



Our Ref: CM: 239971

30 June 2023

City of Newcastle Council  
12 Stewart Ave,  
Newcastle West NSW 2300

**ATTENTION: HOLLY HUTCHENS**

By Email: [hhutchens@ncc.nsw.gov.au](mailto:hhutchens@ncc.nsw.gov.au), [aryan@ncc.nsw.gov.au](mailto:aryan@ncc.nsw.gov.au)

**RE: DEVELOPMENT APPLICATION 2022/00538  
643 HUNTER STREET NEWCASTLE**

Thank you for providing a copy of the submission from the owners of the adjoining property to the south (12 Steel St) and providing an opportunity to address the issues raised.

The submission is very late in what has been a long process for this Development Application (DA), which we note was publicly exhibited between 23/5/22 and 9/6/22. The submission from Ethos Urban appears to have been accepted for consideration based on their advice that *"the current owner of the site (Salter Brothers) only took possession relatively recently"*.

Our own enquiries through RP Data and title searches indicate that the site was sold to Salter Brothers on the 23<sup>rd</sup> July 2021, with settlement occurring on 30<sup>th</sup> June 2022. (Please refer to **Attachments 1** and **2**). Given these dates our client questions how Salter Brothers were unaware of the proposed development.

Our client is extremely disappointed that this very late submission is to be considered and the determination of the DA delayed. We note that the submission raises no new issues that have not already been considered by the Project Architect, Council's Urban Design Review Panel and Council's staff.

Notwithstanding the above, the following response is provided.

**ADW JOHNSON PTY LIMITED**

ABN 62 129 445 398

**Sydney**

Level 35 One International Towers  
100 Barangaroo Avenue  
Sydney NSW 2000  
02 8046 7411

[sydney@adwjohnson.com.au](mailto:sydney@adwjohnson.com.au)

**Central Coast**

5 Pioneer Avenue, Tuggerah NSW 2259  
PO Box 3717, Tuggerah NSW 2259  
02 4305 4300

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**Hunter**

7/335 Hillsborough Road,  
Warners Bay NSW 2282  
02 4978 5100

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[www.adwjohnson.com.au](http://www.adwjohnson.com.au)

In the first instance the positioning of the tower element relative to boundaries has been established through a long process, around two years (pre and during DA assessment). The following chronology of presentations, meetings, and milestones demonstrates that rigorous consideration and testing of the design has been undertaken, with consideration given by our client to all comments raised.

- 28/04/2021 – Presentation to UDCG;
- 29/09/2021 – Presentation to UDRP;
- 25/10/2021 – Notification of assessing officer / Pre DA meeting;
- 03/11/2021 – Pre-DA Meeting;
- 09/11/2021 – Email to council after Pre DA meeting in relation to DA for 651 Hunter St;
- 24/11/2021 – UDRP meeting;
- 29/03/2022 – Waiver to Design Excellence Competition granted by NSW State Gov Architect;
- 13/05/2022 – DA submission date;
- 20/05/2022 – DA lodgement date;
- 23/05/2022 – Confirmation letter from Council for assessing officer;
- **23/05/2022 to 09/06/2022 – Public Notification Period;**
- 13/07/2022 – Initial briefing meeting to Regional Planning Panel;
- 27/07/2022 – UDRP Meeting;
- 20/03/2023 – Council issued Assessment Report and Recommendation to RPP;
- 04/04/2023 – RPP Determination Meeting;
- 12/04/2023 – RPP Determination Meeting (Record of Deferral attached);
- 19/04/2023 – Submitter Briefing to RPP;
- 26/04/2023 – Updated plans provided to Council;
- 03/05/2023 – Updated plans provided to Council;
- 08/05/2023 – Meeting with Council re DA Timing. Council advised that the determination meeting would take place on the 21<sup>st</sup> June, the delay being due to Panel Members being away on annual leave;
- 15/05/2023 – Council Traffic Committee meeting; and
- 21/06/2023 – Verbal advice received that the determination has been deferred until 10 July due to a late submission received from the owners (Salter Brothers) of the site at 12 Steel St (previously Travelodge, now Mercure Hotel).

The minutes of the final Meeting with the UDRP on 27 July 2022 (almost a year ago now) also summarise the progression of the design including in relation to the issue of setbacks from the Travelodge (Mercure) site. These concluding minutes advise as follows:

*“ ..... The Applicant advised that the Regional Planning Panel reviewed the project and asked for more information about the Travelodge setbacks. The Applicant prepared a conceptual approach for the Travelodge site and showed one way it could be developed without impacting its development potential, and meeting setback and overshadowing requirements. The Panel considered the approach a reasonable and equitable assumption, which worked well for aspect and solar access.”*

The minutes in conclusion advise as follows:

*"The Panel is supportive of the proposal. A small number of relatively minor matters, as outlined under the headings above, are expected to be satisfactorily addressed, and it is anticipated that these will be resolved to the satisfaction of the Assessing Officers without necessarily referring further to the Panel.*

*With the expected resolution of the identified minor matters, the development can be considered to exhibit a high level of design quality, and the completed proposal can be expected to make a very positive contribution to the area."*

The final design for 643 Hunter Street has considered the full range of development controls and guidelines, expert opinion from Council's duly constituted SEPP 65 Panel and taken into account the recent approval by Council of the commercial building at 651 Hunter St, on the adjoining site to the west, which was approved on the boundary contrary to Council's DCP.

