



COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSHCC -147 – MA2022/00286 (DA2019/00711) File Number 2019/39309 EXP No 1 National Park Street Pty Ltd v Newcastle City Council
PROPOSAL	Section 4.56 Modification to a Development Application for a mixed used development comprising demolition, retail, commercial, public spaces, residential apartments, associated parking, staging, and stratum subdivision.
ADDRESS	Lot 1171 in DP 858465; Lot 1181 in DP 596950; Lot 99 DP1134475; Lot 1 in DP 741514; and Lot 100 in DP 612505. 1, 17, 19 National Park Street and 434 King Street Newcastle West
APPLICANT	GWH BUILD DEVELOPMENTS PTY LTD
OWNER	EXP NO 1 National Park Street Pty Ltd
MOD LODGEMENT DATE	26 August 2022
ORIGINAL DA DETERMINATION DATE	21 September 2020 Jurisdiction: Class 1 File Number 2019/393097
APPLICATION TYPE	Modification Application under 4.56
REGIONALLY SIGNIFICANT CRITERIA	Clause 2, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : General development with a CIV greater than \$30 million. 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.
CIV	\$73,288,558 (excluding GST)

CLAUSE 4.6 REQUESTS	Not applicable to a Modification Application
KEY SEPP/LEP	<ul style="list-style-type: none"> • State Environmental Planning Policy (Planning Systems) 2021. • State Environmental Planning Policy (Resilience and Hazards) 2021 for consideration of development on land within the coastal environment area. • Environmental Planning Policy (Resilience and Hazards) 2021 for consideration of whether the land is contaminated, and if contaminated, suitable or the purpose of development. • State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development in relation to the advice of an urban design review panel has been satisfied. • State Environmental Planning Policy (Transport and Infrastructure) 2021 in relation to development likely to affect an electricity transmission or distribution network • State Environmental Planning Policy (Transport and Infrastructure) 2021 in relation to traffic generating development. • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • Newcastle Local Environmental Plan 2012 (NLEP 2012).
TOTAL & UNIQUE SUBMISSIONS ISSUES KEY IN SUBMISSIONS	Two submissions received during the notification period.
DOCUMENTS SUBMITTED FOR CONSIDERATION	<p>Appendix A: Draft Conditions of consent</p> <p>Appendix B: Architectural Plans – Date 18 November 2022)</p> <p>Appendix C: Agency Advice – Transport for NSW</p> <p>Appendix D: General Terms of Approval – Mine Subsidence</p> <p>Appendix E: Statement of Environmental Effects (Dated 16 August 2022) and the associated studies and reports as follows:</p> <ul style="list-style-type: none"> • Statement of Environmental Effects and associated studies and reports as follows: • Civil Stormwater Plan (Date: 10 November 2022) • Access Report (Date: 9 August 2022) • BCA Report (Date: 9 August 2022) • BASIX Certificate (Date: 17 August 2022) • Nathers Certificate (Date: 17 August 2022) • ADG Compliance Report (Date: 16 August 2022) • SEPP 65 Design Report (Date: 16 August 2022) • Flood Assessment Review (Date: 9 August 2022)

	<ul style="list-style-type: none"> • Landscape Plans (Date: 4 October 2022) • Stratum Subdivision Plans (no date provided) • Traffic Assessment Addendum (Date: 11 August 2022) • Waste Management Plan (Date: 16 August 2022) • Construction Staging Plans (Date: 11 August 2022) • Capital Investment Value Report (Date: 27 September 2022) • UDRP August Meeting Minutes (Date: 31 August 2022) • Applicant's response to request for information (Date: 28 November 2022) • Owners Consent (Date: 16 August 2022) • Stamped Mine Subsidence Subdivision Plans (Date: 17 October 2022) • Stamped Mine Subsidence Architectural Plans (Date: 17 October 2022)
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	N/A
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	No
SCHEDULED MEETING DATE	14 December 2022
PLAN VERSION	28 November 2022 – Revision L
PREPARED BY	Holly Hutchens, Senior Development Officer (Planning)
DATE OF REPORT	7 December 2022

EXECUTIVE SUMMARY

Referral to the Hunter Central Coast Regional Panel

This Section 4.56 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*.

The Site

The site that is the subject of the approved Development Application DA2019/00711 comprises:

- Lot 1171 DP 858465 No. 1 National Park Street Newcastle West
- Lot 1181 DP596950 No. 17 National Park Street Newcastle West
- Lot 1 DP 741514, Lot 99 DP 1134475, No. 19 National Park Street Newcastle West

- Lot 100 DP: 612505 No. 484 King Street Newcastle West.

The site has two street frontages, to National Park Street and King Street.

Background

On the 21 September 2020 the NSW Land and Environment Court resolved to uphold the appeal and grant development consent to the development application subject to conditions of consent. The approved development application sought consent for the demolition of existing structures, construction of two towers of 22 and 19 stories comprising 193 dwellings; office premises; ground floor retail premises; car parking and associated landscaping and ancillary works. The proceedings, brought under Class 1 of the Court's jurisdiction, was an appeal pursuant to s8.7 (1) of the *Environmental Planning and Assessment Act 1979* against Newcastle City Council's deemed refusal of Development Application DA2019/00711.

The original development was general development with a capital investment value over \$30 million, and was defined as Regionally Significant Development. Pursuant to Section 4.7, of the *Environmental Planning and Assessment Act 1979* and schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011 (or subsequently Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021), the consent authority for the Development Application would have been Hunter Central Coast Regional Planning Panel (HCCRPP) if the application was not appealed in the Land and Environment Court.

In accordance with the Instruction on *Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents* published on the NSW planning portal on 30 June 2020, section 4.56 modification applications are not identified as being an application in which Council can determine, and therefore the application is referred to the Hunter Central Coast Regional Planning Panel for determination.

Proposed Development

The subject application seeks the following modifications:

- *The inclusion of stratum subdivision for the proposal*
- *The staging of the development to allow for staged construction. The development will be split into two stages consisting of the following:*
 - *Stage 1: Podium and South Tower*
 - *Stage 2: North tower and completion of works*
- *Increase the overall height of the building with an additional floor and communal open space moved to the rooftop of the northern tower.*
- *Rationalisation of the floor plans, materials and finishes to improve construction efficiency and correct issues identified during the construction design review.*
- *Amending the number and mix of dwellings and reducing the amount of commercial GFA. This has been achieved by replacing the level 1 & 2 offices and replacing the existing communal space in the northern tower with a dwelling.*
- *Increase carparking provision to accommodate the increased dwelling numbers and reflect a more efficient carpark design.*
- *Changes to the provision of communal space including:*

- *Redesigning and enlarging the rooftop space on the southern tower;*
 - *Moving communal area to northern tower rooftop from level 18;*
 - *Providing a pool and communal area on podium level;*
 - *Establishing a gym and theatre in podium level indoor communal spaces.*
- *Amendment of conditions to reflect updated proposal.*

The proposed built form changes and staging would generate the need to modify the conditions of the consent issued in respect of the Development Application (DA2019/00711). The applicant has detailed that the following condition amendments would be required:

Plans and Documentation

Condition 1.

Development contributions

Condition 3. - To be recalculated for each stage

Stage 1 cost- \$55,473,853

Stage 2 cost- 16,886,365

All other conditions to be amended to reflect proposed staging.

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.

Key issues

The following key issues have been raised with respect to the proposed modification:

- Consistency with current planning controls and the approved development.
- Built form, including height.
- Landscaping.
- Staging.

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 29 June 2022, and during the assessment period, on 31 August 2022 and the 30 November 2022. The application at lodgement was considered well short of demonstrating design excellence. Changes were made to the design during the assessment and improvements have been made to the design, with some of the proposed changes being able to be supported.

The 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.

The increase of approximately 8m in height to the northern tower is not supported by the Panel. The proposed modification for the southern tower is considered acceptable. The differential in height between the two towers is considered a positive urban component of the approved design, which the former Urban Design Consultative Group (UDCG) supported in terms of the southern tower's exceedance in height, and the UDRP shares this opinion.

Staging the development still raises a number of concerns which include, achieving design excellence, and it is unclear how the amenity and construction impacts will be addressed during the construction of proposed Stage 2 to Stage 1 residents.

Exhibition

In accordance with the *Environmental Planning and Assessment Regulation 2000* (ie as relevant at the date of lodgement) and the City of Newcastle's (CN) Community Participation Plan, the Modification Application was notified between **September 2022 until 19 September 2022** and two public submissions have been received in relation to the application.

Recommendation

That Modification Application MA2022/00286, seeking consent to modify DA2019/00711, a Development Application for a *'Mixed use development - Shop top housing*, commercial premises, car parking, associated demolition, landscaping, and site works that has been assessed pursuant to the provisions of the Act, can be supported subject to amended draft conditions of consent and drawings, as contained in **Appendix A**. The application is recommended for approval.

1. THE SITE AND LOCALITY

1.1 The Site

The subject property comprises 1, 17, 19 National Park Street & 484 King Street Newcastle West, and is legally described as Lot 1171 in DP 858465; Lot 1181 in DP 596950; Lot 99 DP 1134475; Lot 1 DP 741514; and Lot 100 in DP 612505. The site is positioned on the corner of National Park Street and King Street, with frontages to both streets. The site is level and has a total area of 4,235m², with 80 metres of frontage to National Park Street and 70 metres to King Street.

The site accommodated a mixture of commercial and retail uses, with the former buildings having various historic uses. The existing buildings have now been demolished to facilitate the development in accordance with the approved development consent. The existing character of the immediate locality is varied and subject to current re-development.

1.2 The Locality

As mentioned above, the former buildings on the site have been demolished and construction of the development has started.

Within the vicinity of the development is the Verve Residence (a mixed-use development including two residential flat buildings and commercial premises) and RSL Lifecare Retirement Village (seniors living), both developments reflect the strategic intentions of the 'Newcastle City Centre West End Precinct'. The area is identified as a precinct with unrealised potential and seeks to become the gateway to Newcastle's City Centre. The subject site is uniquely positioned in close proximity to key public domain sites including Little Birdwood Park and the Cottage Creek corridor. The most recent high-density redevelopments respond to the growing demand for higher density residential and commercial development. Its position is ideal to take full advantage of the transport, retail, public places, and civic open spaces available in central Newcastle.

Fronting Hunter Street are a row of smaller terrace shops, which present in a "piano key" establishment. The subject site is located within the Newcastle City Centre Heritage Conservation Area, the vicinity is a mixture of non-contributory, contributory, and neutral items. There are two existing street trees located along the National Park Street frontage.

The King Street and National Park Street frontage comprise of a concrete footpath with kerb and gutter. A right of way is located behind the piano key development which services the subject site and the shops located along Hunter Street. National Park Street has one existing vehicle crossover, whilst King Street has two.

2. PROPOSAL, BACKGROUND, AND SITE HISTORY

2.1 Details of the Proposed Modification to DA2019/00711

The approved development is for demolition of existing structures, erection of mixed-use development comprising of the construction of two towers of 22 and 19 storeys, containing 193 dwellings; retail and business premises; car parking and associated landscape and ancillary works.

Development Data

Table 1: Development Data

Control	Approved	Proposal
Site area	4,235sqm	-
Overall GFA	23,036sqm	23,069.12sqm
Commercial / Retail GFA	1406sqm South Tower – 565 North Tower – Nil	1285.6sqm South Tower – Nil North Tower – Nil
FSR (retail/residential)	5.5:1	5.44:1
Clause 4.6 Requests	Yes – Hight of Buildings and Building Separation.	No – The variation for height is sought under a modification application.

No of apartments & Type	193 62 x 1 Bed 108 x 2 Bed 23 x 3 Bed	199 38 x 1 Bed 131 x 2 Bed 30 x 3 Bed
Number of dwellings in each tower	South Tower 116 34 x 1 Bed 68 x 2 Bed 14 x 3 Bed North Tower 77 28 x 1 Bed 40 x 2 Bed 9 x 3 Bed	South Tower 117 21 x 1 Bed 76 X 2 Bed 20 X 3 Bed North Tower 82 18 x 1 Bed 54 x 2 Bed 10 x 3 bed
Max Height	Southern Tower <u>Lift Over Run</u> – 78.38m AHD Northern Tower <u>Lift Over Run</u> – 65.98m AHD	Southern Tower <u>Lift Over Run</u> – 80.18m AHD Northern Tower <u>Lift Over Run</u> – 72.76m AHD
Landscaped area	966sqm	638sqm of landscaping across all levels
Car Parking spaces	248	257
Setbacks	Separation distances between the proposed towers: Separation distances between the proposed towers Up to 25m (Level 3, Level 4, Level 5 and Level 6) The separation distance between buildings on the same	The separation between the two towers is slightly less than the ADG, at 22.29m.

