

COUNCIL ASSESSMENT REPORT

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSHCC – 105 – MA2021/00450 (DA2018/01109)
PROPOSAL	Section 4.55(2) Modification to a Concept Development Application for a mixed use development comprising retail, commercial, public spaces, residential apartments and associated car parking
ADDRESS	Lots 2 & 3 DP1271240 No.854 Hunter Street Newcastle West, Lot 11 DP1270693 No.874 Hunter Street Newcastle West and Lot 300 DP1255289 No.6 Stewart Avenue Newcastle West
APPLICANT	Doma Interchange Development Pty Ltd C/ - SLR Consulting Australia Pty Ltd
OWNER	Doma Interchange Development Pty Ltd
DA LODGEMENT DATE	17 November 2021
APPLICATION TYPE	Modification to a Concept Development Application
REGIONALLY SIGNIFICANT CRITERIA	<p>Part 2.4, Clause 2.20 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> requires, for development that is the subject of a concept development application, that any part of the development that is the subject of a separate development application is to be considered as Regionally Significant Development.</p> <p>Section 275 of the <i>Environmental Planning and Assessment Regulation 2021</i> states that a council must not determine an application to modify a development consent under the Act, Section 4.55(2), on behalf of a regional planning panel, if the application is of a kind specified in the <i>Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents</i> published on the NSW Planning Portal on 30 June 2020. The subject application is such a kind specified in the instruction, as it involves development that contravenes a development standard imposed by an environmental planning instrument by more than 10%.</p>
CIV	\$200,000,000
CLAUSE 4.6 REQUESTS	Not applicable to a modification application
KEY SEPP/LEP	State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

	State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 Newcastle Local Environmental Plan 2012
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	Nil
DOCUMENTS SUBMITTED FOR CONSIDERATION	Appendix A: Draft Conditions of consent Appendix B: Architectural Plans Statement of Environmental Effects Modification Letter
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	No
SCHEDULED MEETING DATE	20 June 2022
PLAN VERSION	Revision B – 13.04.2022
PREPARED BY	Holly Hutchens
DATE OF REPORT	14 June 2022

EXECUTIVE SUMMARY

Referral to the Hunter Central Coast Regional Panel

This Section 4.55(2) modification is referred to the Hunter Central Coast Regional Planning Panel in accordance with the *Environmental Planning and Assessment Act 1979* (the Act), Regulations and Clause 2.20 of *State Environmental Planning Policy (Planning Systems) 2021*, noting that the concurrent Stage 4 development application for physical work exceeds \$30 million capital investment value and is therefore also development specified as Regionally Significant Development as per Clause 2.19 of *State Environmental Planning Policy (Planning Systems) 2021*).

This proposed modification application is lodged under Section 4.55(2) of the Act.

The Site

The site that was subject of the approved Concept Development Application DA2018/01109 is currently known as Lots 2 & 3 DP1271240 No.854 Hunter Street Newcastle West, Lot 11 DP1270693 No.874 Hunter Street Newcastle West and Lot 300 DP1255289 No.6 Stewart Avenue Newcastle West. The site has two street frontages, to Hunter Street and to Stewart Avenue.

Background

The Concept Development Application relates to a site that previously contained the former Co-operative Store building, known as '*The Store*'. The demolition of that building was approved for the purpose of redevelopment of the site, specifically the Newcastle Bus Interchange (NBI).

The demolition works were approved, under Part 5 of the Act, by Transport for NSW. The Part 5 Review of Environmental Factors (REF), determined by Transport for NSW in November 2017, provided for the demolition of structures, remediation of the site to an RL of -0.1m, ground plane landscaping of public domain areas and the construction of a ground level NBI.

The site was previously owned by the Hunter & Central Coast Development Corporation. In April 2017, a separate development application was lodged with Council for a multi-storey carpark located above the NBI (DA2018/00879) for Stage 1 of the Concept Development Application. The carpark was approved and has been constructed. The carpark application was lodged prior to the submission for the Concept Development Application (DA2018/01109), to enable construction of the carpark in conjunction with the NBI, but it was also included in the concept for the development of the site.

Proposed Development

The Concept Development Application for the site (DA2018/01109) was submitted pursuant to provisions of the Act that allow for concept development applications. The application was approved on 1 April 2019.

The Concept Development Application for the site detailed the following application stages:

- Stage 1: Multi-storey carpark – 5 levels of parking located above the NBI, comprising 678 parking spaces (ref: DA2018/00879);
- Stage 2: Concept Development Application (ref: 2018/01109);
- Stage 3: 12 storey commercial office building with a Gross Floor Area of 16,689m², including a basement carparking level with 40 parking spaces (ref: DA2018/01107);
- 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 Gross Floor Area of 6,012m²;
 - Two residential towers from levels 4 -29 with 34,661m² Gross Floor Area and 300-350 apartments (estimated at 343);
 - One basement carparking level with 37 carparking spaces.(ref: DA2021/01530)

The following changes are proposed to the consent under a Section 4.55(2) Modification:

- Stage 4: Mixed use building
 - The removal of the approved Basement level;
 - The approved plant and equipment spaces have been moved from the Ground Floor and Level 4, relocated to Level 1;
 - The residential storage spaces have been moved from the approved basement and reallocated to Levels 2, 3, 4 and 5. This redistribution of storage across the specified levels has resulted in a reduction in the approved commercial space;
 - Amendment to commercial tenancies on Levels 1 and 2, with an increase in the overall floor plate, from 966m² to 1070m²;
 - Amendment to the approved floor plan to facilitate the mixed use of residential, commercial, communal space and storage on Level 3;
 - The inclusion of a mezzanine on Level 5, to accommodate the additional storage; and
 - Proposed apartment number being 352 (ie 181 Apartments in the Western Tower and 171 Apartments in the Eastern Tower).
 - Building Height: East Tower 106.78m (RL109.88) and West Tower 100.58m (RL103.68)
- Changes to conditions

The proposed built form changes would generate the need to make the following condition amendments to the consent issued in respect of the Concept Development application (DA2018/01109.01):

Plans and Documentation

Condition 2.

Staging

Condition 3A.

Floor Area

Condition 7.

Building Height

Condition 9.

Car Parking

Condition 17.

Permissibility

The environmental planning instrument that is primarily relevant to the proposed development is the *Newcastle Local Environmental Plan 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' and 'business premises'), all of which are permitted with consent within Zone B3 Commercial Core.

DA2018/01109 was not assessed as '*integrated development*' under the Act, as no works were proposed by the application (ie concept only).

Key issues

There are no significant issues raised with respect to the proposed modification. However, the following matters have been identified in the assessment, as follows:

- Consistency with current planning controls and the approved concept plan;
- Built form, including height and internal separation;
- Carparking provisions.

Consultation

As the proposed modification primarily involves amendments to the built form and height, the proposal was reviewed by the Urban Design Review Panel (UDRP) prior to lodgement of the modification application, on 26 May 2021, and during the assessment period, on 25 November 2021. In summary, the UDRP were generally supportive of the proposed changes and considered that the modified proposal provides a positive contribution to the West End Precinct locality in terms of design quality, the internal and external amenity that the proposal provides for and that the modified proposal involves a suitable mix of commercial, retail, and residential uses.

Exhibition

In accordance with the *Environmental Planning and Assessment Regulation 2000* (ie as relevant at the date of lodgement) and the City of Newcastle (CN) *Community Participation Plan*, the Modification Application was not required to be placed on public exhibition. However, the Modification Application and supporting documents have been available for public viewing on CN's on-line Application Tracker from November 2021 and no public submissions have been received in relation to the application.

Recommendation

That Modification Application MA2021/00450, seeking consent to modify DA2018/01109, a Concept Development Application for a '*Mixed use development comprising retail, commercial, public spaces, residential apartments and associated car parking*', that has been assessed pursuant to the provisions of the Act, be approved subject to amended conditions of consent, as contained in Appendix A.

1. THE SITE AND LOCALITY

1.1 The Site

The site that was the subject of the approved Concept Development Application (DA2018/01109) was known as Lot 100 DP1245750 No.854 Hunter Street Newcastle West. That lot has since been subdivided and the site now consists of Lots 2 & 3 DP1271240 No.854 Hunter Street Newcastle West (mixed use building and multi-story carpark), Lot 11 DP1270693 No.874 Hunter Street Newcastle West (NBI) and Lot 300 DP255289 No.6 Stewart Avenue Newcastle West (commercial building).

The site is bounded by the Newcastle Transport Interchange to the north, Stewart Avenue/Cooper Street to the east, Hunter Street/Beresford Lane to the south. The site has a frontage to Hunter Street of 108.94m and to Stewart Avenue of 39.94m. The site falls approximately 1.5m from south to north, from Hunter Street to the railway infrastructure located adjacent to the northern side of the site.

The site previously contained the 'Co-operative Store' building, which was listed as a local heritage item, with demolition of the building approved in connection with the NBI approval, by Transport for NSW, pursuant to Part 5 of the Act. The eastern section of the site contained a carpark, which was utilised in conjunction with the former 'Co-operative Store' building and was also demolished pursuant to the NBI approval.

The site has signalised vehicular access to/from Hunter Street, near its south-western corner. Cooper Street, adjacent to the south-eastern part of the site is identified as a public road, whereas Beresford Lane, with which Cooper Street intersects, is identified as a private road.

Figure 1 below identifies the site prior to the approval of the NBI and the Concept Development Application.

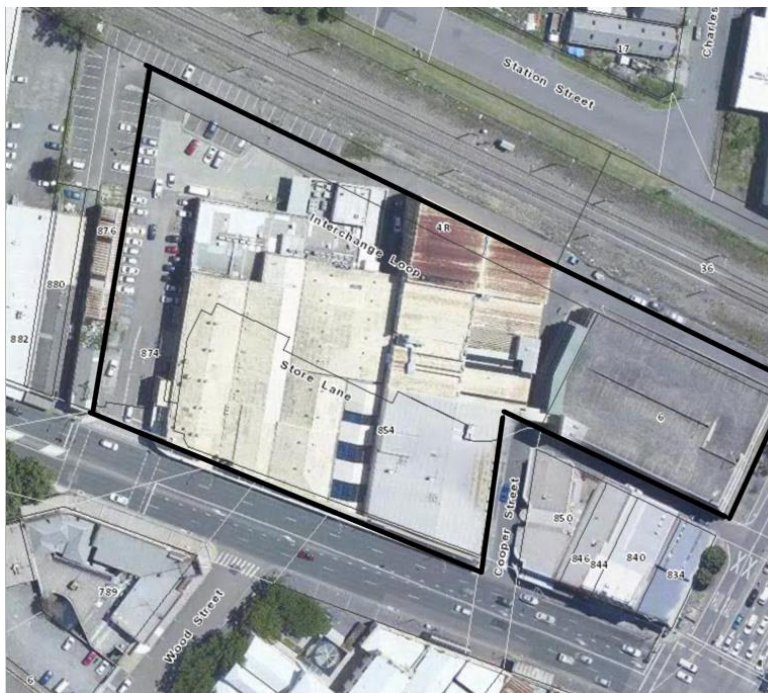


Figure 1: Aerial image of the subject site 2011 (Source: OneMap 2011)

1.2 The Locality

The immediate locality of the site currently features the following developments:

- North: The rail corridor containing the Newcastle Transport Interchange which is the terminus for heavy rail and the interchange for the Newcastle Light Rail. Further north is 10 Dangar Street, a former vehicle sales premises and now a construction site for 'Bowline' a mixed-use development.
- East: Stewart Avenue, which is a four to six lane road, adjoins the eastern-most boundary of the site. On the eastern side of Stewart Avenue are single-storey and

two-storey retail/commercial buildings, while further to the east are a number of more recently developed sites containing multi-storey mixed-use buildings.

- 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. The Cambridge Hotel is located diagonally adjacent to the site, which is likely to be the subject of future redevelopment opportunities. The multi-storey commercial building located directly south of the site, completed in 2019, contains numerous commercial office tenancies.

South-east of the site is a small row of commercial buildings that are bordered by Beresford Lane, Cooper Street, Hunter Street and Stewart Avenue. Those buildings do not form part of the Concept Development Application.

- West: Further west, along Hunter Street, is a mix of commercial development of various scales and forms, including retail, offices, self-storage, and vehicle sales. It is noted that since the original Concept Development Application was approved, two developments of a similar scale and nature have been proposed (ie yet to be determined) further west of the site including at 'Dairy Farmers Corner'.

Figure 2 below shows a relatively recent view of the site and its locality.



Figure 2: Aerial image of the subject site 2021 (Source OneMap 2021)

2. BACKGROUND, SITE HISTORY & PROPOSAL

2.1 Background of Modification Application

Pre-Development

Ongoing discussions with key stakeholders, including with the Department of Planning & Environment and the Hunter & Central Coast Development Corporation, regarding the development, have occurred since 2018.

A Design Excellence Competition Waiver had been provided in February 2018, by the Government Architects, Office (GAO). To ensure design integrity, the GAO required that a

design review panel (DRP) be established to provide continual review through design development and delivery. In this case the DRP was effectively CN's UDRP.

The current modified proposal has undergone four pre-lodgement UDRP reviews. During the final pre-lodgement UDRP meeting, the applicants advised that they were intending to submit a development application for Stage 4 of the approved concept development, towards the end of 2021. The UDRP meeting concluded with the panel being firmly supportive of the proposal in principle, subject to some design amendments that were raised.