We note that the submission from Ethos Urban presents a scheme that is hypothetical and does not consider the full range of issues to determine if a tower could be approved in this location, including but not limited to, solar access, building separation from the existing Mercure Hotel, street wall heights, setbacks, and streetscape.

The hypothetical scheme does not present any FSR information, does not consider alternatives, does not present information as to the impact on floor plates, and most importantly it has not been reviewed by any Design Review Panel, does not have a design waiver from the Government Architect and has not achieved design excellence through a design competition. Clearly, there is substantial uncertainty that a tower could be placed as indicated.

We note that the sketch provided appears to take advantage of the fact that the design of the proposed development for 643 Hunter Street purposefully presents a narrower building to the south boundary allowing the Travelodge (Mercure) site to take advantage of views, outlook, and sun to the north. A more compliant design for 643 Hunter St with a longer wall length to the south boundary (but setback to the guide within the ADG) would not afford those same advantages. The longer wall length option to the south boundary would have to be pursued if the design is forced off the south boundary further in order to recover lost floor space.

Stewart Architects have prepared drawings (**Attachment 3**) to demonstrate the benefits of the proposed design. The drawings consider views, shadows and open space location. The drawings show the impacts of the proposed design and the impacts of a south boundary ADG compliant scheme (including adjustment to replace lost FSR by extending the building wider along the southern boundary). The drawings have also updated the Ethos Urban sketch such that their design complies with street wall setbacks, which currently it does not.

These drawings by Stewart Architects clearly demonstrate that should Salter Brothers propose a tower in the location they have chosen, their tower will have better access to views and better access to sunlight based on the scheme proposed as opposed to the alternate modelled. It is for this very reason and following a long period of consultation with Council's Urban Design Review Panel that the proposal gained the panel's support to the design some 12 months ago.

Clause 7.4 of the LEP has no requirement for the sharing of separation distances between boundaries, only between buildings. It would be unreasonable to prevent the proposed development of 643 Hunter Street on the grounds that Salter Brothers might one day propose a tower above 45m in the location shown and that the consent authority might approve of it, particularly given the uncertain nature of the concept presented. In any event, it remains an option open to Salter Brothers to prepare a Clause 4.6 objection to the development standard for consideration on merit by the relevant consent authority at that time.

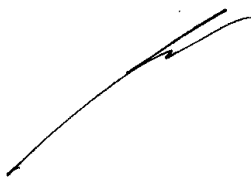
In summary, we believe that the proposed design of 643 Hunter Street is the best outcome for the site (and the adjoining site to the south) for the following reasons:

- It is a well-considered design that has been rigorously tested through multiple presentations and meetings with the relevant authorities, and considers the full suite of controls and guidelines;
- It is supported by Council's Design Review Panel, achieving design excellence;
- It considers impacts to the Travelodge (Mercure) site by purposefully narrowing the wall length presented to the south boundary;
- It sacrifices some setback from the south boundary to achieve a better outcome for the Travelodge (Mercure) site; and
- The narrower wall length to the Travelodge (Mercure) site provides the largest range of options for the design of a quality outcome for that site by ensuring the best possible access to northern sunlight and the best possible outcome for view corridors past the 643 Hunter Street building.

In conclusion, our client is disappointed that such a late submission is to be considered. The submission raises no new issues that have not been resolved by Council's Urban Design Review Panel a year ago. The proposed design narrows the wall length presented to the Travelodge (Mercure) site providing this site to the south with the best possible access to sunlight and views.

We look forward to the determination of the application and should you have any further questions please do not hesitate to contact the undersigned.

Kind Regards

A handwritten signature in black ink, appearing to read 'Craig Marler', written over a thin horizontal line.

**CRAIG MARLER**  
**PRINCIPAL PLANNER**  
ADWJOHNSON  
HUNTER OFFICE

## ATTACHMENT 1

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CERTIFICATE TITLE



FOLIO: 1/1094808

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SEARCH DATE	TIME	EDITION NO	DATE
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28/6/2023	3:22 PM	5	8/7/2022

LAND

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LOT 1 IN DEPOSITED PLAN 1094808  
AT NEWCASTLE WEST  
LOCAL GOVERNMENT AREA NEWCASTLE  
PARISH OF NEWCASTLE COUNTY OF NORTHUMBERLAND  
TITLE DIAGRAM DP1094808

FIRST SCHEDULE

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SALTER BROTHERS ASSET MANAGEMENT PTY LTD (T AS274667)

SECOND SCHEDULE (8 NOTIFICATIONS)

