the Concept Approval requiring the submission of a detailed wind assessment in conjunction with the Stage 4 residential development.

### **Geotechnical Constraints**

The Concept Application is accompanied by a draft Preliminary Geotechnical Investigation prepared by Douglas Partners, dated 26 May 2016. The report was prepared to identify subsurface conditions, including depth to groundwater; identify site classification; confirm suitable footing types; estimate pile capacities; provide retaining wall parameters; and provide recommendations on site preparation and earthworks. The investigation included 3 cone penetration tests and 12 boreholes which were drilled for the contamination investigations. The report confirms that structural loads are not known at this stage.

The subsurface results generally identified fill to depth of approx. 2.0m to 3.7m; sand to depths of approx. 7.6m to 12.9m; clay and sand to approx. 12.6m to 14.5m; stiff clay from approx. 15m; and bedrock refusal at depths of up to 41.06m. The field work results identified free ground water recorded at depths of 1.8m to 1.9m.

GHD recommend that the upper soil profile be compacted to improve site trafficability and proof rolled. Excavation of the subgrade soils can be achieved by conventional earthmoving equipment, however, due to the presence of groundwater, additional measures such as sump and pump or trench boxes and sheet piling will be required. Furthermore, any deeper excavation below groundwater may require dewatering, a licence sought from WaterNSW, and further investigation on possible effects to adjacent structures.

The suitable pile types based on Douglas Partners' investigations are continuous flight auger piles and concrete screw cast piles, with additional types investigated if required. There is variability in subsurface conditions and a detailed geotechnical investigation would be required to refine pile foundations and capacities. The subsurface conditions comprise interbedded clay strata below the proposed pile founding depth and therefore could lead to differential settlements between columns and further investigations are required to assess this further using actual layout of working loads on columns and wall footings.

It is noted that the Geotechnical Report is a preliminary report prepared for UrbanGrowth NSW in 2016, which presumably was prepared in the absence of detailed knowledge regarding future building design and scale. Accordingly, as the design has now progressed, particularly for the commercial building, the applicant was requested to provide supplementary commentary from a geotechnical engineer confirming that they have reviewed the plans, confirming whether their recommendations remain valid and identifying any additional specific recommendations regarding building construction.

A letter was prepared by ADE Consulting Group on 20 Feb 2019, which confirmed that they had reviewed the architectural plans prepared by Bates Smart, the structural plans prepared by Northrop and the Geotechnical Report prepared by Douglas Partners (DP) and they concluded the following:

*“The existing subsurface conditions comprised sand overlying clay and then grades into weathered bedrock. The DP report indicated that the weather rock will provide good foundation condition. The piles are proposed installed by grout injections method (CFA), which considered the ideal for the expected subsurface conditions and that is also capable of to avoid potential impact on the surrounding buildings and structures (sic).*

*Preliminary, there cone penetrations insitu testing to a depth about 43m was carried out and additional 12 boreholes at 4-5m depth were completed by DP. An indicative of 41-43m refusal was detected by CPT which interpreted to be a weather siltstone and sandstone. The groundwater was interpreted at a depth of about 2.0m below existing surface level.*

*The preliminary geotechnical report also indicated that the site is not within a proclaimed ‘Mine Subsidence District’ and confirmed that no restriction would be expected to be imposed on development.*

*Based on the above analysis and assessment and proposed development, ADE confirms that the geotechnical recommendations remain valid and confirms that the site is suitable for the proposed development of this nature.”*

On the basis of the above it is recommended that a condition be attached to any approval issued for any stage which specifies that a detailed geotechnical investigation shall be submitted to Council for consideration prior to the release of the Construction Certificate, to identify ground constraints, together with engineering design and management strategies for buildings and associated earthworks.

Further, Sydney Trains has requested that the following condition be applied to any approval which is issued for the Concept Application, which will presumably also apply to the staged DAs):

*“Any future applications for any structure within 25 metres of the rail corridor shall have its Geotechnical, Structural and Drainage Engineering documentation, and its Construction Methodology documentation endorsed by Sydney Trains prior to the issuing of any relevant Construction Certificate.”*

### **Contamination**

Contamination and remediation of the site is addressed with the foregoing section of this report relating to SEPP 55.