A summary of the key issues and how they have been addressed by the application are outlined below. The key issues are considered to be:

- Built form and scale
- Density
- Amenity

The development application for Stage 4 and the subject S4.55(2) modification application were lodged concurrently on 17 November 2021. A chronology of the development application since lodgement is outlined in Table 1 below, including the UDRP's involvement (briefings, deferrals etc):

Table 1: Chronology of the DA

Date	Event
17 November 2021	DA lodged
18 November 2021	DA referred to Urban Design Review Panel
25 November 2021	Meeting held with Urban Design Review Panel
9 December 2021	Applicants' 'Kick-Off' briefing to the Urban Design Review Panel
11 February 2022	Request for additional information from Council to the applicant
7 March 2022	Urban Design Review Panel briefing
8 March 2022	Meeting held with the applicant
29 April 2022	Partial response to Council's request for additional information provided
3 May 2022	A completed response to Council's request for additional information provided
26 May 2022	Additional information requested
6 June 2022	Additional information provided

2.2 Site History

Review of Environmental Factors – NBI:

An initial approval for works on the site was determined by Transport for NSW in November 2017, under Part 5 of the Act and the provisions of *State Environmental Planning Policy (Infrastructure) 2007*, for the demolition of structures, remediation works and the construction of the NBI at ground level.

Specifically, the approval for the NBI included (as outlined within the REF):

- Removal of existing buildings on the site, including 'The Store' and open multi-storey carpark;
- At-grade bus interchange including bus shelters, bike racks, driver ablutions, drop off and pick up zone, mobility parking, loading zone;
- A drivers facility on the north-western corner of the site, that includes toilets, kitchenette and seating;
- Access and egress from Hunter Street and Cooper Street, as well as Stewart Avenue, via Beresford Lane;
- At-grade landscaping;
- Public domain works;
- Operation 24 hours per day, 7 days per week

The REF also addressed potential future development on the site, particularly for a mixed-use development, integrating with the NBI and the adjacent Newcastle Transport Interchange. A preliminary assessment was undertaken to determine the feasibility of future development over and adjacent to the NBI, which was found to be possible.

Staged mixed use development of the site:

Figure 3 below pictorially demonstrates the staging of development on the site, as per the approved Concept development application.

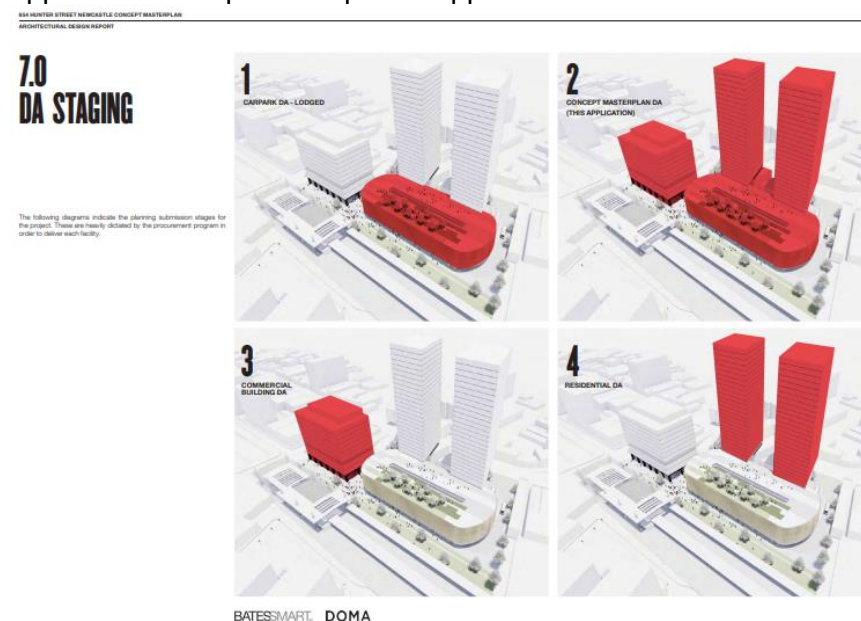


Figure 3: Staging Plan - Approved Concept Master Plan (Source Bates Smart)

Stage 1 - Multi-storey Carpark - DA2018/00897

DA2018/00897 was approved by Council on 7 December 2018. This consent provided for the construction of a multi-storey carpark, located above the NBI. The five-level carpark was proposed to contain 678 spaces, with access provided via a ramp that was to be accessed from the internal access road leading from the signalised intersection with Hunter Street.

Modifications to DA2018/01107:

DA2018/00897.01 – Changes to layout, façade, site set out and consent conditions (approved 24 April 2019).

DA2018/00897.02 – Modification to the approved location of the eastern lift, lobby, and staircase (approved 28 June 2019).

Stage 2 - Staged Concept Proposal - DA2018/01109

A staged concept development application was lodged by Doma Interchange Development Pty Ltd for the subject site, which was ultimately determined by the then Hunter & Central Coast Joint Regional Planning Panel (JRPP). This application was submitted concurrently with an application (DA2018/01107) for the 12-storey commercial building that now adjoins Stewart Avenue, representing Stage 3 of the concept for development of the site.

Section 4.24(2) of the Act (*Status of staged development applications and consents*) states that "*while any consent granted on the determination of a staged development application for a site remains in forces, the determination of any further development application in respect of the site cannot be inconsistent with the consent for the concept proposals for the development of the site*".

This requires future development applications for each stage of the development to remain consistent with the approved concept.

Modification to DA2018/01109:

DA2018/01109.01 – Amended conditions for Floor Space Ratio and carparking.

Stage 3 – Erection of 12-storey commercial building with ground floor retail and basement car park – DA2018/01107

DA2018/01107 was approved by the JRPP in May 2019. This consent granted approval for a freestanding commercial/retail building over 12 storeys (plus plant level), with the following key features:

- One basement level carpark consisting of 40 spaces, including 2 accessible spaces; 87 bicycle storage spaces; end of trip facilities; plant rooms and storerooms. The basement parking is for building occupants only.
- Landscaping to Stewart Avenue (within public domain/road reserve) and north of the building at a colonnade adjacent to light rail corridor.
- Ground floor:
 - Retail tenancies fronting an outdoor forecourt on the northern side of the building, which will include outdoor seating overlooking a light rail future proof zone
 - Office lobby and foyer

- Waste storage rooms
- Loading dock
- Vehicular access from Beresford Lane
- Level 1 - 11 Commercial/Office Space
- Level 12 - Plant Space

Modifications to DA2018/01107:

DA2018/01107.1 – Modification to conditions of consent A5, B8, B9, C1, C8, C9 C14, C24, C25, C27, C31, & F4.

The modification sought follows a similar request that was made by the applicant prior to the determination of DA2018/01107. An assessment of that request was included in a supplementary assessment report that was provided to the JRPP. At the time, the applicant had sought to apply a car parking rate of approximately 1 space per 100m² of gross floor area for the proposed commercial building, based on the site being well connected to public transport.

In the case of the previously mentioned supplementary assessment report, that was provided to the JRPP, the applicant had sought to reduce the total amount of car parking to be provided to the commercial building to 198 car spaces, down from 278 car spaces that were originally required by Condition 21.

The assessment of that request, as described in the supplementary report to the JRPP, concluded that there was sufficient justification to reduce the *Newcastle Development Control Plan 2012* (DCP) parking rate from one space for every 60m² to one space for every 75m², equating to a total of 223 car parking spaces for the commercial building.

The determination of the modification application also included the deletion of condition of consent E6, ie removal of a requirement to establish a right of way for which CN concurrence was required to relinquish, vary or modify.

DA2018/01107.2 – Changes to floor plan layout (ground floor and basement), parking (two less spaces), overall height reduced (by 449mm) and changes to consent condition referencing documents.

DA2018/01107.4 – Changes to Developer Contributions payment timing and change to the timing of the approval of the public artwork.

DA2018/01107.5 – Modification to condition of consent C21 – Changes to on-site car parking allocation.

Subdivision of the site:

Two Lot Subdivision - DA2018/01507

The proposal involved the subdivision of Lot 100 DP1245750 into two allotments. This application led to the creation of Lot 300, being 1784m² in area, having frontage to Stewart Avenue and now containing the approved 12-storey commercial building. The balance of the land, being Lot 301, had an area of 1.0246ha and comprised of the land containing the NBI, the multi-storey carpark and the proposed mixed use building adjoining Hunter Street.

Three Lot Stratum Subdivision – DA2019/00452

The approved proposal involved the subdivision of Lot 301 DP1255289 into three lots, being Lot 100 (NBI – ground level), Lot 101 (light rail future proof zone) and Lot 102 (mixed use development site and multi-storey carpark, above NBI), which were created in DP1260633.

Note: Lots 100 and 102 were subsequently further subdivided (ie adjusted), for purposes under the *Roads Act 1993*, to become Lot 11 (NBI – ground level) and Lot 12 (mixed use development site and multi-storey carpark, above NBI) DP1270693.

Two Lot Stratum Subdivision – DA2020/00706

The approved proposal involved the subdivision of Lot 12 DP1270693 into two lots, separating parts of the multi-storey carpark (levels 1 & 2) from the remainder of the mixed use development site and multi-storey carpark. This effectively delineates parts of the Multi-storey carpark, used in connection with the adjacent 12-storey commercial building, from the remainder of the lot.

Lot 3 DP1271240 includes the parts of the multi-story carpark used in association with the 12-storey commercial building and Lot 2 DP1271240 contains the remainder of the subdivided lot, associated with the mixed use development on the southern part of the site, as approved via the Concept Development Application DA2018/01109 and the current Stage 4 application DA2021/01530.

2.3 Details of the Proposed Modification to DA2018/01109

The Concept Development Application was approved pursuant to Division 4.4 '*Concept Development Applications*' of the Act. DA DA2018/01109 was approved on 1 April 2019, for the following development:

- Stage 1: Multi-storey carpark – 5 levels of parking located above the NBI, comprising 678 parking spaces (ref: DA2018/00879);
- Stage 2: Concept Development Application (ref: 2018/01109);
- Stage 3: 12 storey commercial office building with a Gross Floor Area of 16,689m², including a basement carparking level with 40 parking spaces (ref: DA2018/01107);
- 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 Gross Floor Area of 6,012m²;
 - Two residential towers from levels 4 -29 with 34,661m² Gross Floor Area and 300-350 apartments (estimated at 343);
 - One basement carparking level with 37 carparking spaces.

(ref: DA2021/01530)

The modification application seeks to modify the approved plans/documentation and conditions under the Concept Development Application (DA2018/01109 and DA2018/01109.01), to be consistent with the development application for Stage 4 DA2021/01530, which has been lodged concurrently with this application.

A description of the proposed changes arising from the Stage 4 development proposal, which is concurrently the subject of the separate DA2021/01530, is as follows:

- Remove the proposed basement level (1091m²) which was proposed to contain 274 storage cages;
- Changes to ground floor level comprising five retail tenancies (which were proposed to range from 70 m² to 144 m², now proposed to range from 69m² to 158m²), a commercial lobby, a residential lobby and service areas;
- Changes to commercial tenancies (offices) on Levels 1-2, which were proposed to have floor plates ranging from 1202 m² to 1323m², now proposed to range from 966m² to 1070m²;
- Provision of commercial/residential storage space (1219 m²) on Level 3;
- Level 4 service and storage areas, including 144 individual storage cages, previously detailed as 82 storage areas;
- Level 5 to include the following:
 - A mezzanine, including 133 individual storage cages;
 - Recreation area above existing car park structure, including a tennis court, pool, kids play area, lawn, community garden, lounge areas and terrace areas; and
 - Internal lobby/lounge areas.
- 352 residential apartments on Levels 5-30, with 181 apartments in the western tower (Levels 5-28) and 171 apartments (Levels 5-30) in the eastern tower, comprising of the following apartment mix:
 - 66 x 1-bedroom;
 - 182 x 2-bedroom;
 - 96 x 3-bedroom; and
 - 8 x 4-bedroom;
- Communal terrace on Level 28 (western tower) and Level 30 (eastern tower);
- Mechanical plant zones on roof levels; and
- Vehicular and service access via Beresford Lane.

Proposed Changes to Conditions.

Architectural Drawings

Condition 2) A01.MP.100 – A08.MP.401 to be amended.

Floor Area

(Modified 3 June 2020)

Condition 7) This consent permits a maximum gross floor area of 58,938m² over all stages, inclusive of approved amenities for the Newcastle Bus Interchange (NBI)

The allocation of gross floor area across the site shall generally be:
Stage 3 (Commercial Building): 16,689m²

Stage 4: (Mixed Use/Residential Building): 40,673m²
Surplus Parking (113 spaces): 1456m²
Approved NBI Amenities:120m²

Amend Condition June 2022:

(Modified 3 June 2020)

Condition 8) This consent permits a maximum floor space ratio on the total site of 4.9:1

Amend Condition June 2022:

Building Height

9) This consent permits a maximum overall building height of RL57 for the Stage 3 (commercial) building and an overall height of RL103 for the mixed use (residential) towers.