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- 1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
- 2 BK 372 NO 923 LAND EXCLUDES MINERALS BEING PART DESIGNATED (A) IN  
THE TITLE DIAGRAM AS REGARDS LOT 1 IN DP1094808
- 3 BK 921 NO 880 LAND EXCLUDES MINERALS BEING PART DESIGNATED (B) IN  
THE TITLE DIAGRAM AS REGARDS LOT 1 IN DP1094808
- 4 BK 921 NO 880 COVENANT BEING PART DESIGNATED (B) IN THE TITLE  
DIAGRAM AS REGARDS LOT 1 IN DP1094808
- 5 2051892 EASEMENT FOR ELECTRICITY PURPOSES AFFECTING THE  
PART DESIGNATED (A), (B) & (C) IN DP265344 AS REGARDS  
LOT 1 IN DP1094808
- 6 AK839589 RIGHT OF FOOTWAY APPURTENANT TO THE LAND ABOVE  
DESCRIBED AFFECTING THE THE WHOLE OF LOT 2 IN DP81601
- 7 AS274668 MORTGAGE TO ANZ FIDUCIARY SERVICES PTY LIMITED
- 8 AS274669 LEASE TO SALTER BROTHERS (STEEL ST) HOTEL PTY LTD  
EXPIRES: 31/12/2052.

NOTATIONS

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UNREGISTERED DEALINGS: NIL

\*\*\* END OF SEARCH \*\*\*

## ATTACHMENT 2

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DEALING AS274667

Lodger Details

Lodger Code 501410K  
Name ASHURST AUSTRALIA  
Address 5 MARTIN PL  
SYDNEY 2000  
Lodger Box 238N  
Email PEXA.NSWLANDREGISTRY@ASHURST.COM  
Reference 309377/1000 106

Land Registry Document Identification

AS274667

STAMP DUTY:

Transfer (01T)

Jurisdiction NEW SOUTH WALES

Privacy Collection Statement

The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

Land Title Reference	Part Land Affected?	Land Description
1/1094808	N	

Applicant

ANZ FIDUCIARY SERVICES PTY LTD ABN 91100709493ACN 100709493  
Registered company

Document Type

Transfer (01T)

The subscriber requests the Registrar-General to make any necessary recording in the Register to give effect to this instrument, in respect of the land or interest described above.

Attachment

See attached Dealing

Execution

The Certifier has taken reasonable steps to verify the identity of the applicant or his, her or its administrator or attorney.  
The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.  
The Certifier has retained the evidence supporting this Registry Instrument or Document.  
The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Executed on behalf of	ANZ FIDUCIARY SERVICES PTY LTD
Signer Name	MARTIN COLEMAN
Signer Organisation	PARTNERS OF ASHURST AUSTRALIA
Signer Role	PRACTITIONER CERTIFIER
Execution Date	01/07/2022



Form: 01T  
Release: 6.3

## TRANSFER

New South Wales  
Real Property Act 1900

Leave this space clear. Affix additional  
pages to the top left-hand corner.

**PRIVACY NOTE:** Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

### STAMP DUTY

Insert Duties Assessment No. as issued by Revenue NSW Office.

Duties Assessment No. 10307643-007

### (A) TORRENS TITLE

1/1094808

### (B) LODGED BY

Document  
Collection  
Box

Name, Address or DX, Telephone, and Customer Account Number if any

CODES

T

TW

Email:

Reference:

### (C) TRANSFEROR

THE TRUST COMPANY LIMITED ACN 004 027 749

(D) **CONSIDERATION** The transferor acknowledges receipt of the consideration of \$ as per contract dated 23 July 2021 and as regards

(E) **ESTATE** the abovementioned land transfers to the transferee an estate in fee simple

### (F) SHARE TRANSFERRED

(G) Encumbrances (if applicable):

### (H) TRANSFEE

SALTER BROTHERS ASSET MANAGEMENT PTY LTD ACN 119 833 760

### (I) TENANCY:

DATE 30 June 2022

(J) I certify that I am an eligible witness and that the transferor's attorney signed this dealing in my presence.  
[See note\* below].

Certified correct for the purposes of the Real Property Act 1900 by the transferor's attorney who signed this dealing pursuant to the power of attorney specified.

Signature of witness:

Signature of attorney:

Trent Franklin

Name of witness:

WILLIAM DAVID RENNIK

Address of witness:

101 COLLINS STREET  
MELBOURNE VIC 3000

Attorney's name:

Senior Client Manager

Signing on behalf of:

The Trust Company Limited

Power of attorney-Book:

4676

-No.:

134

Certified correct for the purposes of the Real Property Act 1900 on behalf of the transferee by the person whose signature appears below.

Signature:

Signatory's name:

Alice Jillane Langham

Signatory's capacity:

solicitor

(K) The transferee's solicitor certifies that the eNOS data relevant to this dealing has been submitted and stored under

eNOS ID No. 2657053

Full name: Alice Jillane Langham

Signature:

\* s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.