	<p>site are not applicable to Levels 3 and 4.</p> <p>At level 5, a minimum 21m separation distance is provided between North Tower habitable space and South Tower habitable space. This complies with the minimum separation distances for buildings on the same site.</p> <p>At level 6, a minimum 22.35m separation distance is provided between North Tower habitable space and South Tower habitable space. This complies with the minimum separation distances for buildings on the same site.</p> <p>Over 25m (Level 7 to Level 18) At Level 7 to Level 18, a minimum 22.35m separation distance is provided between North Tower habitable space and South Tower habitable space. A minimum separation distance of 24m is required between buildings on the same site.</p>	
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2.2 Background

A pre-lodgement meeting was held prior to the lodgement of the application.

A chronology of the modification application since lodgement is outlined below in **Table 3** including the Panel's involvement (briefings, deferrals etc) with the application:

Table 2: Chronology of the Modification Application

Date	Event
29 June 2022	Pre DA – Reviewed by the Urban Design Review Panel (UDRP)
26 August 2022	Modification application lodged
30 August 2022	Exhibition of the application

30 August	Referrals to internal sections - Engineering, City Greening and Assets.
31 August 2022	Reviewed by the UDRP
5 October 2022	Referred to Transport for NSW
19 October 2022	Amended architectural & landscaping drawings Submitted
2 November 2022	Panel Briefing
8 November 2022	Request for additional information from Council to applicant
10 November 2022	Amended civil plans submitted
15 November 2022	Applicant response to UDRP report
17 November 2022	Applicant submitted a comparison report detailing 'Approved DA vs S4.55'.
18 November 2022	Electronic referral to the UDRP
28 November 2022	Applicant response to request for information
28 November 2022	Amended architectural drawings submitted
30 November 2022	Reviewed by the UDRP
30 November 2022	Amended Ground Floor Plan – Ground column shift

2.3 Site History

3. STATUTORY CONSIDERATIONS

When determining a modification application, the consent authority must take into consideration the matters outlined in 4.56 of the EP&A Act in relation to modification of consents provisions, Section 4.15(1) of the EP&A Act in relation to matters for consideration for applications and Part 5 of the 2021 EP&A Regulation in relation to information requirements and notification. These matters are considered below.

The subject application seeks approval for a Section 4.56 modification to DA2019/00711.

3.1 Section 4.56 of the EP&A Act

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the or [the Court] (for Section 4.56 applications) and subject to and in accordance with the regulations, modify the consent if a number of matters are satisfactorily addressed pursuant to Section 4.55(2) of the EP&A Act. The matters include the following:

Section 4.56 applications:

Section 4.56 (1)(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 the consent was originally granted and before that consent as originally granted was modified (if at all) (s4.56(1)(a)), and*

Officers Comment:

With regard to Section 4.56(1)(a), the applicant provided an analysis of the proposed modified development in the applicant's statement of environmental effects, which argues the following;

"The traditional 'test' as to whether or not a development as modified will be "substantially the same" development as that originally approved was applied by Justice Stein and the Court of Appeal in Vacik Pty Limited v Penrith City Council (1992, NSWLEC 8) (Vacik), and endorsed by Justice Bignold in Moto Projects (No. 2) Pty. Limited v North Sydney Council (1999) 106 LGERA 298 (Moto).

Justice Stein stated in the Vacik case: "In my opinion 'substantially' when used in the section [s102, the predecessor of s96, now s4.55] means essentially or materially having the same essence".

Justice Bignold expressed in the Moto case: "The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified ... not merely a comparison of the physical features or components of the development ... rather ... involves an appreciation, qualitative as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)." The matter of "substantially the same" appeared again in Tipalea Watson Pty. Limited v Kurringai Council (2003) 129 LGERA 351.

From this Judgement, a list of matters or 'tests' to consider, being whether the modification involves the following:

- (a) significant change to the nature or the intensity of the use;*
- (b) significant change to the relationship to adjoining properties;*
- (c) adverse amenity impacts on neighbours from the changes;*
- (d) significant change to the streetscape; and*
- (e) change to the scale or character of the development, or the character of the locality*

These tests are explored in detail below;

(a) significant change to the nature or the intensity of the use;

The proposed modification is not considered to be a significant change to the nature or the intensity of the use. The modification will result in essentially the same development being a mixed-use development comprising of two towers with residential and commercial premises, carparking, associated demolition and landscaping. The proposal is modified by the addition of 6 residential units from 193 to 199 (a 3 % overall increase) achieved by adding one level to the proposal within the allowable GFA for the site, along with the reduction of commercial space by 120.4m² (8.6% overall reduction).

As has been demonstrated, the additional floor does not necessarily change the intensity of the use, as the building retains a compliant GFA, indicating the addition is appropriate in the context of the site, therefore the accompanying increase in height cannot be considered to be a significant change to the intensity of the use.

Overall, the modified proposal is considered to be of the same nature and intensity as the approved development given that the majority of the changes have happened within the existing footprint of the development and the overall increase in residences is considered minor, and within the allowable GFA.

(b) significant change to the relationship to adjoining properties;

The proposed modification has demonstrated that the relationship between itself and adjoining properties essentially remains the same, with only a minor increase in shadow impacts compared to the approved development. Given the minor change to the intensity of the use, being 6 dwellings, impacts like traffic and noise will remain the same. The additional height of the buildings does not impact on any views from adjoining properties. Access to development remains the same, as does its impact on the streetscape and existing infrastructure. The proposed modification does not result in significant change to the relationship to adjoining properties.

(c) adverse amenity impacts on neighbours from the changes;

As has been demonstrated by the updated plans, the proposed changes to the building do not result in adverse amenity impacts on neighbours. As previously stated, the updated design results in a minor change to shadow impacts of the approved development and does not impede any views from neighbouring properties. As has been established, the intensity and nature of the development is remaining substantially the same, with impacts assessed under the original proposal essentially equal to those under the revised development.

(d) significant change to the streetscape; and

The proposed modification is considered to improve the overall streetscape appearance when compared to the approved development. The modification has improved the entrance forecourt area by increasing the amount of open space and landscaping and has improved access provisions for all. The King Street façade is a grand urban façade, in the tradition of street wall buildings that define and reinforce the space of the street. The façade has a calm arrangement of horizontal projections, which are counterpointed by a range of minor and major vertical elements.

The National Park Street façade is generously recessed to denote the main entrance into the site, creating a well-proportioned plaza sheltered from the hustle and bustle of King Street. The setback appears to be carved out of the podium and presents a softened edge to the public domain through the use of a sculptural vertical batten screen and vegetation. A

cantilevered street awning provides protection for pedestrians and further defines the main entrance into the site.

Whilst the updated proposal is considered to improve the streetscape presentation of the development, the proposed change to streetscape is not considered to be significant, with only minor variations to the proposed materials and layout to achieve an improved outcome. No radical changes to the approved development are proposed.

(e) change to the scale or character of the development, or the character of the locality

As has been demonstrated, the proposed modified design is considered to be consistent with the approved scale and character of the development. The increase in height by way of the additional floor has not significantly increased the intensity or nature of the development, nor have the changes significantly changed the impacts on adjoining properties. The overall scale of the development is substantially the same, with the increase in height somewhat unnoticeable at ground level and benefits the development by reducing the visual disparity of the buildings when viewed from afar, which would become even more evident given the 90m height limit for lots fronting Hunter Street. The overall increase in height is below the assessed maximum approved height, with the impacts of this variation found acceptable during the previous assessment.

The proposed modification does not result in a change to the character of the locality, being an urban district earmarked for, and already undergoing, renewal and development. The proposed modification achieves the same outcome as the approved development in this regard.

It is our contention the modification does not change the essential features of the approved development and therefore constitutes substantially the same development. This decision is based on the following general considerations:

- The development, as modified, remains a mixed-use building containing an appropriate mix of commercial and residential uses. Conversion of commercial GFA to additional dwellings does not alter the mixed-use nature and definition of the project. The project retains commercial uses at the ground level to activate the streetscape, and the conversion of aboveground office spaces to residential will not reduce the street activation. The office spaces were small in scale and not considered critical to the economic functioning of the CBD.*
- The massing, form and scale of the development is retained with the twin tower configuration above a common podium. Importantly, despite the increased height, the development retains a stepped height between towers to maintain visual interest in the landscape setting, whilst reducing overall visual disparity between the towers from 13m to 7m, and the transition to higher built form anticipated with the 90m height of building control west of the site.*
- The increase in height is considered to not increase the overall intensity of the proposal, as it has been achieved within the GFA allowance for the site. The additional height of the northern tower, including the additional level and rooftop communal area is considered acceptable given the minor increases in impacts on adjoining properties. The overall increase in height is below the assessed maximum approved height, with the impacts of this variation found acceptable for the site during the previous assessment. The increase in height to the southern tower is considered minor and does not increase any impacts on adjoining properties".*

With regard to Section 4.56(1)(a), Council is satisfied that elements of the proposed modification are substantially the same as the development as originally approved. The application as modified would remain as a mixture of retail, business, and residential uses. The proposed changes to the two towers are largely in response to the operational needs of the development, construction constraints, the dwelling reconfiguration and material changes. The inclusion of additional residential units do not significantly alter the intent of the approved scheme.

The modification application continues to adhere to the above reasons for approval in that the use, density, bulk, remain 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, community facilities, employment, and the entertainment precinct. Accordingly, the proposed modification is considered satisfactory in this regard.

However, as noted by the Urban Design Review Panel the increase in height on the northern tower is not supported. The proposed changes to the height of the northern tower and scale of the approved scheme are a concern.

The modification application proposes to stage the construction of the two towers in two stages. The staging of the approved development application raises a number of concerns specifically with design excellence and amenity.

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

Section 4.56 (1)(b)

(b) it has notified the application in accordance with—

- (i) the regulations, if the regulations so require, and*
- (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 (s4.56(1)(b)), and*

Section 4.56 (1)(c)

(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person (s4.56(1)(c)), and

Section 4.56(1)(d)

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be (s4.56(1)(d)).

Officers Comment:

In accordance with Section 4.56(1)(b), (c) and (d), the amended application was notified in accordance with the Newcastle Community Participation Plan and two submissions were received. The matters raised are discussed within Part 5.5 of the report.

(1A) 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 (s4.56(1A)).

Officers Comment:

The matters required to be considered include:

- Matters for consideration pursuant to Section 4.15(1) of the EP&A Act – these matters are considered below in Section 3.2 of this report; and
- Reasons given by the consent authority for the grant of the consent that is sought to be modified – outlined below.

Reasons for Grant of Consent

The NSW Land and Environment Court granted consent to the original development on 21 September 2020 in response to an agreement between parties, pursuant to section 34(1) of the *Land and Environment Court Act 1979*.

During the course of the Court proceedings, the Applicant was granted leave to rely on amended plans. The amended proposal the subject of the agreement was considered to be consistent with the relevant provisions as follows:

- The proposed development comprising 'shop top housing, commercial premises, retail premises' and 'demolition' is permissible within Zone B3 Commercial Core.
- The proposal exceeded the principal development standards in relation to building height and building separation. An exception to the principal development standards in relation to height and building separation standards were sought pursuant to clause 4.6 of the Newcastle Local Environmental Plan 2012. The clause 4.6 written requests were found to be well founded and supported.
- Clause 5.10 of the NLEP is engaged as the DA proposes works on land that is within a heritage conservation area (HCA) and is within proximity to a number of heritage items within the locality.
- The proposal was considered to exhibit design excellence in accordance with clause 7.5 of the NLEP, with a high standard of architectural design exhibited. It was noted that documentary evidence of the waiver of the requirement for an architectural design competition was produced.
- Commercial spaces were provided at the Ground Floor level to ensure active street frontages in accordance with clause 7.6 of the NLEP.
- The proposal is consistent with the provisions of the State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development ("SEPP 65").

- The proposal is consistent with the provisions of the State Environmental Planning Policy No 55 Remediation of Land ("SEPP 55").
- The proposal is consistent with the provisions of the State Environmental Planning Policy (Infrastructure) 2007.
- The proposal is consistent with the provisions of the State Environmental Planning Policy (Coastal Management) 2018.
- The proposal is consistent with the provisions of the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.

The proposed modification is not inconsistent with the reasons for the decision on this consent in that the proposed development remains consistent with the relevant planning controls and expectations for the site given the zoning and other planning controls for the site.

3.2 Section 4.15(1) of the EP&A Act

Section 4.15(1) of the EP&A Act contains matters which the consent authority must take into consideration in determining a development application and modification applications pursuant to Section 4.56(1A), which are of relevance to the application.

These matters include the following, which are considered in detail below:

- (a) *the provisions of—*
 - (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),*
- (b) *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.*

3.2.1 Section 4.15(1)(a) - Provisions of Environmental Planning Instruments, Proposed Instruments, DCPs, Planning Agreements and the Regulations

The relevant provisions under s4.15(1)(a) are considered below.