Amended Condition June 2022:

Car Parking

(Modified 3 June 2020)

17) On-site car parking accommodation is to be allocated to the different land uses within the development on the basis of one space per 75m² for the Commercial Building (stage 3) and the specific parking rates that are detailed in the Newcastle Development Control Plan 2012 for all other land uses, with any excess parking being allocated to the residential component of the development only after the required number of parking spaces has been allocated for the commercial/retail uses

Amended Condition June 2022:

Amendments to Stage 4

Table 2: Development Data

Control	Previously Modified Concept DA 2018/01109	Modified Concept DA
Max Height	East Tower – RL 103 West Tower - RL 103	East Tower – RL 108 West Tower - RL 103
Site area	12,028 m ²	12,028 m ²
GFA	58,234 m ²	58,754 m ²
FSR	4.84:1	4.88:1
Podium Commercial Space	3 levels	3 levels
Street wall height	16m	16m

Clause 4.6 Requests	Yes – Clause 4.3 Height of Building & Clause 7.4 Building Separation.	No – Not required for Section 4.55 (2) Modification application.
No of apartments	300-350 (estimated at 343) dwellings	352
Number of storeys	East Tower – 30 Storeys West Tower – 30 Storeys	East Tower - 31 Storeys West Tower - 29 Storeys
Car Parking spaces	755 car parking spaces; <ul style="list-style-type: none"> - 678 in the multi-level carpark - 40 spaces in the Stage 3 Commercial Building - 37 spaces in the Stage 4 Mixed Use Building. 	735 car parking spaces <ul style="list-style-type: none"> - 697 in the multi-level carpark - 38 spaces in the basement of the Stage 3 office/retail building
Setbacks	Between the eastern tower and the western tower – 21m	Minimum 16.4m – Maximum 27.9m.

3. PLANNING ASSESSMENT

3.1 Environmental Planning and Assessment Act 1979 (the Act)

3.1.1 Section 4.55(2) of the Act

The Modification Application has been assessed in accordance with the relevant matters for consideration prescribed by Section 4.15(1) and 4.55 of the Act and the *Environmental Planning and Assessment Regulation 2021*.

The subject application seeks approval for a Section 4.55(2) modification to DA2018/01109.

Section 4.55(2) states that a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

Section 4.55(2)(a):

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

Planners Comment

As regard to Subsection (2)(a), CN is satisfied that the development to which the consent as modified relates is substantially the same development for which consent was originally granted and before that consent as originally granted was modified.

Qualitatively, the Modification Application, despite proposing additional height, does not propose to alter the approved building footprint and does not result in a significant change to the overall built form. The taller eastern tower dwellings will have a reduced floor plate, resulting in slender portions that will allow for more daylight access to the ground floor and public spaces.

With regard to modified external building treatments, including increased communal space, glazing and panelling, this does not adversely impact on the overall design of the proposal.

The extended height will not adversely impact on any adjoining properties, particularly as the additional shadows cast as a result of the additional height are minimal. It is further acknowledged that the proposal remains, as for the original Concept Development Application, for a mixed-use development comprising retail, commercial, public spaces, residential apartments and associated car parking. While the proposal will accommodate additional height, the built form and relationship to the surrounding land is generally the same. To achieve an improved level of solar amenity, the eastern tower has extended beyond the 90m height limit, creating a tapered tower form with reduced floor plates. The western tower has largely maintained the height as already approved.

The approved development remains substantially the same as that originally approved in terms of massing and function.

Section 4.55(2)(b):

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

Planners Comment

The approved development was not assessed as integrated development pursuant to Section 4.46 of the Act. The Modification Application is satisfactory having regard to subsection (2)(b).

Section 4.55(2)(c) and (d):

- (c) *it has notified the application in accordance with—*
- (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Planners Comment

In regards subclause (2)(c) and (d), the Modification Application was not required to be placed on public exhibition or notified in accordance with the Act, *Environmental Planning and Assessment Regulation 2000* (ie as relevant at the date of lodgement) and CN's *Community Participation Plan*. However, the Modification Application and supporting documents have been available for public viewing on CN's on-line Application Tracker from November 2021 and no public submissions have been received in relation to the application.

Section 4.55(3)

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

Planners Comment

As regard to Section 4.55(3) an assessment of the modification application against the matters referred in Section 4.15(1) of the Act is included in this report. The statement of reasons provided by the JRPP for the approval of the original application included the following key comments:

'While the Panel held concerns regarding the approach to development of the site and order of applications (the Concept application should have been the first application), the Panel was nonetheless supportive of the overall development of the site and the mix uses. The removal of a heritage item was approved by the landowner under Part 5 of the Act and a carparking structure to service the future development (and available publicly in the interim) was previously approved by the Council.

The process somewhat constrained the scope of holistic consideration of the site by the Panel, which is the purpose of a Concept Plan. The Panel noted and expected that the building envelopes would and should be refined and modulated during the detailed DA process and wanted to ensure this was clear in the terms of the decision/approval. In considering envelopes, future buildings should not fill every square metre, as a range of design excellence and other considerations were relevant to ensure high quality buildings'.

The Modification Application continues to adhere to the above reasons for approval in that the density, bulk, height, and scale has continued to be refined and is consistent with the development as originally approved. The application continues to provide a mixed used development which will support both residential development and commercial activity within proximity to public transport infrastructure. Accordingly, the proposed modification is considered satisfactory in this regard.

An assessment of the modification against the matters for consideration under Section 4.15 of the Act is provided below.

4. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the Act. These matters that are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (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 (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

4.1 Section 4.46 Integrated development

The original development application was not considered integrated development pursuant to Section 4.46 of the Act as no physical works were proposed. The relevant approvals were sought as part of the separate staged applications.

4.2 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the regulations are considered below.

4.3 Section 4.15(1) Evaluation

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

4.3.1 Section 4.15(1)(a)(i) – Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application

- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Newcastle Local Environmental Plan 2012

A summary of the key matters for consideration arising from these Environmental Planning Instruments are outlined in **Table 3** or considered in more detail below the table.

Table 1: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	No compliance issues have been identified as a result of the proposed modifications. Therefore, further consideration is not required under this modification application.
State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development	See detailed assessment following this table
State Environmental Planning Policy (Planning Systems) 2021	<p>Chapter 2: State and Regional Development</p> <ul style="list-style-type: none"> • Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6 as it comprises General Development over \$30 million, it is noted that the CIV for Stage 3 and Stage 4 is over \$30 million. • Section 2.20 Concept development applications If – <ul style="list-style-type: none"> (a) <i>Development specified in Schedule 6 is described in that Schedule by reference to a minimum capital investment value, other minimum size or other aspect of the development, and</i> (b) <i>Development the subject of a concept development application under Part 4 of the Act is development so specified, Any part of the development that is the subject of a separate development application is development specified in Schedule 6, but only if that part of the development exceeds the minimum values or size or other aspect specified in that Schedule for the development.</i> <p>Both Stage 3 and Stage 4 are general development with a CIV over \$30 million. No changes to the CIV for Stage 4 are proposed, with Stage 4 still considered as Regional Development.</p>
State Environmental Planning Policy (Resilience & Hazards) 2021	<p>Chapter 2: Coastal Management</p> <ul style="list-style-type: none"> • Section 2.10(1) & (2) - Development on land within the coastal environment area.

	<p>The proposed modification is unlikely to increase the risk of coastal hazards and is consistent with the approved building footprint. Therefore, further consideration of Coastal Management is not required under this modification application.</p> <p>Chapter 4: Remediation of Land</p> <ul style="list-style-type: none"> Section 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions. <p>The previous approval, under Part 5 of the Act, for the NBI, includes the remediation of the entire site to the depth of RL -0.1m. Significant site investigations, remediation and validation works have been undertaken across the development site.</p> <p>The site is considered suitable for the proposed use and is consistent with the objectives and requirements of Chapter 4, Section 4.6 of the Resilience and Hazards SEPP 2021.</p>
<p>State Environmental Planning Policy (Transport and Infrastructure) 2021</p>	<p>Chapter 2: Infrastructure</p> <p>Division 5 Electricity transmission or distribution</p> <p>Subdivision 2 Development likely to affect an electricity transmission or distribution network.</p> <p>Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions.</p> <p>The Modification Application continues to not propose physical works. Consultation with Ausgrid has occurred during the assessment of the Staged Development Applications. No further consultation or assessment is required under the Modification Application.</p> <p>Division 15 Railways</p> <p>Subdivision 2 Development in or adjacent to rail corridors and interim rail corridors—notification and other requirements.</p> <p>2.97 Development adjacent to rail corridors – Section 2.97 applies to development on land that is adjacent to a rail corridor.</p> <p>The site is adjacent to a rail corridor, being both the heavy and light rail corridor. It is considered that the proposed modification will not create any new material impacts on the heavy or light rail corridor as no physical works are proposed, however it is noted that the Stage 4 application, which is being assessed concurrently, has been referred to Transport for NSW for comment. No further consultation is required under the Modification Application.</p> <p>2.98 Excavation in, above, below or adjacent to rail corridors</p>

	<p>No physical works are proposed as part of the Modification Application. It is considered that the proposed modification to Stage 4 of the application will not create any new material impacts on the heavy or light rail corridor.</p> <p>Division 17 Roads and traffic</p> <p>Subdivision 2 Development in or adjacent to road corridors and road reservations</p> <p>Section 2.118(2) - Development with frontage to classified road</p> <p>The Modification Application continues to not propose physical works. Consultation with Transport for NSW has occurred during the assessment of the related Staged Development Applications. No further consultation or assessment is required under the Modification Application.</p> <p>Section 2.119(2) Impact of road noise or vibration on non-road development</p> <p>The Modification Application continues to not propose physical works. Consultation with Transport for NSW has occurred during the assessment of the related Staged Development Applications, including Stage 4 which has been lodged concurrently with the Modification Application. No further consultation or assessment is required under the application.</p> <p>Section 2.121(4) - Traffic-generating development</p> <p>The Modification Application continues to not propose physical works. Consultation with Transport for NSW has occurred during the assessment of the related Staged Development Applications. No further consultation or assessment is required under the Modification Application.</p>
Newcastle Local Environmental Plan 2012	See detailed assessment following this table

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

SEPP 65 aims to improve the design quality of residential flat buildings across NSW by providing an assessment framework, including the Apartment Design Guideline (ADG), for assessing 'good design'. To support these aims the SEPP introduces nine design quality principles. These principles do not generate design solutions but provide a guide to achieving good design and the means of evaluating the merits of proposed solutions.

Part 4 Application of design principles

Clause 29 Determination of applications for development consent modifications

(1) *This clause applies if a consent authority is required by clause 115(3B) of the Environmental Planning and Assessment Regulation 2000 to refer an application for*

the modification of development consent (other than in relation to State significant development) to a relevant design review panel (if any) for advice as to whether the modifications diminish or detract from the design quality, or compromise the design intent, of the development for which the consent was granted.

- (2) *In determining an application to which this clause applies, the consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration)—*

(a) the advice (if any) obtained from the design review panel, and

(b) the design quality of the development (as modified) when evaluated in accordance with the design quality principles, and

(c) the Apartment Design Guide.

- (3) *However, if the relevant design review panel fails to inform the consent authority of its advice within 14 days after its first meeting to deal with the application concerned, the consent authority may determine the application without considering any such advice and a modification of consent so granted is not voidable on that ground.*

- (4) *The 14-day period referred to in subclause (3) does not increase or otherwise affect the period within which an application for the modification of development consent is required to be determined by a consent authority.*

As the Modification Application includes changes to the built form, and height an assessment of the modified proposal, under the design principles, is provided below in **Table 4**.

Table 4: Consideration of Design Quality Principles

Design Quality Principles	UDRP Comments	Officers Comments
Principle 1: Context and Neighbourhood Character	<p>25 November 2021</p> <p><i>Whilst the Statement of Heritage Impact has a good introduction – it only briefly touches on the First Nations use of the site. The Panel recommends that the Applicant further consider Connecting with Country, with a view to an engagement informing an appropriate recognition, possibly by way of a public artwork.</i></p> <p><i>Much made about the current history of the site – but it is necessary to address how the project has meaningfully implemented Connection with Country.</i></p>	<p>The applicant has indicated that connection to country will be further addressed during the public art process, details of which are required prior to issue of the construction certificate.</p> <p>The west end precinct has been typically characterised by a mixture of light industrial and commercial buildings. However, it is noted that the area is transitioning, with the construction of high-density mixed-use developments within the</p>

		<p>immediate vicinity. The site is zoned B3 Commercial Core and the planning controls envisage high density mixed use development, the proposal as amended is therefore consistent with the concept plan and desired future character of the area.</p> <p>The concept development application comprised of varied building typologies, circular carpark building, tall slender, tapered apartment buildings, and a separate medium scale commercial building.</p> <p>These typologies remain consistent with the concept plan for the whole of the site.</p>
Principle 2: Built Form and Scale	<p>25 November 2021</p> <p><i>The Panel noted that the design presented was generally responsive to the previous advice from the UDRP. The previous recommendations have been addressed, in the main with a more than satisfactory response. The developed design is considered to be of a high standard.</i></p> <p><i>The revision to the initial design's layout, which opens up the space between the towers at its northern end, and which reduces the linear lengths of the wall planes, is considered successful in producing a more attractive, less bulky urban form, and a better spatial relationship between the towers. Solar access to the dwellings is also improved by this move. As presented previously to the Panel, a minor variation to the recommended minimum ADG building separation (of 24m) between the towers, occurs at their very southern ends, but apartments and their balconies have been configured to avoid direct overlooking between dwellings, and this spatial arrangement was again supported.</i></p> <p><i>The subject site is located within the Newcastle City Centre and the proposal will result in two buildings of 45 metres or higher above ground level, as such the provisions of Clause 7.4 apply, requiring a separation of 24m. As</i></p>	<p>The height and location of the staged 4 mixed use building is not inconsistent with the built form approved under the concept development application building envelopes.</p> <p>Whilst there is a slight increase in the overall height, it is considered that the changes results in a more favourable tapered building form, which adds visual interest and reduces the apparent bulk.</p>