**NSW Land Registry Services**  
Level 30, 175 Liverpool Street Sydney NSW 2000  
GPO Box 15, Sydney NSW 2001  
P (02) 8776 3575  
E [ConveyancingNSW@nswlrs.com.au](mailto:ConveyancingNSW@nswlrs.com.au)  
[www.nswlrs.com.au](http://www.nswlrs.com.au)

## Lodgment Rules Exception Form

**This form must be lodged with every Dealing with Exception and Miscellaneous Dealing (Miscellaneous Document) form, as defined in the Lodgment Rules.**

Please accept this scanned paper dealing, as an eligible exception under Rules 5 or 10 of the Lodgment Rules (version 2), that has been lodged as either a:

1. Dealing with Exception form; or
2. Miscellaneous Dealing (Miscellaneous Document) form

**Lodgment Rules exception number: \*** 1.3

*\*Insert, from the Lodgment Rules exceptions list, the exception number relied on to use the Dealing with Exception form or Miscellaneous Dealing (Miscellaneous Document) form.*

**The Lodgment Rules exception list is published on the Office of the Registrar General Lodgment Rules webpage:**  
<https://www.registrargeneral.nsw.gov.au/publications/lodgment-rules>

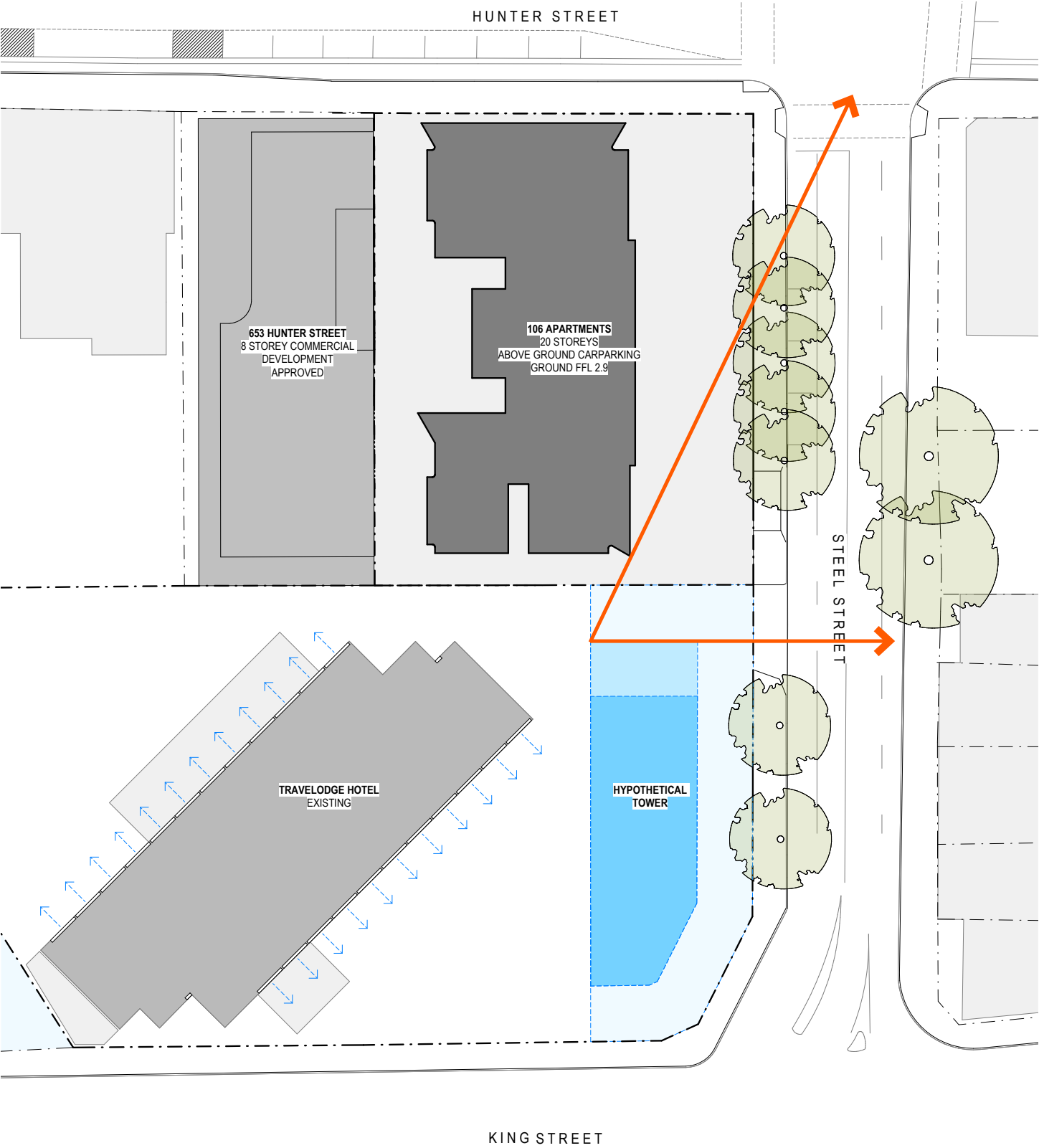
## ATTACHMENT 3

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STEWART ARCHITECTURE DRAWINGS