(a) Environmental planning instruments (s4.15(1)(a)(i))

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 State Environmental Planning Policies are outlined in **Table 4** and considered in more detail below.

Table 3: Summary of Applicable State Environmental Planning Policies (Preconditions in bold)

EPI	Matters for Consideration	Comply (Y/N)
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.	Yes
SEPP 65	<ul style="list-style-type: none"> • Clause 30(2) - Design Quality Principles - The proposal is consistent to the design quality principles and the proposal is consistent to the ADG requirements. Please see the detailed assessment following this table. 	Yes
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 remains over \$30 million. 	Yes
SEPP (Resilience & Hazards)	<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>	Yes

	<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 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>	
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p>Chapter 2: Infrastructure</p> <p>Division 17 Roads and traffic</p> <p>Subdivision 2 Development in or adjacent to road corridors and road reservations</p> <p>Section 2.122 (2) – Traffic generating development with a frontage to classified road.</p> <p>Consultation with Transport for NSW has occurred during the assessment of the Development Application and Modification Application. No further consultation or assessment is required under the Modification Application.</p>	Yes
Newcastle Local Environmental Plan 2012	<p>Clause 2.3 – Permissibility and zone objectives</p> <p>Clause 4.3 – Height of Buildings</p> <p>Clause 4.4 – Floor Space Ratio</p> <p>Clause 4.6 – Exception to Development Standards</p> <p>Clause 6.1 – Acid Sulfate Soils</p> <p>Clause 6.2 – Earthworks</p> <p>Part 7 – Additional Local Provisions – Newcastle City Centre</p> <p>Clause 7.3 – Minimum Building Street Frontage</p> <p>Clause 7.4 – Building Separation</p> <p>Clause 7.5 – Design Excellence</p> <p>Clause 7.6 – Active Street Frontages in Zone B3 Commercial Core</p> <p>Clause 7.9 – Height of Buildings</p>	Yes

	Clause 7.10 – Floor Space Ratio for Certain Development in Area A.	
NDCP	Section 3.10 – Commercial uses Section 4.01 – Flood Management Section 7.03 – Traffic, Parking and Access	Yes

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

State Environmental Planning Policy – Building Sustainability Index BASIX– 2004 ('BASIX SEPP') applies to the proposal. The objectives of this Policy are to ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.

The application is accompanied by BASIX Certificate No. 998995M_03 prepared by Evergreen Energy Consultants Pty committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the BASIX SEPP. The proposal is consistent with the BASIX SEPP subject to the recommended conditions of consent.

State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development

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.

The development application has been reviewed by CN's UDRP, who operate under a charter stating that they undertake the functions of a design review panel for the purposes of both SEPP 65 and Clause 7.6(6) of the NLEP 2012. The development application has been referred to the UDRP on three occasions, including once prior to lodgement of the subject development application at the meetings held 30 June 2022.

After receipt of the development application, the proposal was reviewed twice, at the meeting of the UDRP held 31 August 2022 and again on the 30 November 2022. Written advice from the UDRP confirmed their position that with the expected resolution of some matters identified in the written advice, to the satisfaction of the UDRP, the development could exhibit a high level of design quality. However, it is noted there are a number of matters that are still required to be addressed.

The development proposal has been amended during the assessment process in response to assessment matters raised by CN, including the recommendation of the UDRP. An assessment of the current amended proposal has been undertaken having regard to the UDRP 31 August 2022 advice in relation to the Design Quality Principles, as detailed in **Table**

4 below. CN is satisfied the amendments and additional information submitted has adequately responded to the matters raised by the UDRP in respect to the previous iteration and is considered an appropriate design response.

Table 4: Consideration of Design Quality Principles

Design Quality Principles	UDRP Comments	Applicants Comments
Principle 1: Context and Neighbourhood Character	<p><u>29 June 2022</u></p> <p>A competition was held for the Spotlight site (on western side of National Park Street – The DA for the Spotlight site is expected to be lodged shortly.</p> <p><u>31 August 2022</u></p> <p>No further contextual changes noted.</p>	No further contextual comments.
Principle 2: Built Form and Scale	<p><u>29 June 2022</u></p> <p>Proposed changes which are potentially positive improvements:</p> <ul style="list-style-type: none"> – Corner blade elements – Applicant advised these will be in-situ concrete – Introduction of more variety and more solid elements, and improved shading into facade – Protection of expanses of unshaded glazing exposed to morning and afternoon summer sun – Reduced west-facing glass <p>Issues about design quality generally:</p> <p>Pre-cast concrete construction:</p> <ul style="list-style-type: none"> – Concrete quality control is key to a good outcome – There needs to be an excellent quality of concrete, good detailing, possibly including a mix of natural and through-coloured concrete. Detail must carefully consider joints and water staining over time. – What are the junctions between the pre-cast panels? – The potential for deposits to build up in these joints and then spill down the facade of the building over time. – Details of the panel joints and panel breakups needs to be carefully considered and documented. – The success of pre-cast buildings comes down to how it weathers and gains patina 	

	<ul style="list-style-type: none"> - Expenses of painted concrete are an on-going maintenance issue and expense (this is also not sustainable design). <p>Soft Landscape Areas:</p> <ul style="list-style-type: none"> - Reduction in landscaping area in communal spaces, reduced or eliminated soft landscaping opportunities in the residential lobbies of the towers. <p>Plant and infrastructure</p> <ul style="list-style-type: none"> - All plant and infrastructure practically necessary for the building, needs to be shown on the plans, elevations and sections – including mechanical plant, rainwater tanks, hydraulic boosters, hydrants, air conditioning compressors, meter cupboards, etc. - Close attention is needed to the rooftop plant with respect to distant views – this can often compromise the building profile / appearance. - Concerns about having air conditioning compressors on balconies – need to consider suitable ventilation to the compressors and where the A/C will blow hot air. <p>Communal open space</p> <ul style="list-style-type: none"> - The Panel does not support removing the north tower's rooftop communal open space – there should be communal open space in both towers – residents often don't feel comfortable going into another's towers to use the communal space – socially this needs to be explored. If staged, the developed staging plan needs to ensure that earlier stage(s) have good communal space provisions, and do not await a later stage for amenity. <p>Ground level 'Public Art' area facing National Park Street</p> <ul style="list-style-type: none"> - The Panel has concerns about the narrowing down of this space as it opens onto National Park Street – this is a loss. - Whilst the Panel acknowledged the Applicant's advice that this is proposed to accommodate the span, the Panel encouraged further consideration including the narrowing of the column enclosure shown on drawings and identified as a possible area of amendment by the applicant. <p>Podium - south facade</p> <ul style="list-style-type: none"> - The Panel acknowledged there are privacy and noise issues particularly on the south 	
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	<p>façade of King Street and noted that design development should address this. To that end, it was noted that the open balustrading facing King Street needs to be more solid.</p> <p>Signage</p> <ul style="list-style-type: none"> – Signage needs to be considered as part of the architectural fenestration of the building now, to avoid future business identification signage which detracts from the architectural expression achieved by the approved development. A signage strategy should form part of the design development process with the goal of maintaining an attractive façade and minimising visual clutter, while ensuring there is good wayfinding for visitors to the building (both visitors to the commercial and residential areas). <p>Additional Height</p> <p>The Panel has not at this stage reached a position in respect to the proposed additional floor of apartments on the northern tower.</p> <ul style="list-style-type: none"> – It was noted that the approved proposal's 10% FSR "bonus" was dependent upon achievement of design excellence. The altered scheme needs first to demonstrate capacity for achievement of design excellence before any consideration of possible further height can occur. – It was noted that there had previously been a direct trade-off between the southern and northern towers in respect to height, which had been supported by the UDCG as there was a public benefit arising aesthetically from the differential created, and there was no net additional FSR arising. <p>Documentation</p> <ul style="list-style-type: none"> – Panel acknowledged it is useful to demonstrate how the design has developed and the options considered – however this needs to be more clearly labelled to facilitate an understanding as to what design option is current and what is a superseded option. <p>31 <u>August 2022</u></p> <p>Ground Level</p> <ul style="list-style-type: none"> • Main changes are around forecourt area adjacent National Park Street • The National Park Street forecourt space, while regaining some of its lost openness 	<p>Ground Level</p> <p>The forecourt area has been improved by the addition of larger tree sizes</p>
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	<p>to the street, has become dominated with hard surfaces. It was suggested that the size and or number of the trees and greater utilisation of available deep soil should be pursued. In the approved development this area was quite a green, leafy area.</p> <ul style="list-style-type: none"> • Forecourt area also seems somewhat “bare” now – possibly add some fixed seating –the providing pedestrian circulation paths are maintained. • Fixed built in furniture is preferable – rather than seating that is an afterthought. • Consider also, and give guidance to the seating arrangement for the lessees of the café space. • There is also an opportunity to open the west facade of the north commercial space further. <p>Podium (Level 04)</p> <ul style="list-style-type: none"> • East facing two storey apartments – add landscape beds to create a landscaped small forecourt to each of the apartments. • A form of screening is needed to north edge of Apartment N0405 private open space – to stop direct views to apartment to the north <p>North tower</p> <ul style="list-style-type: none"> • Communal space noted as being added to the north tower – indoor and outdoor. 	<p>to the forecourt area, the softening of hardscape spaces with increased landscaping and increase in the size of some of the planters. Fixed seating has been incorporated into the landscape design that adds improved amenity for users.</p> <p>The west facade of the north commercial space has also been improved moving the planter to make the shopfront more accessible and visible from National Park Street,</p> <p>The café outdoor seating has been shown on the plans.</p> <p><u>Podium</u></p> <p>The landscape area in front of the two storey walk-ups has been increased in size and plantings to provide more privacy and separation, screens have also been introduced. This will achieve a high degree of separation of these apartments from the podium area, which will increase amenity and privacy for the users. In addition, the access path to the units has been revised to a single point of entry, in lieu of the thoroughway previously proposed. This will define the more private front door entry zones to the two storey walk ups and limit the number of pedestrian movements to occupants and guests. Additional screening has been incorporated into the design to minimise views from apartment 0405 north towards units 0404 balcony and living</p>
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	<p>South tower</p> <ul style="list-style-type: none"> • Podium under the south tower is one floor higher than the remainder of the podium – it is set back a little. And is dark in colour. • Concerns about the heat absorption with a really dark colour – dark finishes don't last as long, and absorb and re-radiate heat in summer. The Panel was not opposed to the concept of a recessive mid-tone grey, which in shadow will still appear recessive. <p>Height</p> <ul style="list-style-type: none"> • The Panel noted that it would be very difficult to argue for increases to both FSR and height, and it was unlikely to support a proposition for both. The Applicant indicated that FSR was not proposed to be increased from the DA approval, but height was. • The Panel indicated that is consistently cautious about recommending exceedances to the LEP controls – particularly in respect to height – and unless there is a clear public benefit, the Panel hesitates to support it. 	<p>areas.</p> <p>South tower</p> <p>The proposed 'charcoal' powder coat colour for the window and door surrounds are an integral aspect of the design to make the glazed elements recede, whilst emphasising the light concrete stained vertical blade elements. The darker toned painted facade elements have been adjusted to a mid grey. This retains the design intent of emphasising the lighter frame to the podium wrapping around King St to National Park. The intermediate floor between podium and towers, as well as the facades facing the level 4 courtyard have been adjusted to mid grey also. This will better address the potential for increased heat absorption and be less susceptible to staining over time. It is also noted that the predominant mid grey facade elements are generally south facing or shaded by the opposing tower. The development meets the Basix requirements relating to thermal comfort, energy efficiency and window selection</p> <p>Height</p> <p>The proposed FSR for the project has dropped from 5.5:1 in the approved DA to 5.36:1 in the 4.55 modification. This has been achieved through a general tightening up of the floor areas - mainly in the</p>
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	<ul style="list-style-type: none"> The Panel remains uncommitted in terms of supporting a further height increase - whilst it concedes the substance of the observation that there is significantly greater permissible height on the opposite (western) side of National Park Street. The Panel also concedes that there is an urban design argument for a moderate “stepping” up at this interface, but notes that the approved development already has a height exceedance. In summary, the Panel simply notes that an increase of the scale proposed appears not to raise any concerns in respect to urban design, and defers the further consideration of this aspect to the Consent Authority. 	<p>common circulation spaces.</p> <p>The height of the southern tower has increased marginally from an ultimate height (top of lift overrun) of 78.38m in the approved DA to an ultimate height of 80.02m in the amended DA. An increase of 1.62m.</p> <p>The height of the northern tower has increased from an ultimate height (top of lift overrun) of 65.98m in the approved DA to an ultimate height of 73.82m in the amended DA. An increase of 7.84m.</p> <p>Since the submission of the original DA a proposal has been put forward on the Spotlight site, located on the western side of National Park Street. The winning proposal consists of a twin tower development at 90+ metres in height. The recently completed Verve Towers to the east of One National sit at a height of 66m for both towers. The key principle of modulating the tower forms of One National is to mediate between the 66m high Verve Towers and the 90m+ high Spotlight towers.</p> <p>As outlined, the southern tower for One National is proposed to be increased slightly to allow sufficient height for a transfer slab on podium roof level. The northern tower is to be increased by approximately 7.84m whilst still maintaining the intended modulation between the two One National towers and the adjacent Verve and Spotlight towers.</p> <p>The entire top floor of the Northern tower has now been dedicated</p>
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	<p>Staging</p> <ul style="list-style-type: none"> • Staging of the development raises a range of considerations in respect to the partially completed development, and impacts arising on residents of Stage 1. It also raises the possibility that the development may not be completed as approved. • Whilst noting that the Developer has an established track record of completing projects in the region, and has a broad and deep range of diversified businesses across the industry, projects do get sold on from time to time, and a subsequent owner may not have the resources at its disposal to guarantee full completion of the project. <p>The Panel was advised that it was proposed to place hoardings to separate the Stage 2 work area from the remainder of the podium, noting that the two storey townhouse style units are part of Stage 2.</p> <ul style="list-style-type: none"> • However, while the fencing / hoarding may screen incomplete areas at podium level, a large number of units will be looking down on the area. 	<p>entirely to communal functions, which is a marked improvement to the original DA which consisted of a smaller common space located on the same level as adjoining residential units. Through consideration of impacts beyond the urban form, it is clear that the additional height on the northern tower has minimal environmental impacts. Council's Urban Design Panel did not have any concerns with the principles underpinning the urban design argument for a moderate 'stepping' up of the towers at the interface between the Verve and Spotlight sites and indicated this was an appropriate response to the future context and city skyline.</p> <p>Staging</p> <p>A detailed staging document will be prepared outlining what is involved in each stage and how they will be managed to assure that residents in Stage 1 maintain high quality amenity of the apartments and facilities. It is intended that there will be 6 month lag in the completion of Stage 1 to the completion of Stage 2. All buyers are made aware of the staging requirements at purchase and all efforts are made to reduce impacts and maintain amenity for residents.</p>
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	<ul style="list-style-type: none"> • Even assuming the construction of Stage 2 will be managed efficiently and will make every effort to minimise disruption to Stage 1 residents and businesses, it will be inevitable that there will be a degree of disruption and inconvenience. For that reason, a combined construction of the two towers is far preferable, if it can be achieved. • If that is not the case, it is recommended by the Panel that consideration of a form of “sunset clause” that requires a completion or topping off and landscaping of the podium area, including making good, if the second stage has not commenced in a reasonable (nominated) time. • It is likely that a form of guarantee of performance will be necessary to ensure that resources are available to complete the podium works in a timely manner, if needed. 	
Principle 3: Density	<p><u>29 June 2022</u></p> <p>The proposal for an additional habitable floor on the northern tower was put forward by the Applicant on the basis of the site being immediately adjacent to a zone with controls that support greater heights (with the successful competition scheme for the “Spotlight” site opposite, taking advantage of permitted heights on that site). It was noted that the consistent approach to LEP controls by the Panel is to adhere as far as practicable to the controls, excepting in very limited situations in which specific controls might be considered unreasonable or unnecessary in the context. In the event that minor departures from controls were supported, this is generally in recognition of a public benefit arising. Where no adverse impacts arise, the Panel has, from time to time, supported communal uses of rooftop areas – primarily landscaped open space.</p> <p>At this stage the Panel reserved consideration of the additional floor, but noted that it would be considered in the context of the above parameters.</p> <p><u>31 August 2022</u></p> <p>The Panel was advised that FSR had not increased, although the height is proposed to be. This was said to have been achieved via some efficiencies in corridors and internal planning.</p>	The FSR is compliant with the required standard.
Principle 4: Sustainability	<p><u>29 June 2022</u></p> <p>Not addressed at this stage - however the earlier comments are reiterated. Embodied energy in materials should also be considered over the likely</p>	Noted in relation to painted surfaces. All external surfaces are accessible by rope access and ongoing maintenance has been