	<p><i>proposed in the original Stage 2 concept proposal, the adjoining commercial building also slightly exceeds 45m and therefore this clause applies to both buildings. The separation between the eastern tower and the commercial building facing Stewart Avenue is 19.6m, but the buildings are offset, and the resulting relationship between them is considered to be quite satisfactory, with no significant adverse impacts.</i></p> <p><i>The façade composition has been progressed with a moderate projection at each level of the floor slab and with vertical blades inserted between the slabs. A slightly greater projection of the floor slab occurs at four floor intervals, which provides a larger scaled pattern to the façade. The vertical blades are arranged to respond to aspect (solid blades assisting with some shading and privacy where required).</i></p> <p><i>Although the building exterior appears to be fully glazed, areas of insulated solid wall are provided where appropriate, with colour-backed glass and spandrel for bedrooms and areas where more privacy and less light are needed. The Panel noted that a means of cleaning the glazing should be identified, as the buildings are too tall to permit cleaning by abseil.</i></p> <p><i>The Applicant advised that balconies are to be provided with clear glass to their balustrades, which will expose items stored or placed on balconies. Body Corporate regulations will need to address the appearance of items placed on balconies, as these items will be visible from the street and from other buildings in the area. One of the reasons for the Panel's preference not to have entirely glazed balustrades, is to allow a sense of security and to provide some privacy to people using the outdoor space. In accepting the decision to provide clear glass balustrades, the Panel recommended providing at least a low upstand at the base of the balustrade.</i></p> <p><i>In respect to vehicles accessing the car park, it was noted that the current arrangement and signage is somewhat confusing at the vehicle entrances off Hunter Street. It would be easy for a driver turning in to select the wrong roadway. It was acknowledged that the car park use once the development is completed will revert to residents and regular commercial space users, and thus the general public will not frequently make use of the car park entry. It was none the less recommended that clearer</i></p>	
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	<p>signage be provided for drivers. The Applicant indicated that there is also proposed to be some traffic signalling modification that will assist in reducing this risk.</p> <p>The Panel noted and commended the pedestrian friendly and permeable ground plan – creating a landscaped plaza space at Coopers Lane which will lead pedestrians into the laneways. Also commended was the brickwork façade of the podium element, and the treatment of the treatment of the through site link that provides access to the commercial and residential lobby spaces.</p>	
Principle 3: Density	<p>25 November 2021</p> <p>The FSR of the proposal remains consistent with the approved concept master plan and is compliant with the control.</p> <p>There are moderate height exceedances for the proposal, the greater of which is as a result of the desire, supported by the Panel, to relocate some space from the top of the western tower to the east. No increase in FSR resulted from this, but it provided a more satisfactory urban design outcome, thanks to the variation created between the towers appearance. No adverse impacts arise from the height exceedances, which have previously been supported.</p>	<p>The density of the proposal remains relatively consistent with the floor space distribution approved under the concept development application.</p> <p>Whilst there are some minor amendments to car parking, commercial GFA, and the omission of the basement level, the proposed changes do not result in an exceedance to the prescribed FSR for the site.</p>
Principle 4: Sustainability	<p>The main sustainability and amenity issue that the Panel sought further advice upon from the proponent, relates to the extent of glazing across the building facades, and likely solar heat loads resulting. The architects advised that the protruding floor slabs and strategically located vertical blades assist usefully in providing some shade on the façade. None the less, the Panel retains reservations in respect to the solar loads upon the residential buildings, and the extent of exposed glass. It was noted that the requirements of BASIX, being a multi-factored system, currently set a low bar in respect to thermal performance. It is crucial that glazing and window and door frames be of a standard that adequately ameliorates the extent of glazing, and that provides good levels of thermal comfort to the residences - without excessive need for air conditioning and the resultant energy demands. Frames should be thermally broken, and high performance glazing provided. In addition, careful consideration of appropriate indoor window shading and glare reduction should provide residents with a selection of appropriate</p>	<p>The applicants have noted that the area of solid, insulated walls has increased by approximately 13% on the west tower and 19% on the east tower.</p> <p>The development will include high performance double glazed units attributed to thermal and acoustic comfort levels.</p> <p>The proposal includes a BASIX certificate which requires sustainable development features to be installed into the development inclusive of water efficient fixtures and energy saving devices.</p>

	<p>window coverings that can reduce glare and provide some further internal insulation. The Panel was of the view that more extensive areas of solid, insulated external wall treatment in strategic locations would assist, without necessarily incurring any significant loss of panoramic views.</p> <p>Long term maintenance has to be considered – particularly with all the screens proposed in front of the glazing – which will exist in a salty, corrosive environment. It is important to ensure that the materials are able to withstand the corrosive environment, and have a long functional life.</p> <p>Solar PV generation panels – further consideration and refinement of these should be given to integrating solar panels with shade structures/ pergolas within the recreation area.</p>	
Principle 5: Landscape	<p>Public space is a key to the success of this proposal. The plaza area created at ground level at the eastern end of the podium, adjacent to Coopers Lane, is a positive inclusion with an attractive deep-soil landscape approach.</p> <p>The communal open space located on the roof of the car park and Interchange provides a very large recreational and relaxation area, with an attractive aspect, that is likely to be very well utilised by residents. Because of structural constraints and the column spacing below, the location options for larger trees and deep planter beds has been constrained. The planter beds away from columns are quite shallow in their soil volumes, and will need more regular watering. It is likely soil will need to be changed more frequently than if volumes could have been more generous. Access is available for this task.</p> <p>The soil volumes need to be nominated in the documentation for the Development Application – to ensure the executed landscape work achieves the (constrained) soil volumes nominated. None the less, the area will be a very attractive one, which offers a high standard of communal space for residents.</p> <p>Communal areas are also provided at the roof level of the two residential towers. These would benefit from a provision of some shade in the form of pergolas or limited areas that are roofed.</p>	<p>The applicants have provided detailed landscape plans which details the soil depths proposed for the recreational area located above the car parking structure.</p> <p>The updated plans identify the communal rooftop levels, with permeable pergola structures, climber plans have been included which will provide for shade.</p> <p>The proposal provides for landscaping which is consistent with the objectives of the Newcastle DCP and provides on-structure planting to create an appropriate landscape setting.</p>
Principle 6: Amenity	<p>Exposure of Private Open Spaces to the wind condition:</p> <p>In response to earlier Panel comments, balconies have been moved inboard from the corners of the tower floor plates – this left the</p>	<p>The lift lobby has been designed to provide suitable visual connection between the residential lobby and the communal open space area.</p>

	<p><i>corners free for internal living spaces which, in many locations, allow panoramic views.</i></p> <p><i>Access to common spaces on the Level 05 landscaped communal area:</i></p> <p><i>The lift lobby from the car park should be glazed and accessible from both sides, which would also enable it to open it up and provide visual connection between the residential lobby and the communal open space.</i></p> <p><i>Cross Ventilation:</i> <i>Some disappointment was noted that the minimum cross ventilation requirements of the ADG are not being achieved in terms of the proportion of apartments achieving cross ventilation.</i></p> <ul style="list-style-type: none"> <i>– the Applicant acknowledged that they could replan the lower-level single aspect 1B apartments and adjacent 2 bedroom apartments to become 3 bedroom apartments and this would achieve the natural ventilation requirements of the ADG. However these apartments are likely to be the more affordable in the market, and on balance this was considered to have been a better outcome, particularly given that the site conditions are conducive to breezes.</i> <i>– All apartments will be provided with mechanical ventilation via a central plant system – which is strongly supported by the Panel. The volume of air extracted per hour in single aspect apartments should be set at a rate that assists in inducing cross ventilation in single aspect apartments. Centralised HVAC also means that no AC no compressor units will be placed on balconies.</i> <p><i>Extent of glazing – thermal loads and management of glare:</i> <i>As raised under the Sustainability heading, the Panel expressed concerns in respect to solar loads on glass, and the resulting thermal comfort considerations.</i></p> <p><i>A related issue is that, there will need to be an integrated approach between fenestration design and window treatments for glare management and privacy. The Panel recommends incorporating internal window coverings in the fit-out – in particular</i></p>	<p>Analysis of the submitted architectural floor plans (drawings DA.03.05 and DA.03.06, prepared by Bates Smart), found 29 out of the 62 apartments proposed on the first nine storeys of the proposal (Level 00 to Level 08), or 47%, provide for natural cross ventilated.</p> <p>The Panel expressed disappointment regarding the development not achieving the minimum cross ventilation requirements as detailed within the ADG. In response the applicant acknowledged that the lower-level single aspect 1-bedroom apartments and adjacent 2-bedroom apartments could be replanned to become dual aspect 3-bedroom apartments, and this would achieve the natural ventilation requirements.</p> <p>However, the UDRP acknowledged that these lower-level single aspect apartments would likely be more affordable in the market and on balance this was considered to have a better outcome particularly given that the site conditions are conducive to breezes.</p> <p>For the single aspect apartments, the layout and design have maximised natural ventilation; apartment depths have been minimised and frontages extended to</p>
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	<p><i>considering the curved corners – to avoid visual clutter from future tenants installing differing window treatments, which would detract from the architectural expression.</i></p>	<p>increase ventilation and airflow.</p> <p>All habitable rooms are naturally ventilated via adjustable windows with suitable effective operable areas. The non-compliance can be accepted on a balanced view.</p> <p>Generally, the proposal as amended is satisfactory, optimising internal amenity through appropriate room dimensions and shapes, adequate access to sunlight and natural ventilation. The development provides acceptable visual and acoustic privacy, storage, indoor and outdoor space, outlook, layout, and services areas.</p>
<p>Principle 7: Safety</p>	<p><i>The Panel raised a question in respect to the ongoing management of the 'kiss and ride' area. Would it be a problem with drivers parking in the area for longer than needed for pick up and drop off? The Applicant noted that the area was already operating satisfactorily, and the completion of the development was not anticipated to change this.</i></p>	<p>The proposal is considered to provide appropriate safety for occupants and the public for the following reasons:</p> <ul style="list-style-type: none"> - The proposal provides additional passive surveillance to the surrounding street network and interchange area. - The central open space area is appropriately demarcated clearly indicating the communal space area. - The entry lobbies will provide appropriate access.
<p>Principle 8: Housing</p>	<p><i>Liveable Housing Design – 20% silver living is proposed however, the Panel recommend</i></p>	<p>The proposal provides additional housing</p>

<p>Diversity and Social Interaction</p>	<p><i>incorporating apartments which are constructed as platinum level. The Panel noted and supported the Applicant's intended strategy that encourages the upfront offer in marketing for variations to the apartments in respect to accessibility. Silver Level is considered more broadly as a minimal provision.</i></p> <p><i>The subject site provides immediate access to all the benefits of the West End services, activities, entertainment, eating, and transport. New housing supply needs to accommodate more apartments that cater for far more flexible, equitable, high amenity housing in great locations.</i></p> <p><i>Platinum Level Liveable Housing Design is a constructed outcome that increases housing choices.</i></p> <p><i>It is not a fully accessible housing type and so appeals to a wider market, it has minimal additional construction costs because it is built as the original construction where efficiencies are maximised. Cost of construction can increase tenfold where post-construction adaption is relied upon. Research has found the conversion of adaptable apartment types (AS4299), therefore rarely occurs because of the significant post-adaptive construction costs and overall disruption to residents. Liveable Housing Platinum Level has the advantage of being less onerous than fully accessible housing, while providing significantly more flexibility for future residents.</i></p> <p><i>Well located housing should be maximising opportunities for housing choice in apartment typologies. The Panel recommends converting a minimum of 10% of Silver Level apartments to Platinum Level which will be better aligned with Newcastle's demographics identified in its LSPS and Housing Strategy.</i></p>	<p>accommodation, in proximity to public transport.</p> <p>The generous communal space will offer suitable areas for social interaction.</p> <p>The development provides 70 apartments (20%) which satisfy all requirements for Silver Liveable Housing. These apartments provide for appropriate access for residents who are elderly or who have a disability.</p> <p>As noted by the Panel, the applicant will work with the any purchaser who may require a higher level of accessibility.</p> <p>No affordable housing is proposed with the development. The proposed development result in a slight increase in GFA, however remains compliant with the NLEP prescribed FSR.</p>
<p>Principle 9: Aesthetics</p>	<p><i>The Panel noted the urban response and overall aesthetic approach to the development was well-considered. The solidity of the base of the building anchors the development at street level and is a legible, modern reference to the former historic Store building on the site.</i></p> <p><i>The extent of glass utilised on the facades of the residential towers has been successfully offset visually, by the expressed slabs and vertical blades. The variation of the towers' heights and the reversed setbacks of upper</i></p>	<p><i>The proposed development is appropriate in terms of the composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the resultant building.</i></p> <p><i>The proposed building is considered aesthetically to</i></p>

	<p><i>floors, as well as a subtle variation between the treatment of the expressed blades and floor slabs, were also successful in terms of introducing variation between the two tower elements while maintaining strong similarities. The more prominent banding every fourth floor, with a finer treatment to the intermediate floors is also successful in providing a larger grain that assists in views to the buildings from a greater distance.</i></p> <p><i>Recommendations in respect to aesthetics generally go to ensuring that elements such as a site signage strategy are fully integrated in the architectural design– for the commercial components and also for the residential. Building identification, way finding, and commercial signage should all be located.</i></p>	<p><i>respond to the environment and context, contributing in an appropriate manner to the desired future character of the area.</i></p>
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Planners comments

The UDRP noted that ongoing support is given for the relatively minor amendments that have occurred to the Concept Master Plan that was approved as part of Stage 2. The UDRP have inferred that the amendments have been proposed in response to their recommendations and include moderate height increases of the residential towers (without any significant Floor Space Ratio increase) and the opening up of the northern end of the space between them.