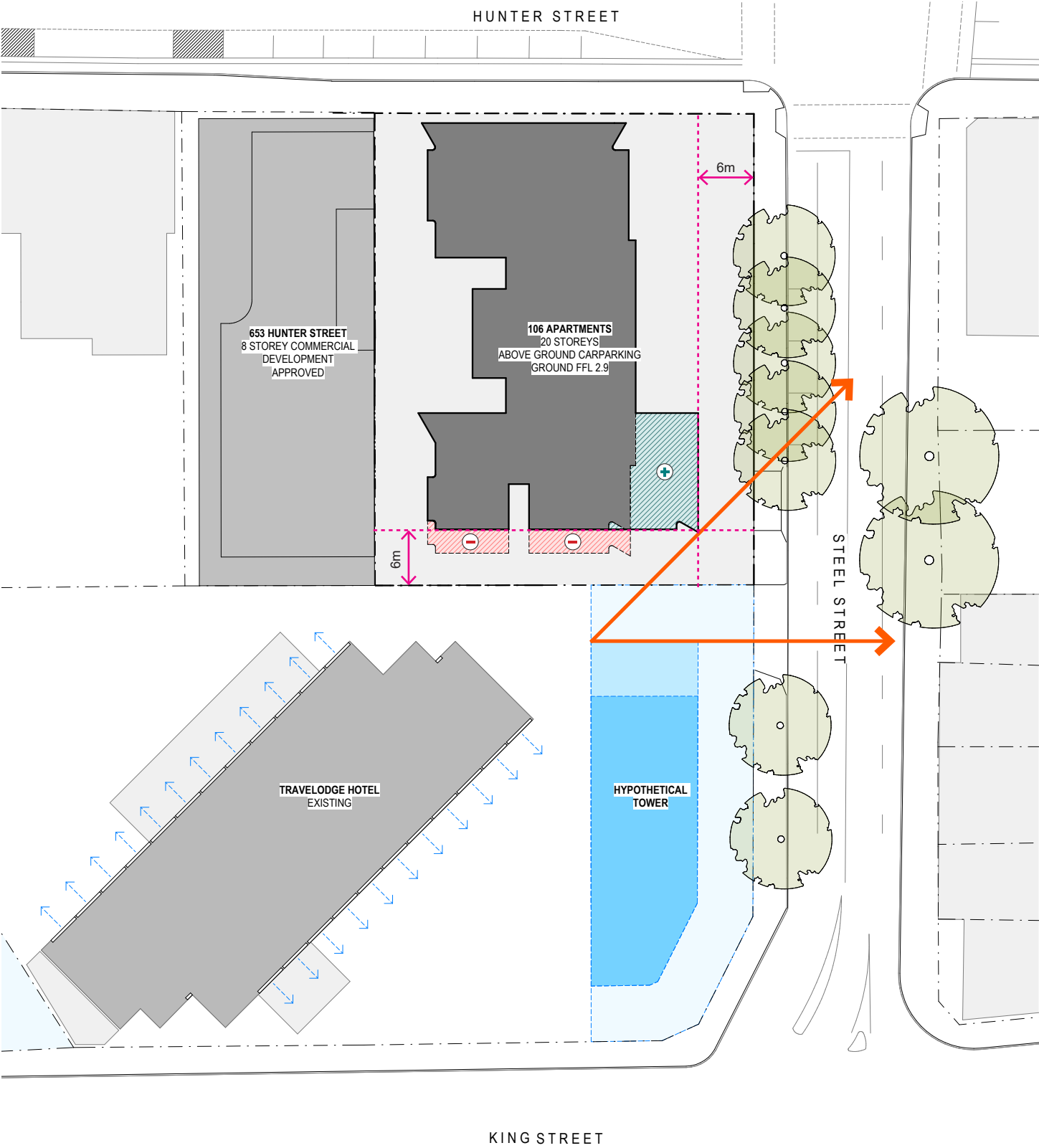
# Views

## PROPOSED DEVELOPMENT



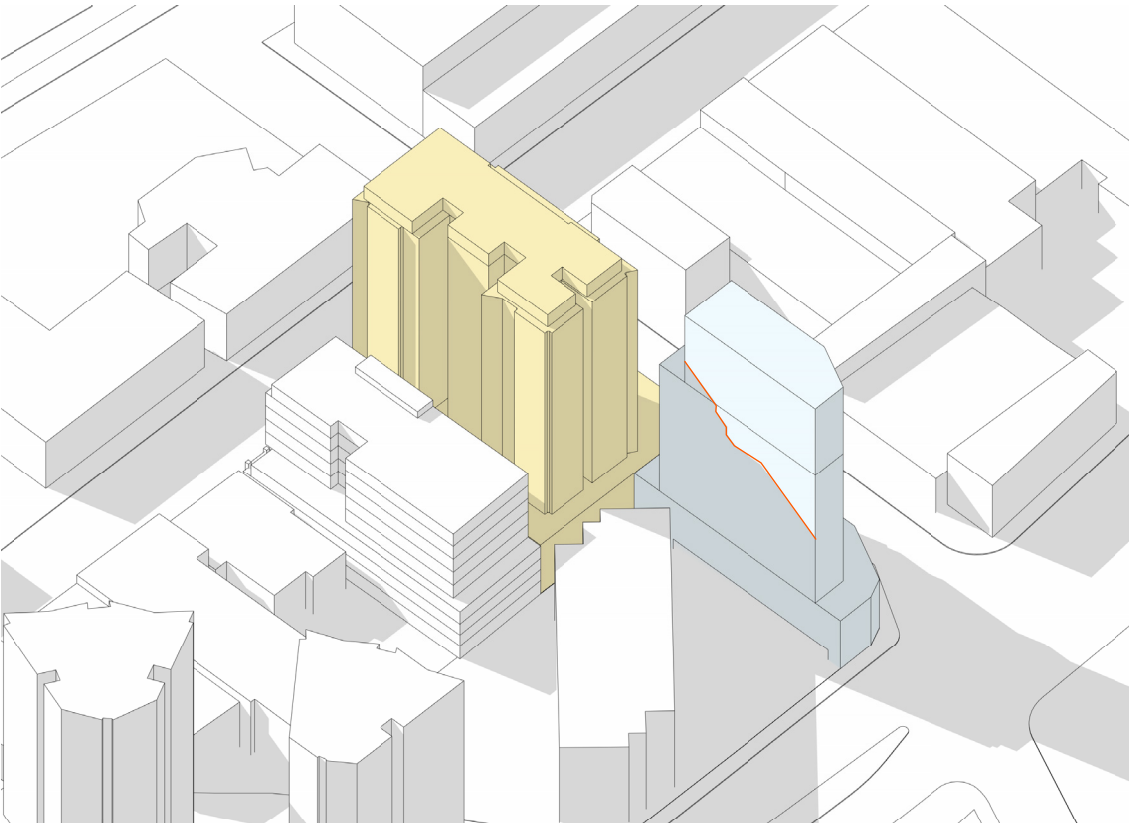
## INCREASED SETBACK STUDY

Conclusion - Proposed development provides a greater view corridor compared to the Increased Setback Study