	<p>useful life of the development. Concrete and aluminium both have high embodied energy, but careful specification and detailing can both extend durability, and can moderately reduce embodied energy, from the outset.</p> <p>External shading of glazed openings – particularly those exposed to morning and afternoon summer sun - should be examined and responses documented diagrammatically.</p> <p>Potential for thermal “bridging” through aluminium door and window assemblies, should be addressed.</p> <p>Artificial plants are not considered appropriate landscape treatment – even if included as a “supplement” and add to plastic fragments in the waterways when they inevitably break down.</p> <p><u>31 August 2022</u></p> <p>The Panel again noted that painted external surfaces – especially those without easy access, are difficult to re-coat, and require an ongoing resource use and expense. The areas proposed to be in natural concrete finish and those with coloured pre-cast concrete were supported by the Panel, and while limited areas of paint finish are acceptable, this should not make up the majority of the facades.</p> <p>The Panel noted the experience in other local developments with buyers fully subscribing the capacity for EV charging in new developments – with over 50% opting for EV Level 2 charging, or higher, in their individual car parks. This provision is recommended in the subject development, with provision also for future additional charging spaces being a desirable outcome.</p>	<p>factored into the selection of finishes.</p> <p>A number of EV charging ports will be provided for the development, with the provision of infrastructure to enable more in the future being investigated.</p>
Principle 5: Landscape	<p><u>29 June 2022</u></p> <p>It was noted that the areas set aside for soft landscape treatment (with living plants) appear considerably reduced overall, although no landscape plan has yet been prepared. It is unlikely that such a reduction could possibly be supported in terms of maintaining design excellence. Adequate areas of soft landscape, with soil volumes appropriate to the scale of plantings proposed, are essential for a good landscape outcome. Planting in pots or large, exposed containers is not considered a suitable substitute for living soft-landscape on structure.</p>	<p>The landscape design has been amended to include increased landscaping on the podium balcony areas in larger pots and containers. However, there are constraints relating to the quality of the landscaping achievable on the southern areas of the podium due to low sunlight environment and high wind potentials. Efforts have been made</p>

	<p>It also needs to be ensured at this stage, that supporting structures are adequate to support proposed wet soil volumes, taking into account necessary penetrations for hydraulics etc.</p> <p>In respect to the submitted documents, while provision of a swimming pool at Podium level is potentially a positive inclusion in the right location, as proposed, the access to the elevated pool necessitates a long ramp that is circuitous and occupies much of the area - at the unfortunate exclusion of soft landscape opportunities. The resulting outcome is a dominance of hard surfaces and spaces that are compromised by the elevation of the pool and its surrounding deck.</p> <p><u>31 August 2022</u></p> <p>The landscape design has progressed to an extent, and the lowering of the podium-top pool has assisted in creating a more pleasant spatial arrangement. Some areas of planter beds have been created above car parks and other non-internal areas. However, the reluctance to locate soft landscape areas above apartments and habitable interior spaces, has considerably limited opportunities for achieving communal spaces that feel like a generously landscaped area. The design excellence previously achieved in the approved design has not yet been replicated in this respect. Large, barren expanses of paving – whether in individual POS areas of apartments or in communal areas, are not attractive, and further opportunities for introducing soft landscaping- possibly in large containers - need to be pursued.</p>	<p>elsewhere to increase the overall landscaping and amenity for residents. Automatic watering and plumbing will be incorporated into the construction design to assure the viability of the proposed landscaping. GWH have experience in delivering similar size development and understand the importance of soil volume loading etc.</p>
Principle 6: Amenities	<p><u>29 June 2022</u></p> <p>Indication of dual glazing to proposed winter gardens on balconies are supported as a form of improved acoustic and thermal amenity. The use of precast balustrade panels is supported, subject to fine detailing and finish as a means of enhancing feelings of enclosure to the high level balconies. Where previously proposed office and commercial spaces have been substituted by residential units, there needs to be a demonstration that the overall level of amenity and winter solar access and cross ventilation have not been reduced.</p> <p><u>31 August 2022</u></p> <p>Solid balustrade treatments have been proposed, and are supported.</p>	Noted.
Principle 7: Safety	<p><u>29 June 2022</u></p> <p>Needs clarification as to response.</p>	Noted

	<p><u>31 August 2022</u></p> <p>No Further comments</p>	
Principle 8: Housing Diversity and Social Interaction	<p><u>29 June 2022</u></p> <p>The degree of social interaction is likely to be reduced by any centralisation of communal areas in a single tower.</p> <p><u>31 August 2022</u></p> <p>No further comments</p>	Noted.
Principle 9: Aesthetics	<p><u>29 June 2022</u></p> <p>The expression of corner columns including continuing these above the 'skyline' is considered a positive amendment comparable to successful precedents. The later demonstrate the need for design excellence in the material finish and detailing of these prominent building elements.</p> <p>The proposed precast balustrade elements are also potentially supported, again based on the above observations as to detailing and 'build' excellence. Tactility should be considered where concrete balustrades are introduced – eg with well-detailed rails above the concrete upstand.</p> <p><u>31 August 2022</u></p> <p>Materials</p> <ul style="list-style-type: none"> • Primary elements are proposed as a higher quality concrete – while the elements which sit 'behind' the primary elements are proposed to be painted. • The Panel again noted that there is an ongoing need to ensure convenient and safe access to the building's exterior to re-paint precast panels, and presumably for window cleaning. The Applicant advised that they intend to install rope systems for repainting access. • The Panel encouraged further minimisation of the extent of painted exterior surfaces, especially where access is not readily available from the relevant level of the building. • Bleed" points of corrosion on pre-cast panels are often a problem over time, and it was queried how this would be addressed. The Applicant indicated that they use hot dipped galvanised dowels <p>Infrastructure</p> <ul style="list-style-type: none"> • A/c condensers need to be shown on the plans 	<p>As was discussed in the meeting, all external surfaces are able to be accessed by a compliant access system for ongoing maintenance, which has been reflected in the minutes. The extent of painted surfaces has been reviewed and the introduction of more off-form concrete to the vertical slots, mid section of the floor plan, has been introduced. This will retain a subtle contrast to the adjoining mineral stain blades and reduce the need for ongoing maintenance to these elements. The intermediate pre-cast elements such as balustrades and wall panels incorporate form liner textures and a painted colour palette intended to emphasise the strong vertical, concrete finish blades. These elements better integrate with the glazing elements and will be accessible for maintenance, cleaning and repainting when the time arises.</p> <p>Infrastructure</p> <p>Condensers have been shown on the plans, along with all service</p>

	<ul style="list-style-type: none"> • Earlier advice in respect to all infrastructure, including meter cupboards, fire booster assemblies, water detention tanks, etc to be located in DA documentation. • Signage should be considered as part of the architectural design, and signage locations and a set of guidelines for tenancy signage established as part of the overall signage management for the project. <p>Public Art</p> <p>The Panel noted advice that consultation was occurring with Council's Public Art Committee, which was supported. However, it was noted that public art as part of a building needs to be considered also as an urban design integration, and as part of the ongoing design excellence process, it was requested that the Panel be kept abreast of the public art proposal(s).</p>	<p>cupboards, tanks and fire requirements. Signage concepts have been included in the amended plans.</p> <p>Public Art</p> <p>Noted.</p>
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UDRP Meeting 30 November 2022

A brief, unscheduled, discussion of the subject modification proposal for 1 National Park St was held at the UDRP meeting on the 30 November.

The Modification has made some good progress in some areas, from a starting point that was considered well short of demonstrated design excellence.

The addressing of materials and components that are available "in house" within the GWH group has progressed quite well, and the standard of detailing and material selection now has good potential, providing it is carried through at Construction Certificate stage - which appears reasonably likely given the in-house sourcing proposed.

From a poor beginning in respect to the Modification for the Landscape component, some progress has been achieved, and the standard of proposed landscape is potentially able to be considered acceptable - but not excellent design.

The comparative "approved" and "proposed Mod" plans just to hand did reveal some aspects of the Mod that the Panel had not been aware of when it previously considered the Mod. These included the reduction in separation between the podium-top townhouses and the southern podium block, and a tightening of circulation space which in some instances provides poorer amenity. Likewise, the ground level commercial spaces - particularly the street corner retail - have a forest of structural columns within the space that may restrict future occupant fit-out and which may potentially visually degrade an otherwise positive space.

The Applicant's advice provided in the email of 18 Nov, included the following

1. The height of the northern tower has increased from an ultimate height (top of lift overrun) of 65.98m in the approved DA to an ultimate height of 73.82m in the amended DA. An increase of 7.84m.
2. It is intended that there will be 6-month lag in the completion of Stage 1 to the completion of Stage 2.