### **Mine Subsidence**

A Section 15B Certificate dated 28 April 2017 has been issued by NSW Subsidence Advisory, indicating that the property is not within a Mine Subsidence District

### **Flood Management**

A ‘high level’ flood risk assessment has been prepared by BMT (dated 23 August 2018) for the Concept Application to determine the peak flood levels and flood behaviour at the 1% Annual Exceedance Probability (AEP) and Probable Maximum Flood (PMF) design events. The site is identified as being located within the Cottage Creek catchment, to which the Honeysuckle Area Flood Study applies.

The correspondence confirms that *“the overall flood mechanism at the site is overland flow resulting from an exceedance of available stormwater drainage capacity. There are three separate flow path alignments that influence the flood conditions at the site:*

- Flow along Denison Street overtopping Hunter Street and flowing north along Beresford Street and Coper Street;*
- Flood waters ponding behind the light rail corridor and flowing eastwards along the northern site boundary;*

- *Flood water overtopping Hansell Street from the east and flowing westwards along the northern site boundary.”*

The correspondence indicates that the Flood Planning Level (FPL) for the site has been defined using a freeboard of 0.4m above the 1% AEP design event with structure blockages.

BMT also note that Council may require a modelling based flood impact assessment to determine potential off site impacts. However, BMT conclude that based on the nature of flooding at the site and the fact that the overall building proposed footprint is smaller than the existing buildings, that the potential for off-site flood impacts is expected to be negligible. Council’s Flood Engineer has reviewed this position with respect to the Stage 3 commercial building and does not consider that the submission of a modelling based flood assessment is warranted. However, it is recommended that a condition be attached the Stage 4 Residential application requiring the submission of a modelling based flood assessment, given the scale of the building footprint.

BMT also provide the following specific commentary with respect to the commercial and residential (mixed use) buildings:

#### Commercial Building:

The FPL of 3.2m AHD for the commercial building presents potential connectivity issues with the Light Rail platform at approx. 2.8m AHD. Alternate flood risk management solutions can be put forward to address this, such as a requirement for the building to be flood compatible below 3.2m AHD.

The entry point on the access ramp to the basement is around 2.8m AHD but to satisfy Council’s requirements this ramp will need to be graded up to FPL of 3.2m AHD prior to descending. BMT conclude that *“the flood planning requirements for the basement levels are satisfied, provided that the ramp entry is set at the FPL and any other potential points of water ingress are set above the PMF level of 3.6m AHD.”*

#### Residential (Mixed Use) Building:

The proposed kerb levels of 2.9m AHD satisfies the flood planning level which requires the flood level to be set above the 1% AEP flood level.

The FPL of 3.1m for the kiss and ride facing retail outlets presents potential connectivity issues with the proposed kerb level at 2.9m AHD. Alternate flood risk management solutions can be put forward to address this, such as a requirement for the building to be flood compatible below 3.1m.

The podium basement ramp will be required to grade up to the FPL of 3.1m AHD prior to descending.

Based on their analysis BMT conclude:

- An FPL of 3.1m AHD is appropriate, above which floor levels should sit, as well as basement car park vehicular entries;
- All other basement entry points should be set at or above the PMF of 3.6m AHD, or 4.2m along Hunter Street;
- The finished floor levels along Hunter street, Beresford Lane and Cooper Street should be set above street level;
- On site flood free refuge is to be provided above the PMF of 3.6m AHD and 4.2m AHD along Hunter Street;
- Flood evacuation routes to upper levels are to be provided with a Flood Emergency Response Plan;
- Buildings are to be structurally able to withstand expected forces of the PMF event;
- The lower level of the multi storey carpark exceeds the required 1% AEP level of 2.7m AHD and therefore could also be used as a flood free refuge.

A condition should be attached to any consent issued for the Concept Application requiring compliance with the recommendations of the Flood Risk Assessment and the submission of information at the respective DA stages demonstrating compliance with such.

### **Stormwater Management**

Following a request for the submission of additional information to confirm the approved NBI drainage arrangement and the manner of integration of the proposed development, the applicant submitted a Civil Drainage Plan for the overall site which was prepared for TfNSW. A drainage plan for the Stage 3 Commercial Building was also submitted, which is discussed in the separate report to the JRPP for this DA.