The UDRP have noted that the separation between the eastern tower and the commercial building facing Stewart Avenue is reduced, but the buildings are offset, and the resulting relationship between them is considered satisfactory.

The UDRP are in support of the modifications that are proposed to the Concept Master Plan during design development and have noted no issues of concern in respect the proposed modification application.

The UDRP are firmly supportive of the proposal and is of the view the completed development will make a very supportive contribution to the area. The UDRP have confirmed that the proposal is considered to demonstrate Excellent Design Quality.

In summary, the concept approval, as proposed to be modified, provides a positive contribution to the locality in terms of its design quality, the internal and external amenity it provides, and is a suitable mix of commercial, retail, and residential uses.

Apartment Design Guide (ADG).

A SEPP 65 Design Verification Statement (dated 8 June 2022 prepared by Bates Smart) was submitted in support of the current amended proposal pursuant to Clause 50(1A) of the *Environmental Planning and Assessment Regulation 2000* ('EP&A Reg2000'). This statement confirms that a qualified designer, which means a person registered as an architect in accordance with the Architects Act 1921 as defined by **Clause 3 of the EP&A Reg 2001**, **directed** the design of the architectural drawings, and provides an explanation that verifies how the related development documentation achieves design quality principals and objectives of the ADG.

The ADG provides greater detail on how residential development proposals can meet the design quality principles set out in SEPP 65 through good design and planning practice.

Each topic area within the ADG is structured to provide; (1) **objectives** that describe the desired design outcomes; (2) **design criteria** that provide the measurable requirements for how an objective can be achieved; and (3) **design guidance** that provides advice on how the objectives and design criteria can be achieved through appropriate design responses, or in cases where design criteria cannot be met.

Whilst the ADG document is a guide which under Section 28(2) the consent authority must take into consideration when determining a development application for consent to which SPP 65 applies, the provisions of Clause 6A under SEPP 65 establish that the objectives, design criteria and design guidance set out in Parts 3 and 4 of the ADG will prevail over any inconsistent DCP control for the following topic area;

- a) visual privacy,
- b) solar and daylight access,
- c) common circulation and spaces,
- d) apartment size and layout,
- e) ceiling heights,
- f) private open space and balconies,
- g) natural ventilation,
- h) storage.

Assessment of the current amended proposal has been undertaken having consideration for the ADG. The residential apartment component of the development application is considered to demonstrate good design and planning practice.

Table 5 below, addresses compliance with the objective and design criteria of the relative topic areas in accordance with Clause 6A of SEPP 65. Where a topic area is not specified a design criteria, or where it is not possible for the development to satisfy the design criteria, the compliance comments in the following table will have regard to the design guidance relevant to that topic area.

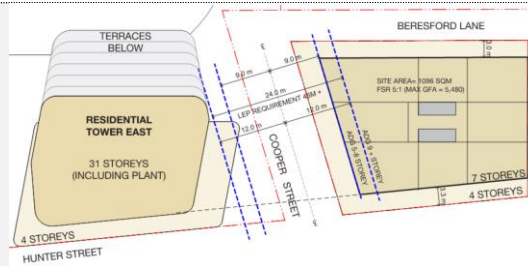
Table 5: Compliance with required topic areas of ADG

3D Communal and public open space		
Objective 3D-1		
An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping		
Design Criteria:	Comment:	Compliance:
1. Communal open space has a minimum area equal to 25% of the site.	<p>Concept Proposal</p> <p>The total site area equals 12050sqm</p> <p>25% of the total site area equals 3012.5sqm</p> <p>The proposed development includes three areas of communal open space;</p> <ul style="list-style-type: none"> • Level 4 recreational deck = 4021sqm • Level 28 residential tower west rooftop communal terrace = 223sqm • Level 30 residential tower east rooftop communal terrace = 114sqm 	Complies

	<p>The total communal open space provided is 4358sqm or 36% of the total site area.</p> <p>Stage 4 The Stage 4 site area equals 8743sqm 25% of the total site area equals 2185.75sqm The proposed development includes three areas of communal open space;</p> <ul style="list-style-type: none"> • Level 4 recreational deck = 4021sqm • Level 28 residential tower west rooftop communal terrace = 223sqm • Level 30 residential tower east rooftop communal terrace = 114sqm <p>The total communal open space provided is 4358sqm or 49% of the Stage 4 site area.</p>	Complies						
Design Criteria:	Comment:	Compliance:						
2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter).	<p>Concept Proposal The Level 4 recreational deck, which is the principle useable part of the communal open space, is orientated north and achieves a minimum of 2hrs sunlight between 9am and 3pm in mid-winter to over 50% of the area.</p> <p>Stage 4 The Level 4 recreational deck, which is principle useable part of the communal open space, is part of Stage 4. As such, Stage 4 meets the minimum requirements for solar access to the communal open space.</p>	Complies						
3E Deep soil zones								
<p>Objective 3E-1 Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.</p>								
Design Criteria:	Comment:	Compliance:						
<p>1. Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>greater than 1500m²</td><td>6m</td><td>7%</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	greater than 1500m ²	6m	7%	<p>Large areas of deep soil with a minimum dimension of 6m are not provided (approximately 55sqm of deep soil area is located at Ground level within the 'Copper Street Plaza', however these areas do not achieve the 6m minimum dimension).</p> <p>The design guidance provided for this objective acknowledges that achieving the design criteria is not possible on some sites including where;</p> <ul style="list-style-type: none"> • The location and building typology have limited or no space for deep soil at ground level (e.g central business district, constrained sites, high density areas, or in centres); and or • There is 100% site coverage or non-residential uses at ground floor level. 	Satisfactory (Merit based assessment)
Site area	Minimum dimensions	Deep soil zone (% of site area)						
greater than 1500m ²	6m	7%						

			Achieving the design criteria is no possible due to the location and constraints of the subject sites (high density area and the site being part of a transportation precinct), and the extensive site coverage with non-residential development at ground. The proposal instead complies with the design guidance for this objective by integrating acceptable stormwater management and alternative forms of planting such as planting on structures (Level 4 recreation deck, Level 28 residential tower west rooftop communal terrace, and Level 30 residential tower east rooftop communal terrace tower. This is considered acceptable.	
Objective 3F-1 Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.				
Design Criteria:			Comment:	Compliance:
1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:			The site is irregular in shape, with two street frontages; Hunter Street (south boundary), Cooper Street (part east boundary), and Stewart Avenue (part east boundary). As such, the site has the rear boundary (north), and one 'side boundary' (west) – for which the minimum separation distances are applicable and are discussed below. Notwithstanding that the minimum separation distances of this part do not technically apply to Cooper Street frontage (east boundary), the ' <i>Development Application Design Report</i> ' (dated October 2021, prepared by Bates Smart) considers the building separation between the proposal (in particular the 'residential tower east') and potential future development to the east of Cooper Street at No. 850 Hunter Street. The diagrams on page 47 of the ' <i>Development Application Design Report</i> ' demonstrates that the proposed development achieves the minimum separation distances described in this part of the ADG for all levels when measured from the centreline of Cooper Street. As such, equitable and ADG compliant building separation between the proposed development and a potential future development on the neighbouring site for the purposes of residential apartments, can be realized in the future (see extract of page 47 of the ' <i>Development Application Design Report</i> ', below).	
Building height	Habitable rooms & balconies	Non-habitable rooms		
up to 12m (4 storeys)	6m	3m		
up to 25m (5-8 storeys)	9m	4.5m		
over 25m (9+ storeys)	12m	6m		
Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2). Gallery access circulation should be treated as				

habitable space when measuring privacy separation distances between neighbouring properties.



Extract of page 47 of the 'Development Application Design Report'

Note: Level 00(Ground), Level 01, Level 02, Level 03, and Level 04 of the proposal do not contain residential apartments. As such the minimum separation distances from buildings to the side and rear boundaries described in this part of the ADG are not applicable at these levels.

Separation distances to west boundary

Up to 25m (Level 05)

At Level 05, 'residential tower west' is setback a minimum 22.7m from the west boundary (see 'SITE PLAN', drawing DA.01.01, revision 1, dated 03 June 2022, prepared by Bates Smart). This complies with the minimum separation distance for buildings from side and rear boundaries at this height (9m for habitable rooms).

Over 25m (Level 06 to Level 30)

At Level 06 and above, 'residential tower west' is setback a minimum 22.7m from the west boundary (see 'SITE PLAN', drawing DA.01.01, revision 1, dated 03 June 2022, prepared by Bates Smart). This complies with the minimum separation distance for buildings from side and rear boundaries at this height (12m for habitable rooms).

Separation distances to north boundary

Up to 25m (Level 05)

At Level 05, both towers are setback a minimum 48.3m from the north boundary (see 'SITE PLAN', drawing DA.01.01, revision 1, dated 03 June 2022, prepared by Bates Smart). This complies with the minimum separation distance for buildings from side and rear boundaries at this height (9m for habitable rooms).

Over 25m (Level 06 to Level 30)

At Level 06 and above, both towers are setback a minimum 48.3m from the north boundary (see 'SITE PLAN', drawing DA.01.01, revision 1, dated 03 June 2022, prepared by Bates Smart).

Complies

Complies

Complies

Complies

	<p>This complies with the minimum separation distance for buildings from side and rear boundaries at this height (12m for habitable rooms).</p>	
	<p>Separation distance between the proposed towers</p> <p><u>Up to 25m (Level 05)</u></p> <p>At Level 05, a minimum 17.2m separation distance is provided between the two tower volumes, with a maximum separation of 27.9m. Whilst the minimum does not comply with the 18m minimum distance for building on the same site at this height (9m for habitable rooms + 9m for habitable rooms), the variation is minor (800mm) and generally the minimum separation is achieved.</p> <p>Where the minor variation occurs, the apartments and their balconies have been configured to avoid direct overlooking between dwellings.</p> <p><u>Over 25m (Level 06 to Level 30)</u></p> <p>At Level 06 and above, a minimum 17.2m separation distance is provided between the two tower volumes, with a maximum separation of 27.9m (see 'TYPICAL LOW RISE PLAN', drawing DA.03.06, revision 5, dated 13 April 2022, prepared by Bates Smart).</p> <p>Whilst the minimum does not comply with the 24m minimum distance for building on the same site at this height (12m for habitable rooms + 12m for habitable rooms), On average the separation complies with the controls and maximises views and solar access for apartments. Apartments have been orientated to minimise overlooking.</p> <p>Where the minor variation occurs, the apartments and their balconies have been configured to avoid direct overlooking between dwellings.</p> <p>The spatial relationship between the towers, and the resulting non-compliance with building separation distances of the ADG, was supported by CN's UDRP. The UDRP 25 November 2021 advice stated;</p> <p><i>"The revision to the initial design's layout, which opens up the space between the towers at its northern end, and which reduces the linear lengths of the wall planes, is considered successful in producing a more attractive, less bulky urban form, and a better spatial relationship between the</i></p>	<p>Satisfactory (Merit based assessment)</p> <p>Satisfactory (Merit based assessment)</p>

	<p>towers. Solar access to the dwellings is also improved by this move."</p> <p>The non-compliance is able to be accepted on a balanced view having regard for both visual privacy, bulk and scale, and access to light and air.</p>	
A4 Solar and daylight access		
Objective 4A-1 To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space		
Design Criteria:	Comment:	Compliance:
1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.	Solar access to apartment living rooms The living rooms of 246 out of the 352 total apartments proposed, or 70%, will achieve a minimum of 2hrs sunlight during 9am and 3pm at mid-winter. (For details refer to 'Addendum - RFI Response', pages 5 to 11, dated 3 June 2022, prepared by Bates Smart)	Complies
	Solar access to apartment private open space The private open space (balconies) of 223 out of the 352 total apartments proposed, or 63%, will achieve a minimum of 2hrs sunlight during 9am and 3pm at mid-winter. The design guidance provided for this objective acknowledges that achieving the design criteria is not possible on some sites. In response to CN's request for information during the assessment process, detailed solar access floor plans and 3D views were submitted showing solar and daylight access to all apartments living rooms and private open spaces mid-winter between 9am and 3pm. (For details refer to 'Addendum - RFI Response', pages 5 to 11, dated 3 June 2022, prepared by Bates Smart). The design has sought to balance both wind comfort and solar access. The written justification for the proposed variation provided in the submitted ADG Compliance table prepared by Bates Smart, explains: <i>"In order to provide better amenity, the balconies have been located off the corners of the building where they can be protected from the high wind conditions present in the locality."</i> (For details refer to 'Addendum – ADG Compliance: Design Statement SEPP65 Design Verification, pages 7, dated 8 June 2022, prepared by Bates Smart)	Satisfactory (Merit based assessment)