3. A number of EV charging ports will be provided for the development, with the provision of infrastructure to enable more in the future being investigated.
4. The landscape design has progressed to an extent, and the lowering of the podium-top pool has assisted in creating a more pleasant spatial arrangement. Some areas of planter beds have been created above car parks and other non-internal areas. However, the reluctance to locate soft landscape areas above apartments and habitable interior spaces, has considerably limited opportunities for achieving communal spaces that feel like a generously landscaped area. The design excellence previously achieved in the approved design has not yet been replicated in this respect. Large, barren expanses of paving – whether in individual POS areas of apartments or in communal areas, are not attractive, and further opportunities for introducing soft landscaping- possibly in large containers - need to be pursued.
5. GWH have experience in delivering similar size development and understand the importance of soil volume loading etc.

In Response the Panel notes:

1. The increase of the nearly 8m in height to the northern tower is not supported by the Panel. The proposed modification for the southern tower is considered acceptable. The differential in height between the two towers is considered a positive urban component of the approved design, which the former UDCG supported in terms of the southern tower's exceedance in height, and the UDRP shares this opinion.
2. A six month lag time between stages would probably not be problematic, if achieved - but is there a means/mechanism of ensuring this is adhered to? Is it possible to condition that if a period was expired - say 12 months - before commencement of Stage 2, the full podium top must be completed, including 'temporary' landscaping to a good standard?
3. How many EV points, and what provision for future?
4. See above. Landscape design has improved from the first Mod issue - but that is a low baseline.
5. Landscape standard (design and execution) in completed projects, and the current Mod design, do not offer confidence in relation to the subject project's capacity achieving design excellence for landscape.

These are the primary issues identified.

Officers comment

The UDRP noted that ongoing support is given for some of the amendments that have occurred to the Modification Plan. The UDRP have inferred that the amendments have been proposed in response to their recommendations.

The UDRP have noted that the comparative "approved" and "proposed modification" plans just to hand did reveal some aspects of the modification that the Panel had not been aware of when it previously considered. These included the reduction in separation between the

podium-top townhouses and the southern podium block, and a tightening of circulation space which in some instances provides poorer amenity. Likewise, the ground level commercial spaces - particularly the street corner retail - have a forest of structural columns within the space that may restrict future occupant fit-out and which may potentially visually degrade an otherwise positive space.

The UDRP are in support of some of the proposed modifications that are proposed to the approved development during design development.

The UDRP are supportive of the proposal, however, have confirmed that the elements will need to be further refined. Additionally, the proposed height of the northern tower is not supported. It is noted that the proposed building height is to ensure that the scale of development makes a positive contribution towards the desired built form, consistent with the established hierarchy.

The approved 'off-set' location of the two residential towers results in a good standard of amenity, and satisfactory visual relationship. In order to provide some variation to the skyline profile it was originally recommended by the UDRP that there be some difference in height between the two towers. The original variation to the building height development standard was supported with the UDRP's recommendations.

In summary, the development, as 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. However, aspects of the proposal including a two staged development, the increase in height of the northern tower, and the submitted landscaping plan are not supported.

Apartment Design Guide (ADG).

A SEPP 65 Design Verification Statement (Dated 6 December 2022 prepared by Marchese Partners and CKDS Architecture) 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 2021, 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 the Apartment Design Guide (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><u>Modification Proposal</u></p> <p>Landscaped communal open spaces are provided for access to all apartments. Each apartment in addition has private open space. The roof level of both towers is given over to landscaped open space and communal areas.</p> <p>These areas are provided to maximise amenity for all apartments. In addition, two generous communal rooms and a gym are provided at the base of the southern tower which spill out to the podium level communal gardens.</p> <p>The area of the site is 4238.22m², with 25% of this equating to 1060m². The development has provided 1667.1m² of communal open space, equating to 39.3.7% of the site.</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><u>Proposal</u></p> <p>The Level 20 of the North Tower and the rooftop of the South Tower is a recreational rooftop, is orientated north and achieves a minimum of 2hrs sunlight between 9am</p>	Complies

	and 3pm in mid-winter to over 50% of the area.							
3E Deep soil zones								
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.								
Design Criteria:	Comment:	Compliance:						
1. Deep soil zones are to meet the following minimum requirements: <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.</p> <p>The total site area is 4238.22m². The development provides 638m² of landscaping across all levels.</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. <p>The applicant has stated that achieving the design criteria is not possible due to the location and constraints of the subject site (high density area), and the extensive site coverage with non-residential development at ground.</p> <p>The proposal instead complies with the design guidance for this objective by integrating acceptable stormwater management and alternative forms of planting such as generous planting on structures (Level 4 podium communal open space).</p> <p>Generous communal areas and landscaping on structure has been dispersed throughout the development to offset any shortfall in deep soil planting.</p> <p>The Urban Design Review Panel are not supportive of the reduction in landscaping,</p>	Satisfactory (Merit based assessment)
Site area	Minimum dimensions	Deep soil zone (% of site area)						
greater than 1500m ²	6m	7%						

			this will be conditioned to achieve a satisfactory outcome.	
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:			Distances to boundaries and tower forms are clearly marked across a series of architectural plans. DA-A1-007 shows offset distances to the neighbouring Verve Development to the East. DA-A1-008 shows distances between the two towers as well as the articulation in form of the two towers. DA-A1-009 shows all the individual offset to boundaries. Setbacks to the eastern boundaries has been considered in regard to neighbouring developments and deemed appropriate in consultation with councils Urban Design Panel due to the neighbouring current and future built form. A series of design investigations has occurred to the neighbouring sites to the north to determine what future development might look like on that site. The setback distances to the northern neighbours has been discussed with Council's Urban Design Panel and deemed acceptable. The setbacks to all boundaries remain unchanged from the approved DA. The distance between the two towers is 22.29m. The towers generally have a 6m setback to the eastern neighbouring boundaries to set up a 12m building separation. This is	Satisfactory (Merit Based Assessment)
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.				

	<p>mitigated by the additional distance created by the already developed eastern 'Verve' site.</p> <p>The northern tower is setback 9m from the northern boundary and is justified by an independent feasibility study, which identifies the inability for substantial development to be achieved on the small neighbouring sites to the North.</p> <p>The southern tower typically maintains a 4.5m-5m setback identified along king street.</p> <p>The separation between the two towers is slightly less than the ADG, at 22.29m. However, this is mitigated by several factors, including the offset siting of the two towers. They instead look diagonally across living spaces, rather than directly into each other. This increases the separation distances and creates a glancing, rather than direct sightlines.</p> <p>Additional screening is also incorporated for privacy and solar protection. Furthermore, UDCG comments obtained support the slightly less than 24m separation as well as the slightly lessened 6m setback to king street.</p> <p>As stated, the separation and setbacks remain generally unchanged from the original approval, with no increase in impacts expected.</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.	<p>Refer to drawings DA-A21-010 to DA-A21-013 that show the units that are exposed to sunlight at various times of the day.</p> <p>Refer to drawings DA-A21-020 to DA-A21-022 show each unit and the areas marked</p>	<p>Solar Access complies – Yes</p> <p>Units with no solar access-considered satisfactory</p>

	<p>in a coloured hatch to explain the exposure to natural sunlight.</p> <p>A table has been provided on drawing DA-A21-022 that clearly outlines the percentage of units that achieve 2 hours and 3 hours of sunlight.</p> <p>The living rooms and private open space of 166 out of the 199 apartments proposed, or 83.4%, will achieve a minimum of 2hrs sunlight during 9am and 3pm at mid-winter, which exceeds the minimum requirement.</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>32 units out of the 199 apartments subject to the proposed modification, or 16%, will receive no direct sunlight between 9am and 3pm at mid-winter. (For details refer to drawing Solar Access Diagram, drawing no:DA-A21-022, rev: E, dated 2022, prepared by CKDS and Marchese). The approved DA had 30 units of 193 units, or 15.5%, receiving no sunlight between 9am and 3pm.</p> <p>This change in percentage of 0.5% is considered minor, and the proposed modification is consistent with the original approved scheme in relation to solar access.</p>	Satisfactory
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	61 units have openable windows in at least two orientations for excellent cross ventilation in the first nine storeys of the development. When the ADG dispensation on units above level 9 is factored in, the percentage rises to 149 units (73%), which	Complies

natural ventilation and cannot be fully enclosed.	<p>is in excess of the 60% cross ventilation requirement in the ADG.</p> <p>61 out of the 101 apartments proposed on the first nine storeys of the proposal, 60.3%, are naturally cross ventilated.</p> <p>No enclosed balconies are proposed.</p> <p>For the single aspect apartments, the layout and design maximise 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>	
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:								
<p>1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <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 promote future flexibility of use</td></tr></table> <p>These minimums do not preclude higher ceilings if desired.</p>	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 promote future flexibility of use	<p>All habitable rooms have ceiling heights of ≥ 2.7m</p> <p>All non habitable rooms have ceiling heights of ≥ 2.4m</p> <p>All storeys containing apartments (Level 2 to Level 29) have a floor-to-floor height of at least 3.1m.</p> <p>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-habitable rooms can be achieved for all apartments.</p> <p>The site is not located within the B4 Mixed Use zone as such the increased ceiling heights for ground and first floor described in this part of the ADG are not applicable.</p>	
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 promote future flexibility of use									

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:										
<div>1. Apartments are required to have the following minimum internal areas:</div> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> <div>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</div> <div>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</div>	Apartment type	Minimum internal area	studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<div>Layouts of rooms are functional, articulated to make best use of the design's character and provide a high standard of amenity.</div> <div>The applicant has identified the following apartment as the smallest apartments in the development:</div> <div>Type 1 smallest: 1I @ 54.7sqm approx. (1 bed)</div> <div>Type 2 smallest: 2L @ 75sqm approx. (2 bed)</div> <div>Type 3 smallest: 3B + 3C @ 106sqm approx.</div> <div>This shows that all apartment sizes are compliant with the requirement.</div>	Complies
Apartment type	Minimum internal area											
studio	35m ²											
1 bedroom	50m ²											
2 bedroom	70m ²											
3 bedroom	90m ²											
Design Criteria:	Comment:	Compliance:										
<div>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.</div>	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:										
<div>1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</div>	<div>N/A</div> <div>(all apartments are provided a combined living/ dining/ kitchen area)</div>	N/A										
Design Criteria:	Comment:	Compliance:										
<div>2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</div>	All apartments proposed have a maximum habitable room depth of 8m from a window for open plan living, dining and kitchen area.	Complies.										
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).	All bedrooms have a minimum dimension of 3m (excluding wardrobe space).	Complies												
Design Criteria:	Comment:	Compliance:												
3. Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none">• 3.6m for studio and 1 bedroom apartments.• 4m for 2 and 3 bedroom apartments.	<p>The majority of units comply with this requirement.</p> <p>The design guidance for this objective acknowledges that a merit based assessment is appropriate in circumstances where minimum areas or room dimensions are not met.</p> <p>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> <p>As such, the proposal complies with the design guidance for this objective.</p>	Satisfactory (Merit based assessment)												
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:	Primary balconies depth All apartments have primary balconies that achieve the minimum depths required.	Complies												
<table><tr><th>Dwelling type</th><th>Min. area</th><th>Min. depth</th></tr><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></table>	Dwelling type	Min. area	Min. depth	Studio	4m ²	-	1 bedroom	8m ²	2m	2 bedroom	10m ²	2m	Primary balconies area 312 out of the 352 total apartments have primary balconies that achieve the minimum area required.	Satisfactory (Merit based assessment)
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		
The minimum balcony depth to be counted as contributing to the balcony area is 1m.				
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 04 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: 1. The maximum number of apartments off a circulation core on a single level is eight.			Comment: Typically, the maximum number of apartments accessed off a single core is 5 or 6. This differs throughout the podium levels where double storey apartments are provided and with shared access from both tower cores and communal open space.	Compliance: complies
Design Criteria: 2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.			Comment: The north tower contains 82 apartments and two lifts servicing the residential apartments. The south tower contains 117 apartments and two lifts, meaning, on average a single lift will service 58.5 respectively. A condition has been included in the recommended Draft Schedule of Conditions.	Compliance: Satisfactory (Merit based assessment)
4G Storage				
Objective 4G-1 Adequate, well designed storage is provided in each apartment.				
Design Criteria: 1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:			Comment: All apartments have been provided with ample storage, similar amounts to those provided in other approved developments including Sky Residences, Verve Apartments, Dairy Farmers corner and Aero apartments.	Compliance: Satisfactory
Dwelling type	Storage size volume			
1 bedroom	6m ³			
2 bedroom	8m ³			

3+ bedroom	10m ³	Each unit has a separate linen cupboard and oversized wardrobes to provide residents with ample storage. Each of the units are also provided with a minimum of 4m ³ external storage, located in car park areas.	
At least 50% of the required storage is to be located within the apartment.			

State Environmental Planning Policy (Planning Systems) 2021 ('Planning Systems SEPP')

Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 2 of Schedule 6 of the Planning Systems SEPP as the proposal is development for General Development over \$30 million. Accordingly, the Hunter Central Coast Regional Planning Panel (HCCRPP) is the consent authority for the application. The proposal is consistent with this Policy.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2: Coastal Management

- Section 2.10(1) & (2) - Development on land within the coastal environment area

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.