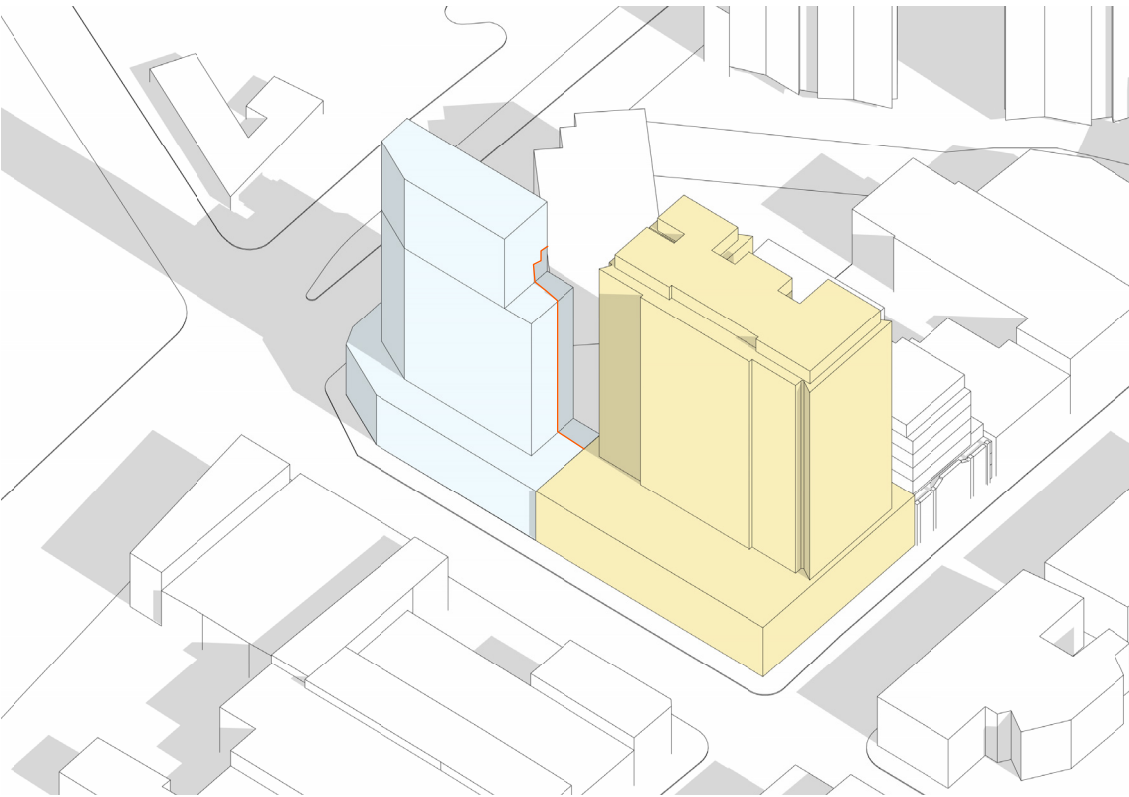


# Solar Access + Overshadowing

## PROPOSED DEVELOPMENT



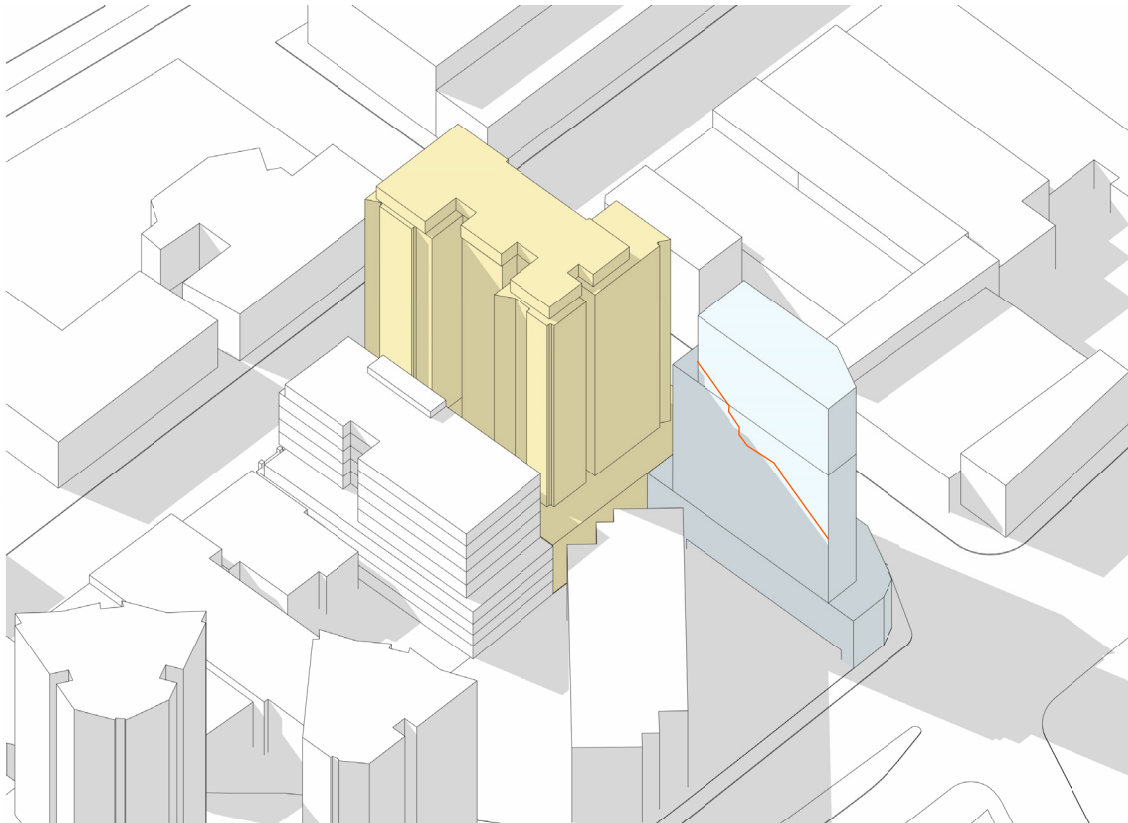
Shadow on Winter Solstice at 12pm



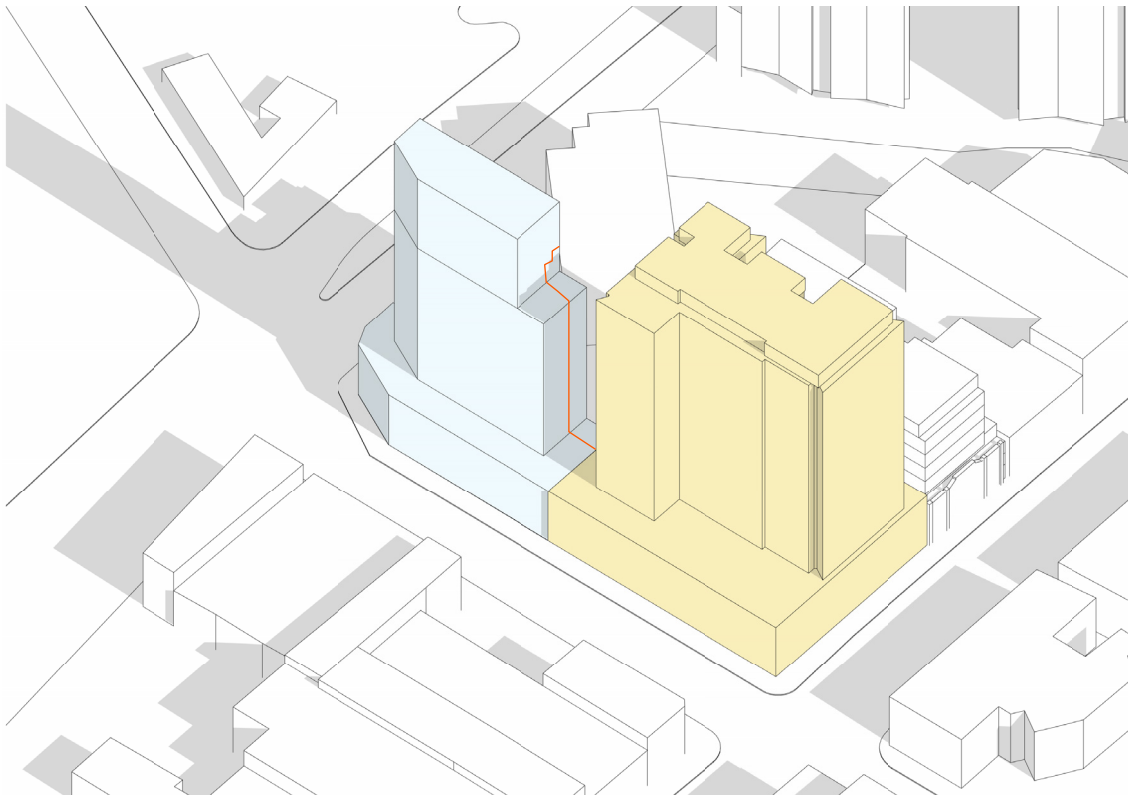
Shadow on Winter Solstice at 11am