	<p>The design drawings and written justification have suitably demonstrated how; (1) the site constraints and orientation (high wind conditions) preclude meeting the design criteria and, (2) greater residential amenity can be achieved by prioritising wind comfort whilst having regard to optimizing the number of apartments receiving sunlight to habitable rooms, and primary windows.</p> <p>As such, the proposal complies with the design guidance for this objective.</p>	
Design Criteria:	Comment:	Compliance:
2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter.	N/A	N/A
Design Criteria:	Comment:	Compliance:
3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	<p>30 out of the 352 apartments proposed, or 12%, will receive no direct sunlight between 9am and 3pm at mid-winter.</p> <p>(For details refer to 'Addendum - RFI Response', pages 5 to 11, dated 3 June 2022, prepared by Bates Smart).</p>	Complies
4B Natural ventilation		
Objective 4B-3 The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.		
Design Criteria:	Comment:	Compliance:
1. At least 60% of apartments are 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.	<p>Analysis of the submitted architectural floor plans (drawings DA.03.05 and DA.03.06, prepared by Bates Smart), found 29 out of the 62 apartments proposed on the first nine storeys of the proposal (Level 00 to Level 08), or 47%, are natural cross ventilated.</p> <p>The written justification for the proposed variation provided in 'Addendum - RFI Response', page 28, dated 3 June 2022, prepared by Bates Smart) explained:</p> <p><i>"The building form has been designed to provide comfort for residents with chamfered corners and balconies moved inboard to protect them from wind. It is considered that the design of the building and amenity of the majority of the apartments would be compromised by the re-design required to achieve the relatively small number of additional apartments required for compliance."</i></p>	Satisfactory (Merit based assessment)

	<p>Furthermore, it is noted that the development proposal was referred to CN's UDRP during the assessment process. The UDRP did note some disappointment that minimum cross ventilation requirements of the ADG are not being achieved. In response the applicant acknowledged that the lower-level single aspect 1 bedroom apartments and adjacent 2 bedroom apartments could be replanned to become dual aspect 3 bedroom apartments and this would achieve the natural ventilation requirements. However, the UDRP acknowledged that these lower-level single aspect apartments are likely to be more affordable in the market and on balance this was considered to have a better outcome particularly given that the site conditions are conducive to breezes.</p> <p>For the single aspect apartments, the layout and design maximises natural ventilation; apartment depths have been minimised and frontages maximised to increase ventilation and airflow.</p> <p>All habitable rooms are naturally ventilated via adjustable windows with suitable effective operable areas.</p> <p>The non-compliance is able to be accepted on a balanced view.</p>									
Design Criteria:	Comment:	Compliance:								
2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	N/A	N/A								
4C Ceiling heights										
Objective 4C-1										
Ceiling height achieves sufficient natural ventilation and daylight access.										
Design Criteria:	Comment:	Compliance:								
1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:	Mixed use Level 00 (Ground) and Level 01 have increased floor-to-floor heights of 4.5m and 3.7m respectively. As such, a minimum ceiling height from finished floor level to finished ceiling level of 3.3m can be achieved for both the ground and first floors.	Complies								
<table><tr><td colspan="2">Minimum ceiling height for apartment and mixed use buildings</td></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to areas</td></tr></table>	Minimum ceiling height for apartment and mixed use buildings		Habitable rooms	2.7m	Non-habitable	2.4m	If located in mixed used areas	3.3m for ground and first floor to areas	Apartments All storeys containing apartments (Level 05 to Level 30) have a floor-to-floor height of at least 3.1m. As such, a minimum ceiling height from finished floor level to finished ceiling level of 2.7m to habitable rooms and 2.4m to non-	Complies
Minimum ceiling height for apartment and mixed use buildings										
Habitable rooms	2.7m									
Non-habitable	2.4m									
If located in mixed used areas	3.3m for ground and first floor to areas									

	promote future flexibility of use	habitable rooms can be achieved for all apartments. No two storey apartments or attic spaces are proposed.	
These minimums do not preclude higher ceilings if desired.			
4D Apartment size and layout			
Objective 4D-1			
The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.			
Design Criteria:		Comment:	Compliance:
1. Apartments are required to have the following minimum internal areas:		All apartments proposed are provided the minimum internal areas required. (For details refer to typical apartment types, drawings DA.13.02 to DA.13.13, and DA.13.50 to DA.13.60, Revision 1, dated 3 June 2022, prepared by Bates Smart).	Complies
Apartment type	Minimum internal area		
studio	35m ²		
1 bedroom	50m ²		
2 bedroom	70m ²		
3 bedroom	90m ²		
The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m ² each.			
Design Criteria:		Comment:	Compliance:
2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.		All habitable rooms within the apartments are provided with a window within an external wall.	Complies
Objective 4D-2			
Environmental performance of the apartment is maximised.			
Design Criteria:		Comment:	Compliance:
1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.		N/A (all apartments are provided a combined living/ dining/ kitchen area)	N/A
Design Criteria:		Comment:	Compliance:
2. In open plan layouts (where the living, dining and kitchen are combined) the maximum		330 out of the 352 apartments proposed have a maximum habitable room depth of less than 8m from a window for open plan living, dining and	Satisfactory

habitable room depth is 8m from a window.	<p>kitchen area, measured from glass line to furthest kitchen bench.</p> <p>Details of the non-complying apartments are listed below;</p> <p><u>APARTMENT TYPE 'E6.05' – 22 x 2 BEDROOM</u></p> <p>Type 'E6.05' apartments have a useable room depth of approximately 8.2m from the furthest kitchen cabinetry and benchtop to the balcony window.</p> <p>It is considered that a 0.2m exceedance is nominal and will have minimal impact on the environment performance of the apartments</p> <p>The non-compliances proposed are minimal and can be accepted on a balance view.</p> <p>(For details refer to 'East Tower Apartment Type 2', drawing DA.13.51, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p>	(Merit based assessment)
Objective 4D-3 Apartment layouts are designed to accommodate a variety of household activities and needs.		
Design Criteria:	Comment:	Compliance:
1. Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space)	All master bedrooms have a minimum area of 10m ² and all other bedrooms have a minimum area of 9m ² (excluding wardrobe space).	Complies
Design Criteria:	Comment:	Compliance:
2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	<p>328 out of the 352 apartments proposed have bedrooms which achieve the 3m minimum dimension (measured excluding wardrobe space).</p> <p>Details of the non-complying apartments are listed below;</p> <p><u>APARTMENT TYPE 'W5.05' – 1 x 2 BEDROOM</u></p> <p>Generally, the second bedroom of apartment type 'W5.05' has a minimum dimension of 3m or greater. However, a small portion of the second bedroom has a dimension of less than 3m due to the irregular alignment of one of the bedroom walls.</p> <p>(For details refer to 'West Tower Apartment Types 2', drawing DA.13.02, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p><u>APARTMENT TYPE 'W6.09' – 19 x 2 BEDROOM</u></p> <p>The master bedroom of apartment type 'W6.09' has a minimum dimension of 2.9m.</p>	Satisfactory (Merit based assessment)

	<p>(For details refer to '<i>West Tower Apartment Types 6</i>', drawing DA.13.06, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p><u>APARTMENT TYPE 'W24.01' – 1 x 2 BEDROOM</u></p> <p>Generally, the second bedroom of apartment type 'W24.01' has a minimum dimension of 3m or greater. However, a small portion of the second bedroom has a dimension of less than 3m due to the irregular alignment of one of the bedroom walls.</p> <p>(For details refer to '<i>West Tower Apartment Types 9</i>', drawing DA.13.09, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p><u>APARTMENT TYPE 'W24.02' – 1 x 4 BEDROOM</u></p> <p>Generally, the fourth bedrooms of apartment type 'W24.02' has a minimum dimension of 3m or greater. However, a small portion of the second bedroom has a dimension of less than 3m due to the irregular alignment of one of the bedroom walls.</p> <p>(For details refer to '<i>West Tower Apartment Types 9</i>', drawing DA.13.09, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p><u>APARTMENT TYPE 'W25.02' – 1 x 4 BEDROOM</u></p> <p>Generally, the fourth bedrooms of apartment type 'W25.02' has a minimum dimension of 3m or greater. However, a small portion of the second bedroom has a dimension of less than 3m due to the irregular alignment of one of the bedroom walls.</p> <p>(For details refer to '<i>West Tower Apartment Types 10</i>', drawing DA.13.10, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p><u>APARTMENT TYPE 'E27.02' – 1 x 1 BEDROOM</u></p> <p>Generally, the master bedrooms of apartment type 'W27.02' has a minimum dimension of 3m or greater. However, a small portion of the second bedroom has a dimension of less than 3m due to the irregular alignment of one of the bedroom walls.</p> <p>(For details refer to '<i>East Tower Apartment Types 7</i>', drawing DA.13.56, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p>	
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	<p>The non-compliances proposed are minimal and can be accepted on a balance view regarding both minimum dimensions and areas. Furthermore, the design drawings have suitably demonstrated the apartment bedrooms are well designed by showing the useability and functionality of the space with realistically scaled furniture layouts and circulation spaces, despite the minor non-compliance.</p>	
Design Criteria:	Comment:	Compliance:
<p>3. Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments. • 4m for 2 and 3 bedroom apartments. 	<p>280 out of the 352 total apartments proposed have either living rooms or combined living/dining rooms which achieve the minimum dimensions required for the number of bedrooms provided.</p> <p>Details of the non-complying apartments are listed below;</p> <p><u>APARTMENT TYPE 'W5.01' – 1 x 3 BEDROOM</u></p> <p>Generally, the combined living/dining room of apartment type 'W5.01' has a minimum dimension of 4m or greater. However, a small portion of the combined living/dining room has a dimension of less than 4m due to the irregular alignment of the external walls (curved/ tapered geometry of the built form).</p> <p>(For details refer to 'West Tower Apartment Types 1', drawing DA.13.01, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p><u>APARTMENT TYPE 'W6.01' – 17 x 3 BEDROOM</u></p> <p>Generally, the combined living/dining room of apartment type 'W6.01' has a minimum dimension of 4m or greater. However, a small portion of the combined living/dining room has a dimension of less than 4m due to the irregular alignment of the external walls (curved/ tapered geometry of the built form).</p> <p>(For details refer to 'West Tower Apartment Types 3', drawing DA.13.03, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p><u>APARTMENT TYPE 'W6.08' – 21 x 3 BEDROOM</u></p> <p>Generally, the combined living/dining room of apartment type 'W6.08' has a minimum dimension of 4m or greater. However, a small portion of the combined living/dining room has a dimension of less than 4m due to the irregular</p>	<p>Satisfactory (Merit based assessment)</p>

	<p>alignment of the external walls (curved/ tapered geometry of the built form).</p> <p>(For details refer to '<i>West Tower Apartment Types 6</i>', drawing DA.13.06, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p><u>APARTMENT TYPE 'W23.03' – 1 x 2 BEDROOM</u></p> <p>The combined living/dining room of apartment type 'W23.03' has a minimum dimension of 3.9m.</p> <p>(For details refer to '<i>West Tower Apartment Types 8</i>', drawing DA.13.08, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p><u>APARTMENT TYPE 'E6.02' – 10 x 2 BEDROOM</u></p> <p>Generally, the combined living/dining room of apartment type 'E6.02' has a minimum dimension of 4m or greater. However, a small portion of the combined living/dining room has a dimension of less than 4m due to the irregular alignment of the external walls (curved/ tapered geometry of the built form).</p> <p>(For details refer to '<i>East Tower Apartment Types 1</i>', drawing DA.13.50, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p><u>APARTMENT TYPE 'E6.06' – 22 x 2 BEDROOM</u></p> <p>Generally, the combined living/dining room of apartment type 'E6.06' has a minimum dimension of 4m or greater. However, a small portion of the combined living/dining room has a dimension of less than 4m due to the irregular alignment of the external walls (curved/ tapered geometry of the built form).</p> <p>(For details refer to '<i>East Tower Apartment Types 3</i>', drawing DA.13.52, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p>The non-compliances proposed are minimal and can be accepted on a balance view regarding both minimum dimensions and areas. Furthermore, the design drawings have suitably demonstrated the apartments are well designed by showing the useability and functionality of the space with realistically scaled furniture layouts and circulation spaces, despite the minor non-compliance.</p>	
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Design Criteria:	Comment:	Compliance:															
4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	N/A	N/A															
4E Private open space and balconies																	
Objective 4E-1 Apartments provide appropriately sized private open space and balconies to enhance residential amenity.																	
Design Criteria:	Comment:	Compliance:															
1. All apartments are required to have primary balconies as follows: <table border="1"> <thead> <tr> <th>Dwelling type</th><th>Min. area</th><th>Min. depth</th></tr> </thead> <tbody> <tr> <td>Studio</td><td>4m²</td><td>-</td></tr> <tr> <td>1 bedroom</td><td>8m²</td><td>2m</td></tr> <tr> <td>2 bedroom</td><td>10m²</td><td>2m</td></tr> <tr> <td>3+ bedroom</td><td>12m²</td><td>2.4m</td></tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	Dwelling type	Min. area	Min. depth	Studio	4m ²	-	1 bedroom	8m ²	2m	2 bedroom	10m ²	2m	3+ bedroom	12m ²	2.4m	<p>Primary balconies depth</p> <p>All apartments have primary balconies that achieve the minimum depths required.</p> <p>Primary balconies area</p> <p>312 out of the 352 total apartments have primary balconies that achieve the minimum area required.</p> <p>Details of the non-complying apartments are listed below;</p> <p><u>APARTMENT TYPE 'W6.03' – 17 x 2 BEDROOM</u></p> <p>The balcony of apartment type 'W6.03' has an area of 9m², which does not achieve the minimum required for 2 bedroom apartments (10m²)</p> <p>(For details refer to 'West Tower Apartment Types 3', drawing DA.13.03, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p><u>APARTMENT TYPE 'W6.07' – 22 x 2 BEDROOM</u></p> <p>The balcony of apartment type 'W6.07' has an area of 9m², which does not achieve the minimum required for 2 bedroom apartments (10m²)</p> <p>(For details refer to 'West Tower Apartment Types 5', drawing DA.13.05, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p> <p><u>APARTMENT TYPE 'E5.07' – 1 x 2 BEDROOM</u></p> <p>The balcony of apartment type 'W6.07' has an area of 8m², which does not achieve the minimum required for 2 bedroom apartments (10m²)</p> <p>(For details refer to 'East Tower Apartment Types 1', drawing DA.13.50, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p>	<p>Complies</p> <p>Satisfactory (Merit based assessment)</p>
Dwelling type	Min. area	Min. depth															
Studio	4m ²	-															
1 bedroom	8m ²	2m															
2 bedroom	10m ²	2m															
3+ bedroom	12m ²	2.4m															