Section 2.10(1) & (2) provides that development consent must not be granted to development on land that is within the coastal environment area unless the consent authority is satisfied that the proposed development will not cause an adverse impact on: the integrity and resilience of the biophysical, ecological and hydrological environment, including surface and groundwater; coastal environmental values and processes; water quality of any sensitive coastal lakes; marine vegetation, native vegetation and fauna and their habitats; existing public open space and access to and along the foreshore; and Aboriginal cultural heritage.

The development is located upon highly disturbed land and has been commercially used for many decades with the current site being nearly 100% hardstand and including two existing buildings. It is considered that the current proposal will have no likely impacts on the coastal environment area under the SEPP and is acceptable particularly in relation to the biophysical environment and coastal processes and maintaining public access to the foreshore.

The proposal will have no material impact on environmental, coastal, native vegetation, surf zone or access issues listed above. Similarly, the long historic usage of the site for industrial and commercial uses, plus its highly disturbed nature, leaves negligible coastal attributes remaining as part of the subject site. The proposal has been assessed in terms of Aboriginal heritage and archaeological aspects and is considered to be acceptable. Overall, the proposal is acceptable, on balance, in terms of its impacts.

Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021 ('the Resilience and Hazards SEPP')* have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent

authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out. In order to consider this, a Remediation Action Plan has been prepared for the site. There are no proposed changes to the approved remediation plan that form part of the Modification Application.

The proposal is considered to be consistent with Chapter 4 Remediation of Land of the Resilience and Hazards SEPP, subject to imposition of relevant conditions of consent in relation to remediation works during construction on any consent granted.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Division 17 Roads and traffic

Traffic-generating development

Clause 2.121 requires development specified in Column 1 of the Table to Schedule 3 (Traffic generating development to be referred to TfNSW).

Transport for NSW have provided comments to assist the consent authority in making a determination on the 25 October 2022.

The provisions of the Infrastructure SEPP can be met via appropriate conditions of development consent.

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 development application 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 as modified 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.
- Provides for the retention and creation of view corridors.

Additionally, it is noted that the 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 Development Application, consideration was given to a variation to Clause 4.3 'Height of Buildings'. Building height has been measured from Natural Ground Level (NGL – 2.2m) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like. The original application was approved with a building height of 76.18m, (78.380 AHD) measure from the NGL to the lift overrun exceeding the NLEP prescribed height limit of 66m by 15.42%.

The proposed modification to the approval includes a further increase to the maximum building height, being from 76.18 (78.380 AHD) to 77.8m (80m AHD) to the topmost part of the building (lift overrun) of the southern tower. Additionally, the height is proposed to change from the approved 63.78m (65.98 AHD) to 71.62m (73.82 AHD) to the topmost part of the building (lift overrun) of in the north tower. This will result in a maximum height of 77.8m from the natural ground level. The total amended height represents a 1.62m increase to the southern tower and a 7.84m increase to the northern tower and a 17.87% variation from the maximum height (66m) permitted under the NLEP.

It is advised that the subject site is located in the height of buildings mapping 'Area AA – 60m' as identified. However, it is noted that under Part 7 Additional local provisions – Newcastle City Centre cl 7.5(6) provides for an additional 10% height for development that exhibits design excellence, as extracted below:-

“7.5(6) The consent authority may grant consent to the erection or alteration of a building to which this clause applies that has a floor space ratio of not more than 10% greater than that allowed by clause 7.10 or a height of not more than 10% greater than that allowed by clause 4.3, but only if the design of the building or alteration has been reviewed by a design review panel”.

The applicant contended during the assessment of the original development application that the development standard for height included the provision of the 10% as detailed under cl 7.5(6) therefore the maximum height was accepted as 66m, and the variation sought was then identified as a 15.42%. As the southern tower exceeded the provisions of 7.5(6) (66m) a clause 4.6 variation to the development standard under Clause 4.6 of LEP 2012 was submitted.

This change in height from the original approval is limited to a 1.62m increase to the southern tower and a 7.84m increase to the northern tower. The additional height stems from modifications sought to achieve a higher yield in the number of apartments, ensuring the proposal remains feasible.

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, as noted by the Urban Design Review Panel the further increase in scale of the development is of a concern.

The increase of the nearly 8m in height to the northern tower is not supported by the Panel. The proposed modification for the southern tower is considered acceptable, however the differential in height between the two towers is considered a positive urban component of the approved design, which the former UDCG supported in terms of the southern tower's exceedance in height, and the UDRP shares this opinion.

It has not been demonstrated that the development will not result in excessive height or scale.

In a broader context, aspects of the proposed design amendments and the additional height do result in a substantial increase on the development footprint. It has not been understood how the proposed amendments to the approved building form will accommodate the additional height cohesively.

For these reasons, the proposal as modified does not remain consistent with the objectives of Clause 4.3 of the NLEP. Therefore, it has been conditioned that the removal of one residential level on the northern tower is to occur.

Clause 4.4 Floor Space Ratio

The maximum Floor Space Ratio (FSR) for the site is identified as 6:1 under 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). Notwithstanding, under clause 7.5 of the NLEP the consent authority may grant consent to the erection or alteration of a building to which this clause applies that has a floor space ratio of not more than 10% greater than that allowed by clause 7.10 but only if the design of the building or alteration has been reviewed by a design review panel. As the proposal achieved design excellence the development was considered and approved with an FSR of 5.435:1, which was compliant with the maximum 5.5:1 FSR.

The proposed amendments to approved development result in a slight increase to the GFA (23,069.12 sqm) resulting in an FSR of 5.44:1. 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 bulk.

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 subject site is identified as containing Class 4 Acid Sulphate Soils (ASS). The potential disturbance of acid sulfate soils during earthworks has been assessed under the original approval. No changes are proposed under the modification application.

Clause 6.2 Earthworks

Earthworks remain consistent with the original development application.

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 frontage of more than 20m and less than 100m both along National Park Street and King Street, satisfying this requirement.

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 development as approved has a building separation slightly less than that recommended in the ADG and LEP 2012 being 22.35m.

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 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 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 not achieved design excellence, as considered by the UDRP.

The modified plans were referred to the UDRP on four occasions during the assessment of the modification application. The UDRP have provided feedback to ensure that the overall design achieves design excellence. The modified proposal is required to meet the design excellence criteria of the NLEP ensuring 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, National Park Street and King 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 Provisions of any Proposed Instruments (s4.15 (1)(a)(ii))

There are several proposed instruments which have been the subject of public consultation under the EP&A 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 Development Application with regard to the objectives and controls of the Newcastle Development Control Plan 2012.

Section 3.10 - Commercial Uses

This section encourages commercial development that attracts pedestrian traffic and activates street frontages. The inclusion of retail/commercial uses on the ground level of development will provide an active street frontage to both National Park Street and King Street and will encourage and improved pedestrian movement along these street frontages with the Zone B3 Commercial Core and Newcastle City Centre location.

The modification application remains consistent with the aims and objectives of this section of the NDCP 2012. The subject site is in an ideal location for the proposed commercial/retail premises due to proximity to public transport, services, retail, and recreational areas.

The proposal has been architecturally designed and will provide an active street frontage, with visual connection into commercial/ retail uses at ground level.

Section 4.01 – Flood Management

Flood Assessment Process at DA2019/00711

A site-specific flood impact assessment was undertaken by Northrop Consulting Engineers as part of the original approval for DA2019/00711. The study was undertaken to determine the impact from flooding and to manage the flood planning for the development.

A peer review of the submitted report was done by CN and the report was accepted.

Subsequent remaining flooding matters were resolved as part of the LEC process and conditions were recommended.

Current DA Application & Flood Planning

Wallace Infrastructure Design Pty Ltd have undertaken a desktop analysis of the preliminary plans and stated that the submission is generally consistent with the intent of the approved application.

CN was concerned that the initial plans did not indicate the approved ground floor levels. The revised submitted architectural ground floor plans have indicated the approved levels including confirming levels for the substation and electrical main switch room, lift and associated circulation areas, ramps and fire passage levels and commercial unit levels.

Flood refuge locations are generally accessible from ground levels and fulfills the intent of the approval.

Flood storage areas, generally being the vehicular access and ground floor parking areas is consistent with the approved plans and will not be impacted.

Conclusion

The proposed development has considered and addressed the impacts of flooding and the risks associated with flooding on the site and the surrounding areas. Concerns and comments

that was raised by CN have been subsequently addressed. The proposed development generally is supported.

Section 7.06 Stormwater Management

Introduction

Wallace Infrastructure Design Pty Ltd have been engaged by the applicants to undertake the stormwater design review for the proposed development application. The revised stormwater plans have a consistent approach to the previously approved application and design changes have been made to reflect the approved principles.

Stormwater Reuse, Retention and Treatment

The revised stormwater design has indicated a 20 KL stormwater reuse tank and a 90KL volume for retention, which is consistent with the approved DA. The reuse will be generally for the retail level on the Ground Floor, commercial levels and the podium level landscape and ground level landscaped areas. Stormwater quality and quantity has been designed to mitigate downstream impacts. The following features are noted in the design

- Rainwater Tanks (20 kilo litres) for stormwater reuse.
- Stormwater Detention (90 KL) for stormwater control
- Stormwater treatment provided via Water Treatment Chamber. The chamber has been installed with SPEL filter cartridges, which will provide the stormwater treatment for the site.
- Discharge is proposed to be connected to the existing on-road drainage system on King St and National Park St.

It is recommended that a SPEL type or similar pit insert be installed at the stormwater pit located within the property fronting National Park St to provide stormwater treatment for the right of carriageway areas. This will mitigate any larger (gross) pollutants entering into the road drainage network. Condition is recommended.

Drainage Connection

Stormwater design allows the discharge from the on-site detention tank to be connected to the existing kerb inlet pits (KIP) on King St and National Park St.

Easement for Stormwater Purposes

Stormwater pits are proposed within the right of carriageway, which are generally consistent with the approved plans. However, there seems to be no right to drain water over the right of carriageway area.

Adjoining properties seem to be historically discharging stormwater over the right of carriageway area. Such an easement can also assist in management of future developments along the Hunter St property to drain stormwater via the right of carriageway and formalise the historic use of the area for drainage purposes.

Discussions have been held in this regard and the applicants understand that such a process can be managed with the existing requirements for the management of the right of carriageway.

A condition is recommended to ensure that an easement to drain water is established, which benefits the adjoining properties already benefiting from the right of carriageway.

Maintenance & Monitoring and Safety

The proposed stormwater structures will require regular monitoring and maintenance to ensure the system is functional. A detailed monitoring and maintenance plan will need to be provided with the CC submission as previously conditioned.

Conclusion

The principles of WSUD and the requirements of the DCP have been applied to the development. The submitted stormwater plans and supporting documents have demonstrated that the development will not impact on the downstream stormwater system and is sustainable.

Generally, the amendments to stormwater conditions are supported.

Section 7.03 Traffic, Parking and Access

Driveway Design and Right of Carriageway Use

Vehicular access for the development is from the existing driveway located at National Park St. The driveway will be modified, and additional civil works will be to be undertaken on the right of carriageway area to ensure that the access is designed to suit the new development traffic movements.

The access from the National Park St site frontage is generally as per the approved DA and the driveway on King St will be made redundant.

The right of carriageway access width of 6m has been retained and will provide for a two-way traffic movement. Pedestrian access along the north of the access has also been retained.

However, new doors to access the Water & Gas Meters and Fire Control Room have been introduced along the southern side of the right of carriageway, which opens onto the access. Hence the doors encroach over the 6m wide right of carriageway.

CN had raised concerns that the maintenance operations may impact on the vehicular access and safety concerns for people accessing these service rooms during maintenance.

Applicants have proposed additional chevron style line marking along these service rooms on the south side of the right of carriageway.

It is noted that the right of carriageway will be restricted to a minimum 4.5m height limit as the proposed new building will be built over the right of carriageway.

The following features are principally retained as per the approval:

- The development proposal has considered the vehicular and pedestrian access needs for the adjoining properties, which have been generally maintained.

- The proposed piers on the ground level along the right of carriageway have been designed at locations consistent with approved plans.
- The revised submission has considered pedestrian access along the right of carriageway, sightlines for existing properties driveway access and maintained adjoining property parking areas.
- Sightline provisions at the driveway entrance at the interface with National Park St have been designed to ensure that drivers have clear view of pedestrians.
- The right of carriage way will need to be upgraded with new pavement to facilitate for the proposed development and for additional vehicular load over access.
- The ground floor access to the parking areas has been generally designed as a slow environment to accommodate for pedestrian and cyclist movements.