## INCREASED SETBACK STUDY

Conclusion - The Proposed development provides less overshadowing compared to the Increased Setback Study



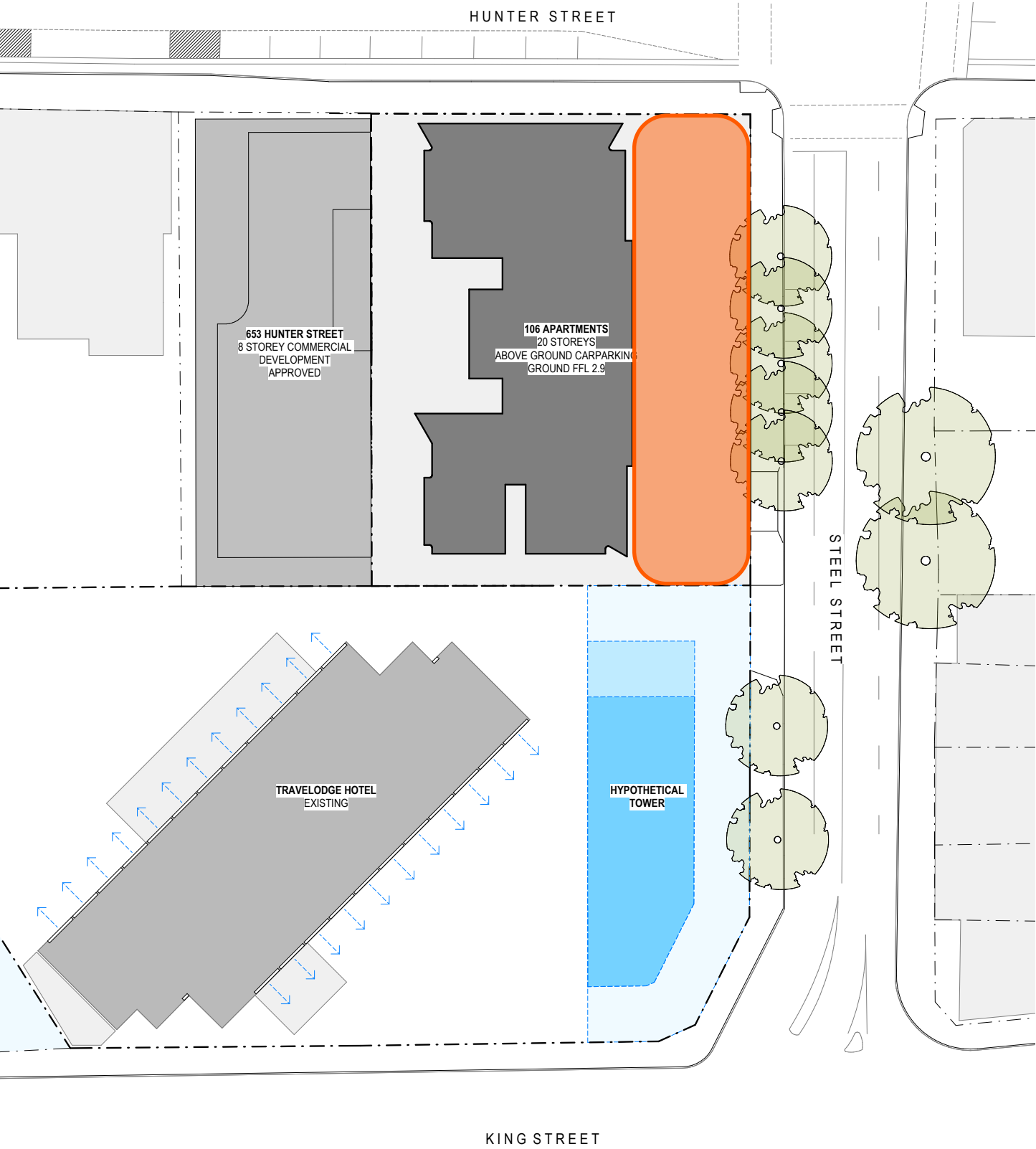
Shadow on Winter Solstice at 12pm



Shadow on Winter Solstice at 11am

# Communal Open Space

## PROPOSED DEVELOPMENT



## INCREASED SETBACK STUDY

Conclusion - The Increased Setback Study has a 34% reduction of communal open space area compared to the Proposed Development. Additionally, the Proposed Development provides the southern neighbour with a visually pleasing outlook.