	<p>The design guidance provided for this objective acknowledges that balcony use may be limited in some proposals, and in these situations other amenity benefits for occupants should be provided in the apartment or in the development or both.</p> <p>The design drawings have suitably demonstrated how; (1) the site constraints (consistently high wind conditions present in the locality, and close proximity to road, rail and other noise sources) may limit balcony use and, (2) the proposal has been designed having regard to optimizing residential amenity for occupants (greater than minimum internal areas for apartments, and increased communal open space).</p> <p>The non-compliances proposed are minimal (ranging from 1m² to 2m²) and can be accepted on a balance view regarding both minimum balcony depths and areas.</p>	
Design Criteria: 2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	N/A (No apartments proposed on Ground Level. Whilst apartments are located on Level 05 where the communal landscaped podium is located, the design and location of the apartments is not what is considered a 'podium or similar structure').	N/A
4F Common circulation and spaces		
Objective 4F-1 Common circulation spaces achieve good amenity and properly service the number of apartments.		
Design Criteria:	Comment:	Compliance:
1. The maximum number of apartments off a circulation core on a single level is eight.	<p>The maximum number of apartments off a circulation core on a single level in either tower is nine.</p> <p>The design guidance provided for this objective acknowledges that achieving the design criteria is not possible on some sites by stipulating that where design criteria 1 is not achieved, no more than 12 apartments should be provided off a circulation core on a single level.</p> <p>As such, the proposal complies with the design guidance for this objective.</p>	Satisfactory (Merit based assessment)
Design Criteria:	Comment:	Compliance:
2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	<p>Each tower contains three lifts servicing the residential apartments. Meaning, on average a single lift will service 57 and 60 apartments in the east and west towers respectively.</p> <p>An analysis of the east and west tower lift performance has been prepared in support of</p>	Satisfactory (Merit based assessment)

	<p>the variation (see '<i>Transportation Services Concept Report</i>' (revision B, dated 31 May 2022, prepared by S4B Studio).</p> <p>The report examines the design basis of the lift services for the current amended proposal. The justification for the proposed variation is based on the view that the lift related requirements of the ADG are very general and cannot be adequately applied to different types of residential buildings. The design approach for the vertical transportation provision within the proposed development is based on international and local benchmarks as well as S4B's internal good practice guidelines.</p> <p>The vertical traffic analysis found the lifts proposed of the east and west towers will have an average waiting time of 45 and 41 second respectively, which will '<i>provide a good level of service</i>'. The analysis is based on a lift speed of 2.5m/s.</p> <p>A condition has been included in the recommended Draft Schedule of Conditions (refer to Attachment A) in accordance with the minimum assumptions made within the '<i>Transportation Services Concept Report</i>'.</p>									
4G Storage										
Objective 4G-1										
Adequate, well designed storage is provided in each apartment.										
Design Criteria:	Comment:	Compliance:								
<p>1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling type</th><th>Storage size volume</th></tr><tr><td>1 bedroom</td><td>6m³</td></tr><tr><td>2 bedroom</td><td>8m³</td></tr><tr><td>3+ bedroom</td><td>10m³</td></tr></table>	Dwelling type	Storage size volume	1 bedroom	6m ³	2 bedroom	8m ³	3+ bedroom	10m ³	<p>Storage located within the apartments</p> <p>All apartments are provided with storage located, and access from, within the apartment equal to at least 50% of the storage volume required in accordance with the number of bedrooms.</p> <p>(For details refer to typical apartment types, drawings DA.13.02 to DA.13.13, and DA.13.50 to DA.13.60, Revision 1, dated 3 June 2022, prepared by Bates Smart).</p>	Complies
Dwelling type	Storage size volume									
1 bedroom	6m ³									
2 bedroom	8m ³									
3+ bedroom	10m ³									
<p>At least 50% of the required storage is to be located within the apartment.</p>	<p>Storage located external to the apartments</p> <p>In addition to the storage volume located within apartments, all apartments are provided with secure storage cages located, and access from, common areas equal to at least 50% of the storage volume required in accordance with the number of bedrooms.</p> <p>The storage cages are located across Level 02, Level 04, and Level 05 Mezzanine and are separated into storage for the 'east' and 'west' towers.</p>	Complies								

	<p>(For details refer to drawing DA.03.02, DA.03.04, and DA.03.05.M, dated 13 April 2022, prepared by Bates Smart).</p> <p>A condition has been included in the recommended Draft Schedule of Conditions (refer to Attachment A) to ensure each is allocated a storage cage of adequate size to meet the total minimum storage volume described under this part of the ADG.</p>	
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Newcastle Local Environmental Plan 2012

The local environmental plan that applies to the site is the *Newcastle Local Environmental Plan 2012* (NLEP). The NLEP provides the mechanism and framework for the management and orderly and economic development and conservation of the land in the Newcastle Local Government Area.

The relevant matters to be considered under the NLEP, for the proposed development, as proposed to be modified, are outlined below.

- Clauses 2.1, 2.2 and 2.3 - Zoning and Land Use Table

The site is zoned B3 Commercial Core under the NLEP. The approved concept master plan proposed 'shop top housing', 'car park', and 'commercial premises' (including 'retail premises', 'office premises' and 'business premises'), all of which are permitted with consent within Zone B3 Commercial Core. The proposal continues to meet the objectives of Zone B3 Commercial Core, as the development:

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

Additionally, it is noted that the concept approval, as proposed to be modified, will continue to be consistent with the definition of 'shop top housing'.

- Principal Development Standards

Clause 4.3 Height of Buildings

In assessing the original Concept Development Application, consideration was given to a variation to Clause 4.3 'Height of Buildings'. The original concept application was approved with a building height of 99m, exceeding the NLEP prescribed height limit of 90m by 9m, ie a 10% variation.

The proposed modification to the concept approval includes a further increase to the maximum building height, being from RL103 (99m) to RL109.88 (106.78m) in the eastern tower (see Figures 4 and 5 below). This will result in a maximum height of 106.78m from the existing

ground level. The total amended height represents a 18% variation from the maximum height permitted under the NLEP, and an increase of 16.78m above the NLEP prescribed height limit.

This change in height from the original approval is limited to 6.88m. The additional height stems from modifications sought to achieve greater solar access and visual amenity across the site.

While there is no requirement to submit a request to vary a development standard for modification to a development consent, the objectives of development standards, along with the numeric standard itself, remain relevant in the assessment of the proposed modification.

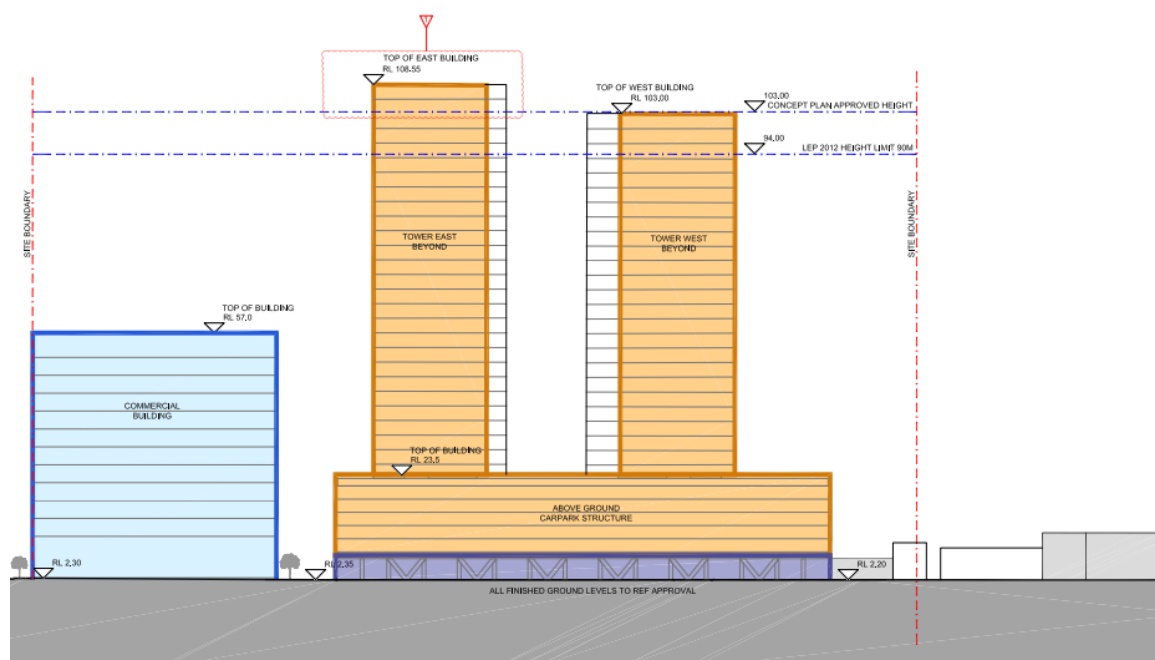
Having regard to the objectives of Clause 4.3 and the relevant zone objectives contained in the NLEP, the scale of the development will continue to contribute towards the desired character, by presenting a mixed use development that provides both high density residential living and further opportunities for commercial and retail development in close proximity to public transport.

As demonstrated within the submitted shadow diagrams, the addition height will not result in unreasonable additional shadowing to adjoining development or to the public domain, allowing for continued amenity and solar access to these areas. The developments within the concept master plan will continue to make a positive contribution and will not result in excessive height or scale.

In a broader context, the proposed design amendments and additional height do not result in a substantial increase on the development footprint. The amendments to the approved building form accommodate the additional height cohesively.

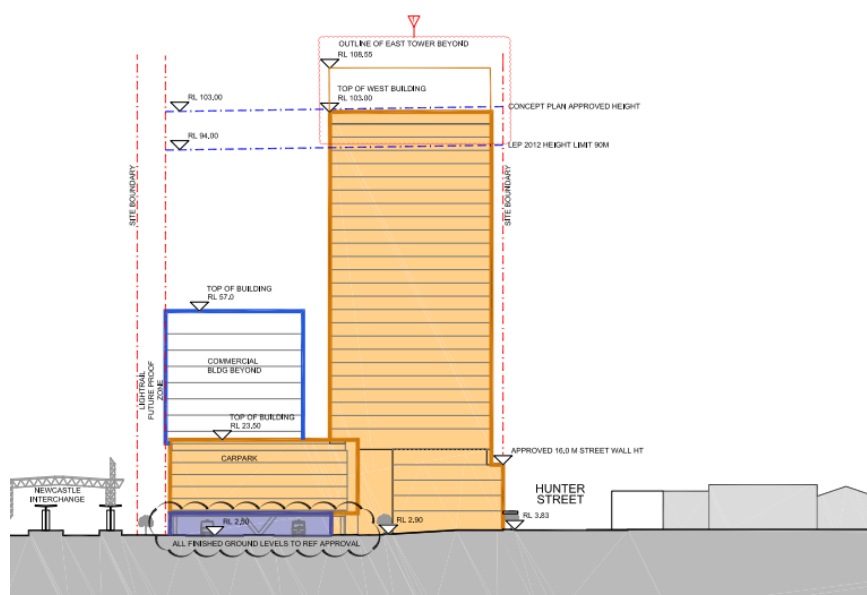
For these reasons, the proposal as modified remains consistent with the objectives of Clause 4.3 of the NLEP.

Figure 4: Modification to East Tower Height (Source Bates Smart)



854 Hunter Street Newcastle		Scale 1:1000@A3 ; 1:500@A1	Melbourne 1 Nicholson Street Melbourne VIC 3000 Australia T 03 9554 6200 F 03 9554 6300 email mel@batesmart.com.au http://www.batesmart.com.au	Sydney 43 Brisbane St Sydney NSW 2010 A T 02 9554 5100 F 02 9554 5101 email syd@batesmart.com.au http://www.batesmart.com.au
Project No.		Drawn FLB	Checked SS	

Figure 5: Western elevation (Source Bates Smart)



Clause 4.4 Floor Space Ratio

The maximum Floor Space Ratio (FSR) for the site is identified as 8:1 in the NLEP. However, under Clause 7.10 of the NLEP, the subject site is identified as being with 'Area A' and, as such, the FSR is reduced to 5:1 (unless the development is entirely for commercial use). Under the original application, the proposal was considered and approved with an FSR of 4.84:1, which is compliant with the applicable maximum 5:1 FSR.