An additional pier has been proposed adjoining the roller gate of 689 Hunter St property, that is, the southern end of 695 Hunter St property. This pier must be appropriately located to ensure that the parking areas and access for 695 Hunter St and 689 Hunter St is not impacted.

- An additional condition is recommended to ensure that the piers are designed at appropriate locations and access to the existing properties access the right of carriageway is maintained.

Generally, the vehicular access on the ground level was approved for medium rigid vehicles (MRV) to enter and exit in a forward direction. Changes to the ground level have been done with a roller gate to the car parking proposed and reduced width for MRV turning within the circulation area.

- An additional condition is recommended at construction certificate stage 1 to ensure that final ground floor turning area be appropriately designed for at least MRV vehicles to turn within the site.

It is noted that that matters arising from the use of the right of carriageway is generally a civil matter and may need to be resolved by the applicants and the owners of the adjoining lots who benefit from the access.

Proposed Roller Gate

A new roller door with 3.2m height clearance is proposed at the entry of the access to the car parking. The additional height will allow smaller delivery vehicles to access the commercial parking.

The proposed roller gate and car reader will require to be appropriately managed and operated. Residential visitor car parking must be made accessible at all times.

- An additional condition is recommended to ensure an operational management plan is developed to manage the car parking access and roller door.

Car Parking and Access Design

Internal vehicular access ramps have generally been designed to Australian Standards. The design of the internal parking and loading zone areas are generally compliant and vehicles will be able to enter and exit from the site in a forward direction.

Signs, line markings and traffic flows are proposed to ensure that traffic flows and safety within the development parking area and right of carriageway is appropriately managed. Additional safety elements such as flashing lights, mirrors at the ramps and speed and slow down signs will further enhance safety within the parking and access areas.

Parking Demand

Introduction

Intersect Traffic have provided a traffic report and GWH have provided additional traffic and parking information in response CN's request for information (RFI). The addendum traffic report and response to RFI by GWH have generally addressed the issues raised by CN.

Overall, the revised architectural plans and GWH response confirms that a total of 275 car parking spaces is proposed within the four (4) levels of car parking. The increase in car parking is generally due to changes car parking layout and conversion of some longer spaces to stacked parking spaces.

Although the current DCP (Effective from 1 November 2022) have savings provisions allowing the use of the previous DCP car parking rates, there is clear opportunity for this development to achieve compliance with the current DCP. The revised submitted plans and subsequent responses to RFI have achieved the parking requirements based on current endorsed Traffic, Parking and Access DCP.

Overall, the proposed development meets CN's current DCP car parking requirements and the proposal is supported.

Proposed development and approved DA car parking breakdown and DCP Parking Rates comparison as follows:

Table 1 - DCP Car parking proposal as follows:

	Approved Units	Proposed Units		Current DCP Parking Rates – (Effective 1/11/22)	Proposed MA2022/00286 Car Parking		Previous DCP Parking Rates	Previous DCP Approved Car Parking
		Stage 1	Stage 2					
Studio / 1 bedroom	62	21	18	1 space per dwelling	21	18	0.6 space per dwelling	210
2 bedrooms	108	76	54	1 space per dwelling	76	54	0.9 space per dwelling	
3 bedrooms	23	20	10	2 spaces per dwelling	40	20	1.4 spaces per dwelling	
Total for Residential		117	82		137	92		
		199 Units			229			

Residential Visitor			No minimum or maximum	20 (Additional 8 commercial spaces to be used as visitor spaces outside business hours) (Includes 2 Disabled Visitor Spaces)	1 per first 3 units and 1 thereafter for every 5	39
Commercial / retail		1285m2	No Specified Rates – based on demand	26 (Includes 1 Disabled Commercial Space)	1 per 60m2 GFA	25
Loading			As per proposed Use	Light Vehicle: use commercial spaces as required	As per proposed Use	Light Vehicle: use commercial spaces as required
				Medium Rigid Vehicle (MRV): 1		Medium Rigid Vehicle (MRV): 1
Total Development Car parking				275		248

Table 2 - Proposed and Potential Car parking breakdown due to potential Stacked Parking as follows:

Car Parking	Ground Floor	Ground Mezzanine	Level 01	Level 02	Level 03	Comments
Residential Visitor	20 (Includes 2 disabled spaces)					
Commercial	26 Spaces Includes 13 Stacked Parking (26 spaces) (Includes disabled space)					
Residential Car Parking		35	59	70	65	

		(14 spaces are longer parking bays)	(11 spaces are longer parking bays)	(11 stacked parking bays (22 spaces))	(2 spaces are longer parking bays) (7 stacked parking bays (14 spaces))	
Motorbike	1	3	2	2	3	11 (As per CKDS Rev K Plans)
Bicycle	48	Storage areas are proposed to be used as bicycle parking. Longer parking bays is proposed to be used as bicycle parking.				Provide for electric bicycle & scooter chargers
EV Charger	4 Residential Visitor Spaces – V.07, V.10, V.13 & V.16					Additional EV Charges will be required (5%) – min. 13 spaces
Total Car Parking	46	35	59	70	65	275

Residential Off-street Car Parking

The development has maintained the number the residential units and the number of bedrooms per unit is also retained as indicated in Table 1 and 2 above.

Comparisons for the car parking requirements between the previous Traffic, Parking & Access DCP and the current DCP, which came into effect on 1 November 2022 have been accounted by Intersect Traffic (Traffic Consultant).

Meetings held between the applicants and CN have discussed the current DCP parking requirements and hence out of the 275 car parking, 229 car parking spaces are for residential units and are purposely designed to achieve compliance with the current Traffic, Parking and Access DCP.

Residential Visitor and Commercial Off-street Car Parking

The development will provide 20 dedicated residential visitor parking. 26 commercial car parking spaces is proposed for the commercial component, out of which 8 commercial spaces are proposed to be used as visitor parking outside business hours.

The proposed development has a minimum 28 visitor spaces. If the remaining 6 commercial stacked spaces are also used as visitor parking, then there could be 34 visitor parking spaces available outside business hours.

The multi-use of commercial car parking is supported.

- An additional condition is recommended to allow for the commercial spaces to be used as visitor parking outside business hours.

Two (2) of the visitor parking spaces and one (1) commercial space is proposed to be designed as disabled parking and meets AS2890.6 design criteria.

Four (4) visitor spaces are proposed to be installed with Electric Vehicle Charging stations.

Motorbike Parking

11 Motorbike parking spaces have been indicated on the plans, whereas 12 motorbike parking was approved. There are ample areas available within the site to provide 12 motorbike parking spaces in line with the approved DA condition.

Bicycle Parking

The revised plans propose approx. 48 bicycle parking spaces on the ground floor car parking level, which can be used by the commercial tenancies and visitors.

GWH have stated the proposed storage areas and additional length to the longer car parking spaces could be used as bicycle parking spaces for residents, thus achieving compliance with the DCP.

Each residential unit is required to be provided with 1 bicycle space, therefore a total of 199 bicycle parking is required.

Overall, at minimum, 226 bicycle parking must be proposed as per the approved DA.

End user facilities for commercial such as showers, change rooms and lockers was requested by CN, however the applicants have stated that such facilities could be done via internal fit out of the commercial units as wet areas and toilet locations are noted on the plans. Although this is understood, if such end user facilities are not appropriately designed, then retro fitting becomes an issue.

- A condition is recommended to ensure that the end user facilities is provided as part of the Stage 1 design.

Plugin Electric Vehicle Charging (EVC)

The draft Environmental Planning and Assessment Amendment (Design and Place) Regulation 2021, relating to the draft State Environmental Planning Policy (Design and Place) 2021 may not be proceeding at this time.

CN has recently adopted a revised Traffic, Parking and Access DCP policy which requires such developments to provide Electric Vehicle parking within the development.

The DCP requires at least 5% of the car parking spaces to be installed with Level 2 or higher electric vehicle charging points and 100% of the parking spaces to be designed with electrical infrastructure (such as cable size, distribution boards and electrical circuitry to allow for future installation of car charging points).

The development proposes 275 parking spaces, thus at least 14 car parking spaces must be installed with Level 2 or higher electric vehicle charging (EVC) points.

Submitted development proposes 4 EVC and GWH have stated that additional EVC cannot be provided due to the large power supply loading and additional demand for substation provisions.

Although the presented issue is understood, no additional documentation to demonstrate the potential impact of additional EVC points on the overall power supply situation is evident.

- Based on the above, it is considered appropriate that additional conditions be included to require the provision for charging infrastructure facilities on site to future proof the building and cater for drivers of electric vehicles, in line with CN Policy and proposed new clause 99.

Conclusion

CN is promoting the use of public transport in the Newcastle LGA, with Newcastle West/Wickham being generally the new CBD City Centre hub.

CN is also encouraging a move towards sustainable transport mode shift via the use of public and alternative transport options. This development has proposed a balanced approach towards the use of cars vs alternative transport modes and multi-use car parking spaces.

Section 7.04 Movement Networks

Traffic Management

Traffic Generation

The traffic report has considered the issues surrounding traffic generation, trip distribution and have considered the impacts on the surround road networks.

It is also very likely that the daily traffic generation numbers may be further reduced as the development is near the Newcastle Transport Interchange, has good bus services outside the site and is in walking proximity of shopping. Furthermore, the development is within walking and riding distances of the waterfront and the future Newcastle City Commercial hub in Newcastle West.

The submitted traffic report has demonstrated that the development will not impact on the surrounding road network. The adjoining traffic signals will be at serviceable level. Furthermore, TfNSW had not raised any issues with the proposed development.

Construction Traffic

A construction traffic management plan for the proposed staging has been provided. It is anticipated that the right of carriageway will be subject to construction traffic during building works for the proposed piers and building over the access and will require to be managed in order to facilitate for the existing users of the carriageway.

The operational issues relating to the use of the right of carriageway during building construction works may need to be resolved by the applicants.

The construction traffic management plan has indicated the use of National Park St to further manage the building construction process. King St will generally be open to normal traffic and the bus stop will remain in operation.

Provision of Works Zone can be resolved at construction stage in consultation with CN Traffic and Transport Section.

It is noted that construction activity has already begun with a hoarding approval in place.

Conclusion

The submitted Traffic Report and subsequent responses have demonstrated that the proposed development has generally complies with CN DCP and relevant Australian Standards for off-street parking.

The development will not cause traffic delays or impact traffic flows and can be sustained. Construction activity may impact in a short duration, however it is anticipated that these matters can be appropriately managed.

Pedestrian flows at each stage are proposed to be appropriately managed with Stage 1 building entry being provided with a secured access at OC.

In consideration of the above factors and noting the recommendations on the traffic report, it can be stated that the development can be sustained in terms of the traffic and pedestrian management.

Section 7.08 Waste Management

Waste and Servicing Collection

Waste collection for the commercial and retail have been proposed via private collection from the provided bin storage areas on the Ground Floor area.

The medium rigid vehicle (MRV) service bay located adjoining the bin storage area within the site will be used for bin collections.

Changes to the internal layout and reduction in turning area may impact the MRV access. It is recommended that a revised turning templates be provided to demonstrate that MRV access can be maintained, and any required design changes can be appropriately managed at Stage 1 CC.

- Additional conditions are recommended.

A round-about style median area is proposed within the site which will allow MRV to manoeuvre within the site. Entry and exit for MRV will therefore be in a forward direction. Minimum 4.5m height clearance is proposed along the right of carriageway thus allowing MRV vehicles to entry.

Additional servicing for residential and commercial purposes can be managed from the loading zone.

The proposed roller gate at the car parking entry is proposed to be approx. 3.2m, hence the potential for smaller vehicles to use the commercial parking bays to service the commercial units and for parcel delivery.

Residential Bin Collection

The residential waste is can also be collected by Council and a separate agreement is managed with CN Waste Management team (if the applicants or future strata choose CN to collect waste).

The waste collection process and design for vehicular access usually done to ensure CN trucks can collect waste from the development.

Although the proposal is for private waste pick-up, consultation has been done with CN Waste Collection team. If required, CN trucks (which are heavy rigid vehicles (HRV) could entry the site via the right of carriageway to collect waste. Either a reverse manoeuvre from National Park St or multiple internal movements could be relied upon.

Conclusion

Overall, the proposed loading zone design area is consistent with the approved DA design and the intent for waste collection and servicing has been retained with the proposed development.

8.0 Public Domain Works and Local Area Traffic Management (LATM)

Public Domain works will need to be done in accordance with the Newcastle West Public Domain plan (See extract 1 and 2 below).