The Concept Application does not seek approval for any stormwater works. Accordingly, it is recommended that a condition be attached to the Concept Approval requiring the submission of detailed drainage plans for each stage of the development, which demonstrate integration of the drainage design with the NBI drainage design.

### **(c) the suitability of the site for development**

This report confirms that the site is suitable for the proposed Concept development, subject to the submission of further detailed investigations, documentation and strategies to comprehensively address contamination, geotechnical constraints, acid sulphate soils, flooding and heritage in conjunction with each stage of the development.

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

No submissions were received from members of the public in respect of the Concept Application.

### **(e) the public interest**

The Concept Proposal will facilitate the achievement of Council's vision for the West End (as contained within the Newcastle Urban Renewal Strategy and NDCP 2012) by providing increased employment and living opportunities in a location which supports the development of the NBI and which has immediate access to the inner city rail and bus network. Further, the development will allow for increased activation and landscaped spaces at the ground plane which will increase public access to the site and the adjacent bus and rail interchange.

It is also recognised that there will be a need to effectively manage impacts through the construction stage of the project to ensure that surrounding business and residents are not unreasonably affected by traffic movements, on street carparking, noise, vibration or dust.

Subject to the submission of further detailed information to clearly address mitigation strategies and ongoing management in conjunction with future Development Applications and/or Construction Certificates, it is considered that the overall economic and social benefits of the Concept Proposal are in the public interest.

## **8. Conclusion**

The proposed residential towers at 30 storeys, will be the tallest buildings within Newcastle and will be iconic and highly visible additions to the skyline. The applicant's heritage consultant acknowledges that the residential towers will have an irreversible visual impact on the Newcastle City Centre Heritage Conservation Area and will also result be out of context with the adjacent State heritage listed former Castlemaine Brewery. This brewery, which now houses the Quest serviced apartments, will also be significantly overshadowed by the proposed development. Whilst the visual and heritage impacts of the towers can be partially offset by appropriate façade treatment and the provision of a through site link leading to the Brewery, the impacts can only be mitigated to a limited extent.

Whilst the development will clearly have impacts beyond the boundaries of the site, the placement of buildings and the three dimensional building envelopes which are proposed

within the Concept Application are supported. With respect to the residential tower, variation to the street frontage height/upper level setbacks is considered to be warranted, subject to ongoing consultation with the UDCG during design development. Further, an assessment of the proposed building height exceedance of the two residential towers has been undertaken and the variation (pursuant to Clause 4.6 of NLEP 2012) is considered to be warranted, on the basis of improved built form outcomes provided by the reduced tower footprints and slender form.

With respect to the proposed commercial building, several planning considerations, including that of non-compliances with NLEP 2012 (building separation) and NDCCP 2012, relate to impacts to the future development potential of the properties to the south of the commercial building site (834-850 Hunter Street). It is considered that the proposal is likely to limit the land use and built form of this land in terms of achieving solar access (if residential development is proposed) and view sharing. However, the assessment contained within this report concludes that, having regard to overall urban form outcome (including street wall heights and setbacks), the proposed commercial building is satisfactory and will provide a suitable scale and appearance in the context of the site. On this basis the variation which is sought to building separation (pursuant to Clause 4.6 of NLEP 2012) is supported.

Whilst the development will result in a number of impacts on adjacent development and the Newcastle City Centre Heritage Conservation Area, this assessment concludes that the overall built form outcomes of the project are positive and that a number of impacts can be partially mitigated.

On balance, and having regard to the recommendations above, it is considered that the Concept Proposal will still achieve the desired street level and built form outcomes for this precinct and will facilitate development of the West End as a key administration and transport hub. Accordingly, approval of the Concept Proposal is recommended subject to the provision of detailed documentation and management plans to mitigate potential impacts. Ongoing consultation with the UDCG will also be essential to ensure that the detailed design of buildings addresses the site's heritage context and its relationship to other listed buildings.

## **8. Recommendation**

That the Joint Regional Planning Panel grant consent to 2018/01109, subject to the conditions contained in Appendix B.

## **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:** Newcastle Bus Interchange 'REF' Plan and Conditions of Approval

**Appendix D:** Concept Masterplan Architectural Design Report prepared by Bates Smart;

**Appendix E:** Clause 4.6 – Building Separation prepared by KDC

**Appendix F:** Clause 4.6 – Building Height prepared by KDC