The proposed amendments to Stage 4 result in a slight increase to the GFA as detailed below. However, the development remains compliant with the

Having regard to the objectives of the clause, the building design will continue to make a positive contribution to the streetscape and will not result in excessive density, bulk, and scale.

Significantly, the modified design retains appropriate setbacks, maintaining suitable separation to existing and future development.

The overall massing, the podium level landscaping and amenities and the external decorative elements remain aesthetically distinctive. The design incorporates a range of building materials that provide adequate articulation.

Clause 4.6 Exception to Development Standards

There is no requirement to submit a request to vary a development standard for a modification application, so Clause 4.6 does not apply to the Modification Application.

Clause 6.1 Acid Sulfate Soils

The site is identified as being affected by acid sulfate soils Class 3 & Class 4. The potential disturbance of acid sulfate soils during earthworks has been assessed under the initial Part 5 approval. The final stage 4 mixed use development will involve the further excavation to facilitate the construction, an Acid Sulfate Soils Management Plan has been prepared.

Clause 6.2 Earthworks

Earthworks are proposed as part of this development. A considerable number of earthworks have already occurred on the site to facilitate the construction of the car park, which will form part of the subject development and provide for parking associated with the residential and commercial use on site. A Geotechnical Report and Contamination report have been provided. The earthworks proposed are unlikely to have any detrimental impact on the immediate site.

Part 7 - Additional local provisions—Newcastle City Centre

The site is located within the Newcastle City Centre. There are a number of requirements and objectives for development within the City Centre, which include promoting the economic revitalisation of the City Centre, facilitating design excellence and protecting the natural and cultural heritage of Newcastle. The proposed development, as per the Modification Application, continues to meet the objectives of Part 7 of the NLEP as it allows for the redevelopment of a site for employment opportunities in the Newcastle City Centre. The proposed development continues to provide for a mixed use site, with activity during the day and throughout the evening, ensuring the Newcastle City Centre is safe, attractive, inclusive and efficient for its local population and visitors alike. The proposed modified development will ensure that economic revitalisation of the Newcastle City Centre continues.

Clause 7.3 Minimum Building Street Frontage

The site is to have a minimum street frontage of 20m under Clause 7.3 of the NLEP. The street frontage remains unchanged having a frontage of 108.94m to Hunter Street and to Stewart Avenue of 39.94m

Clause 7.4 Building Separation

Clause 7.4 of the NLEP requires that a building must be erected so that the distance "*to any other building is not less than 24m at 45 metres or higher above ground*".

The proposed modified development does not achieve the required internal building separation.

The concept development application as approved detailed the building separation for each tower as follows:

Eastern Tower and Stage 3 Commercial Building: 21m (non-compliant being a 12.5% variation).

Eastern Tower and Western Tower: 24m (Compliant).

This development application seeks to further modify Clause 7.4 as follows:

Eastern Tower and Stage 3 Commercial Building: 16.4m being a 32% variation to the development standard.

Eastern Tower and Western Tower: Separation distance of 27.9m – 17.2m being a variation of 28%.

The building separation non-compliance has arisen due to the rotation of the building floorplates providing a splayed orientation. It is noted that a Section 4.55(2) modification application does not require a Clause 4.6 request for an exception to a development standard to be submitted as part of the application. Notwithstanding, the proposed variation has been assessed and considered against the objectives of Clause 7.4 and of the Zone B3 Commercial Core and is considered to be acceptable.

Clause 7.5 Design Excellence

The original Concept Development Application triggered the requirement to undertake an architectural design competition, as the height of the proposed building is greater than 48m. However, a Design Excellence Competition Waiver had been provided in February 2018, by the Government Architects Office (GAO). To ensure design integrity, the GAO required that a design review panel (DRP) be established to provide continual review through design development and delivery. In this case the DRP was effectively CN's UDRP.

As outlined within the original SEPP 65 & ADG assessment, and as described within this report, the modified proposal has been determined to have design excellence, by the UDRP.

The modified plans were referred to the UDRP on one occasion during the assessment of the application. The UDRP have provided feedback to ensure that the overall design achieves design excellence. The modified proposal meets the design excellence criteria of the NLEP and is of a high standard of architectural quality.

Clause 7.6 Active Street Frontages in Zone B3 Commercial Core

This clause states that consent cannot be granted for a development in a B3 Commercial Core Zone unless the building will have an active street frontage, where the ground floor facing the street is to be used for business or retail premises. The modified proposal continues to provide commercial space, including retail uses, at ground floor level, which ensures a level of activation between the NBI, the Newcastle Transport Interchange, Stewart Avenue and Hunter Street. The modified proposal does not change the proposed use of the site.

Clause 7.9 Height of Buildings

The subject site is not identified as being within 'Area A', 'Area B' or 'Area C' of the Height of Buildings Map. Accordingly, the provisions of this clause do not apply to the proposal.

The maximum building height, as relevant to the proposal, is addressed under Clause 4.3 of the NLEP of this report.

Clause 7.10 Floor Space Ratio for Certain Development in Area A

The NLEP Floor Space Ratio Map identifies the site as being located within Area A. Cl7.10 (a) reduces the allowable FSR for the site to 5:1 for non-commercial buildings.

The proposal complies with this as discussed under Clause 4.4.

4.3.2 Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are several proposed instruments which have been the subject of public consultation under the Act and are relevant to the proposal, including the following:

- *Draft Remediation of Land SEPP*

A proposed Remediation of Land State Environmental Planning Policy ('Remediation of Land SEPP'), which was exhibited from 31 January to 13 April 2018, is currently under consideration. The proposed Remediation of Land SEPP is intended to repeal and replace the provisions of SEPP 55 (now Chapter 4 of SEPP (Resilience and Hazards) 2021) and Contaminated Land Planning Guidelines, and 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 list remediation works that require development consent; and introducing certification and operational requirements for remediation works that may be carried out without development consent.

The Remediation of Land SEPP is aimed at improving the assessment and management of land contamination and its associated remediation practices. The modified proposal is consistent with the draft provisions and is considered to be acceptable.

The proposal is generally consistent with the proposed instrument.

4.3.3 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The proposed modified development does not generate considerable changes to any conclusions reached from an assessment of the original Concept Development Application with regard to objectives and controls of the Newcastle Development Control Plan 2012. However, it is noted that changes to the Concept Development Application car park allocation is proposed.

Section 7.03 Traffic, Parking and Access

Parking

The original approval of the concept masterplan DA 2018/01109 approved a parking surplus for the residential apartments in Stage 4 of some 58 spaces over and above Council's DCP. A subsequent modification of this application in June 2020 DA 2018/01109.01 increased this surplus to 113 spaces. DA 2021/01530 reduces this residential parking surplus of 113 to 89 spaces.

It is also worth noting that DA 2018/01109.01 Condition No. 17 states:

'On-site car parking accommodation is to be allocated to the different land uses within the development on the basis of one space per 75m² for the Commercial Building (stage 3) and the specific parking rates that are detailed in the Newcastle Development Control Plan 2012 for all other land uses, with any excess parking being allocated to the residential component of the development only after the required number of parking spaces has been allocated for the commercial/retail uses'

Table 5 (As detailed within the RFI) below details the parking provision across the entire site the subject of the Concept Masterplan DA 2018/01109

Table 5 Proposed Development Car Parking Supply (Source: Extract from SLR Traffic and Transport Response)

Parking Location	Parking Supply	
6 Stewart Avenue	Basement	38
Multi-deck	Level 1	137 spaces
	Level 2	140 spaces
	Level 3	140 spaces
	Level 4	140 spaces
	Level 5	140 spaces
Total		735 spaces

Table 6 (As detailed within the RFI) below details the parking provision across the entire site the subject of the Concept Masterplan DA 2018/01109 (inclusive of Stage 4)

Table 6 Proposed Car Parking Allocation (Source: Extract from SLR Traffic and Transport Response)

Concept Masterplan Development Stage	Land Use	Yield		Minimum Parking Requirement (spaces)	Parking Allocation (spaces)		
					6 Stewart Av	Multi-deck	Total
Constructed 6 Stewart Avenue	Retail	318sq.m		222.5 (223)	38	186	224
	Office	16,371sq.m					
Proposed 30 storey mixes used	Retail	510sq.m		34.7 (35)	0	35	35
	Office	2,095sq.m					
	Residential	66	1 bed units	39.6	0	40	40
		178	2 bed units	160.2	0	218	218
		108	3+ bed units	151.2	0	182	182
		352	Total units	35.9 (36)	0	36	36
Total		-		658	38	697	735

Parking is proposed to be provided for the Retail / Office space at a rate of 1 space per 75m² of GFA totalling 35 spaces. This parking provision complies with the parking rate outlined under the Concept Masterplan DA 2018/01109.01 Condition No. 17 and therefore satisfactory.

The DCP rate for residential visitor parking has been reduced by 50% to 36 spaces. Council has typically accepted a reduction in the order of 25 to 50% for development of this nature in the CBD. It is understood that these spaces are being underutilised and therefore the parking rate under our DCP is not reflective of the demand. On this basis the proposed reduction in parking is supported and considered adequate to cater for the residential visitor parking demands of this development.

A total of 440 spaces are proposed for the residential units (excluding visitor parking) as detailed in Table No 6, representing a surplus of around 89 spaces. The applicant is principally using market demand as the justification for this parking supply. 'Market demand' in itself is not considered to be sufficient justification for the departure from Council's DCP. In addition, the oversupply of resident parking does not align with the objectives of Council's Parking Plan 2021-2030, which aims to increase active and public transport use in the city centre.

Notwithstanding it is acknowledged Council has historically approved a surplus residential parking component with each application on this site. Furthermore, the proposal under DA 2021/01530 represents a reduction in the surplus residential parking from the current 113 spaces approved under DA 2018/01109.01 to 89 spaces.

In conclusion and with consideration for the above the proposed parking provision for Stage 4 as detailed in Table No. 6 is supported, such being inclusive of the 89 space residential parking surplus. Due to the surplus vehicle spaces no additional requirement has been applied for motorcycles.

4.3.4 Section 4.15(1)(a)(iiia) - Planning Agreements under Section 7.4 of the Act

There have been no planning agreements entered into and there are no draft planning agreements proposed for the site.

4.3.5 Section 4.15(1)(a)(iv) - Provisions of Regulations

The proposed modified development does not generate changes to any conclusions reached or conditions imposed, arising from the provisions of the *Environmental Planning and Assessment Regulation 2000* (ie as relevant at the date of lodgement of the Modification Application) and the *Environmental Planning and Assessment Regulation 2021* (ie as relevant from 17 December 2021).

4.3.6 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposed modified development have been considered in this report and are otherwise generally consistent with the original approved Concept Plan.

Environmental Impacts

All environmental impacts of the proposed modified development, relating to the physical works required, including earthworks, contamination, noise and vibration, geotechnical matters, heritage and archaeology are considered to be acceptable. The proposed modifications to the Stage 4 component of the approved Concept plan are generally consistent with that approved Concept Plan.

Social and Economic Impacts in the locality

The proposed modified development is unlikely to generate any significant adverse social or economic impacts in the locality.

The proposed modification to the Concept Development Consent will continue to support the broader West End Precinct redevelopment. The proposed modified development will continue to result in a positive economic impact through the capital investment value of the development and subsequent employment opportunities that will be generated by the development.

4.3.7 Section 4.15(1)(c) - Suitability of the Site

As provided above, the site conditions do not prevent the proposed modifications and nor do the proposed modifications generate impacts that are significantly adverse or which cannot be ameliorated. Accordingly, the site is considered suitable for the proposed development.

4.3.8 Section 4.15(1)(d) - Public Submissions

There are no public submissions to be considered.

4.3.9 Section 4.15(1)(e) - Public Interest

The proposal generally complies with the relevant planning controls and is considered to be in the public interest. The proposed development is consistent with the zoning of the land and enables additional civic, community and commercial opportunities within Newcastle City Centre.

5 REFERRALS AND SUBMISSIONS

5.1 Agency Referrals and Concurrence

The Modification Application was not required to be subject to any external referral or concurrence process.

5.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 5**.

Table 5: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's Engineering Officer reviewed the submitted stormwater concept plan and considered that there were no objections to the proposed amendments conditions.	Yes
Traffic	Council's Traffic Engineering Officer reviewed the proposal and considered that there were no objections to the proposed amendments.	Yes

5.3 Community Consultation

The Modification Application was not required to be placed on public exhibition or notified in accordance with the Act, *Environmental Planning and Assessment Regulation 2000* (ie as relevant at the date of lodgement) and CN's *Community Participation Plan*. However, the Modification Application and supporting documents have been available for public viewing on CN's on-line Application Tracker from November 2021 and no public submissions have been received in relation to the application.

6 CONCLUSION

This Modification Application has been considered in accordance with the requirements of the Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls and the key issues identified in this report, it is considered that the application should be supported.

7 RECOMMENDATION

That the Section 4.55(2) Modification to DA2018/01109 be approved subject to modified draft recommended conditions of consent in **Attachment A**.

The following attachments are provided:

- Attachment A: Draft Conditions of Consent
- Attachment B: Architectural Plans