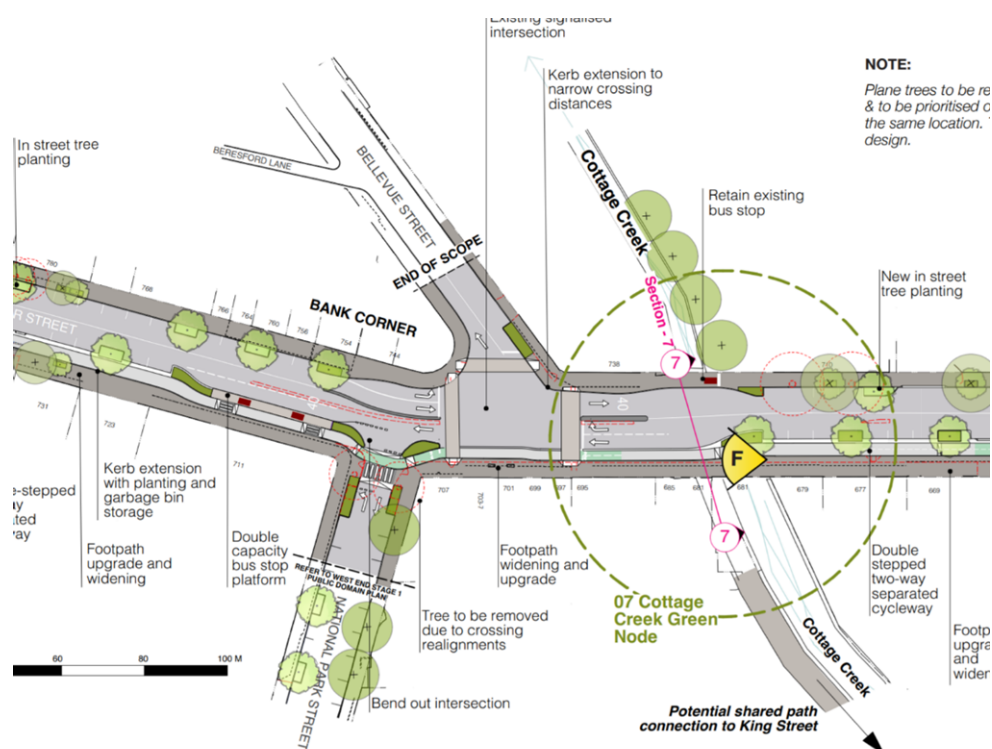
Meetings have been conducted between the applicants and CN and proposed staging of the public domain works have been understood. To ensure that public domain stage 2 works are completed, a bond is required to be paid as part of the Section 138 Roads Act application and conditions will be modified to ensure that staging can be appropriately managed.

Extract 1 – Newcastle West Public Domain Works (Stage 1)



Figure 15 Illustrative Public Domain Plan

Extract 2 – Newcastle West Public Domain Works (Stage 2)

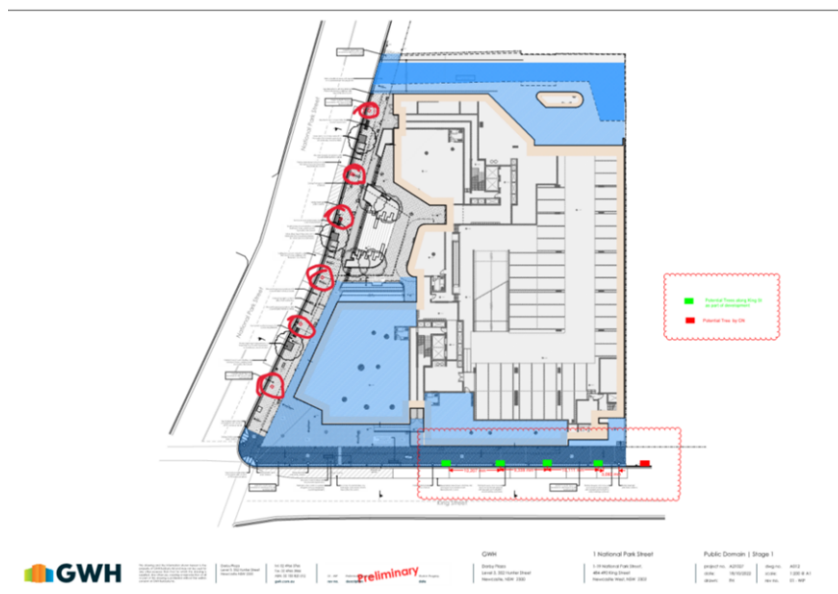


Consultation has been done with CN City Greening team and a concept proposal for street tree planting on King St and replacement of the removed tree has been provided (See Extract 3 below).

This information has been relayed to the applicants and no objections have been raised.

The design for the street awnings and street tree installation can be resolved at the relevant construction certificate stage as part of the Roads Act application.

Extract 3 – Street tree planting concept



Conclusion

Public domain upgrade staging works including street lighting, footpath works, civil and drainage works, pedestrian ramps at closet intersections for desired pedestrian travel and Local Area Traffic Management (LATM) works will need to be undertaken at the relevant stage.

Any changes to the on-street parking including requests for any new loading zones, will need to be approved by Newcastle City Traffic Committee.

Groundwater Management and Ground Anchors

Ground Water

The proposed development will highly likely affect the groundwater table through demolition of existing structures and proposed structure construction. A separate approval will be required to be attained from Department of Primary industries (DPI). This could be resolved as part of the CC process.

The discharge of the groundwater may highly likely be done to Council drainage system. If this is the case, then the applicants will need to attain a separate approval from Council for the proposed discharge of any groundwater. An Environmental Engineer or consultant will need to determine the method to treat the groundwater prior to discharge to Council drainage system. In this regard, the applicants will need to provide Council evidence that MPI have approved the groundwater licence.

Ground Anchors

Ground Anchors may need to be installed to ensure that existing buildings and infrastructure is protected. Separate approval form CN will need to be attained if ground anchors are to encroach on the road reserve.

Conditions Review

Advisory conditions for groundwater discharge and ground anchors will not require any changes and will be retained in current form.

4.3.4 Planning agreements under Section 7.4 of the EP&A Act (s4.15(1)(a)(iia))

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

4.3.5 Provisions of Regulations (s4.15(1)(a)(iv))

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 consideration of impacts on the natural and built environments includes the following:
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 development.

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 approved development are considered consistent.

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 approved development 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.

Accordingly, it is considered that the proposed modification will not result in any significant adverse impacts in the locality as outlined above.

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

These submissions are considered in Section 4.3 of this report.

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

The proposal 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

5.3 Agency Referrals and Concurrence

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

Table 1: Concurrence and Referral Agencies

Agency	Concurrence/referral Trigger	Comments (Issue, resolution, conditions)	Resolved
Referral/Consultation Agencies			
Transport for NSW	S2.121 of the <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	Comments	Yes

5.4 Council Referrals

The modification application was referred to various Council officers for technical review as outlined **Table 7**. The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

Table 7: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's Engineering Officer reviewed the submitted stormwater 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
Public Domain/ Assets	Council's Engineering Officer reviewed the submitted plans and considered that there were no objections to the proposed amendments conditions.	Yes
City Greening	Mark-up of street tree planting provided for NPS and King St	Yes

5.5 Community Consultation

The modification application was notified in accordance with the **Council's Community Participation Plan from 5 September 2022 until 19 September 2022**. Council received a total of two (2) unique submissions, comprising of two objections and no submissions in support of the proposal. The issues raised in these two submissions are considered in **Table 10**.

The issues raised in the community submissions have been addressed in this report and in the recommended conditions of consent in **Attachment A**.

Table 2: Community Submissions

Issue	No of submissions	Council Comments
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<p>Stormwater Management</p> <p>Given the scale of the development proposal, submissions request Council to consider stormwater management in the adjacent properties and taking the opportunity to ensure any stormwater management plan proposed which is comprised in the Development Plan ensures the proper management of stormwater at the rear of these properties.</p>	2	<p>The application proposes an appropriate stormwater management network which will capture and control discharge of stormwater. Council's Development Engineer has reviewed the proposal and raises no objections to the proposed stormwater management arrangements.</p>
<p>Stormwater Management</p> <p>Historically the Right of Carriageway has been an informal stormwater discharge point for all the properties along Hunter Street which back onto the laneway. However, there is no formal stormwater easement in place.</p>	2	<p>Stormwater has been assessed by Council's Development Engineer and is considered acceptable, conditions to be applied to the consent.</p>
<p>Construction Management Plan</p> <p>The modification development application does not include a revised or updated construction management plan with an updated construction methodology or right of way access arrangements.</p>	2	<p>No changes are proposed to the original approved construction management plan.</p>
<p>Structural Column</p> <p>The modification development application shows a different structural column location from the original development applications' construction management plan (DA2019/00711).</p>	2	<p>Amended ground floor plans have been submitted which address this matter.</p>

<p>Structural Column</p> <p>The modification development application shows the structural columns to the northern boundary interfering with access to the property at 699 Hunter Street, Newcastle West.</p> <p>Current width of opening approx. 6.5 metres wide and scaled opening between columns proposed by development is approx. 4.5 metres wide.</p>	2	Amended ground floor plans have been submitted which address this matter.
<p>Structural Columns</p> <p>The elevations on documentation for MA2022/00286 state that the columns are to align with adjacent perpendicular lot boundaries. Clarification is required to ensure the columns will not interfere with access to Lot 2 i.e clear opening width of 6.5 metres. According to the plans supplied the columns will interfere with access to Lot 2.</p>	2	Amended ground floor plans have been submitted which address this matter.
<p>Character & Zone</p> <p>The Little National Hotel and Horizons Apartments, the Huntley Apartments, and now One Apartments markedly exceed the established zoning laws. The continued approval of which highlights a vision of Newcastle that does not respect culture and identity.</p>	2	The current zoning of the land is intentionally seeking to effect a change in the local character over time. To require new development to relate to scale of development along Hunter Street would be contrary to the planning intent of the zoning.
<p>Character</p>	2	This adjoining existing development is respected in terms of minimizing the impacts of

A dangerous precedent will be established where future buildings could easily encroach upon and destroy the value of the properties being developed today and a chain effect of high rises crowding each other out and competing to be the new 'it' thing.		new development on adjoining residential development but in terms of the character of the built form of new development needs to be consistent with the objectives of the zone, as well as the specific aims of the City Centre in which higher density mixed use development is desired.
The Public Interest Development approval should consider all Novocastrians; current and future.	2	The public interest has been considered as part of the assessment of the application.

6 Key Issues

6.1 - The proposed building height of the northern tower

The increase of the nearly 8m in height to the northern tower is not supported by the Panel. The proposed modification for the southern tower is considered acceptable. The differential in height between the two towers is considered a positive urban component of the approved design, which the former UDCG supported in terms of the southern tower's exceedance in height, and the UDRP shares this opinion. Taking the UDRP's comments into consideration it is recommended that a level be removed from the northern tower to address the concerns raised.

6.2 - Staging

As raised by the UDRP staging of the proposal raises a number of concerns. Ensuring a level of amenity for the stage one residence during construction would be difficult. Additionally, if the construction of proposed stage two were not to proceed, the application must ensure that stage 1 alone would achieve design excellence. The staging of the proposal is not supported, further detail is required to assess the potential impacts of the proposal.

6.3 Stratum Subdivision

It is suggested that the stratum subdivision is dealt with under a separate application as we have insufficient information to make an assessment on this matter.

7 CONCLUSION

The development application for the mixed-use development is a significant development within the West End Precinct that will contribute to its revitalisation.

This modification application has been considered in accordance with the requirements of the EP&A Act and the EP&A Regulations 2021 as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in the submission and the key issues identified in this report, it is considered that the application can be supported.

It is recommended that the application to modify the approved development be approved for the following reasons:

- The proposed modifications are considered to result in a development that is substantially the same as the previously approved development.
- The modified development will not result in significant adverse environmental impacts upon the amenity and character of the locality.
- The proposal is consistent with the relevant objectives contained within the NLEP 2012 and the relevant requirements of the NDCP 2012.
- The proposal is consistent with the specific objectives of the Zone B3 Commercial Core in that it shall contribute to the range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area; encourage employment opportunities; maximises public transport, provides residential development that is well-integrated with, and supports the primary business function of, the zone; provides a high standard of urban design; and protects the amenity of surrounding residents.

On balance the proposed development is suitable for the site and adequately responds to environmental, social, and economic impacts from the development and therefore, is within the public interest. It is considered that the key issues have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions.

The application is recommended for approval subject to the following recommendations:

8 RECOMMENDATION

It is recommended: MA202

- That the Modification Application MA2022/00286 (DA2019/00711) for mixed used development comprising demolition, retail, commercial, public spaces, residential apartments, and associated parking be APPROVED pursuant to 4.56(1)] of the *Environmental Planning and Assessment Act 1979* [subject to the draft conditions of consent attached to this report at Attachment A; and
- Pursuant to Clause 118 of the *Environmental Planning and Assessment Regulation 2021*, a notice of determination is to be prepared by Council following the Panel's determination of this modification application.

The following attachments are provided

- Appendix A: Draft Conditions of consent/reasons for refusal
- Appendix B: Architectural Plans
- Appendix C: General Terms of Approval
- Appendix D : Relevant Documents