



STATEMENT OF ENVIRONMENTAL EFFECTS

**Proposed Section 4.55(2) Modification- Shop-Top Housing,
Commercial Premises, Carparking, Associated Demolition,
Landscaping and Site Works**

**1,17,19 National Park Street & 484 King Street
NEWCASTLE WEST**

Prepared by:
GWH Build Developments Pty Ltd

Prepared for submission to:
Newcastle City Council

Tuesday, 16 August 2022

Contents

1. INTRODUCTION	4
1.1. Overview.....	4
1.2. Consultation.....	4
1.3 Overview of Modification	4
2. SITE DETAILS	5
2.1. General	5
2.2. Site Context.....	5
3. PROPOSED MODIFICATION	8
4. REVIEW OF ENVIRONMENTAL IMPACTS	11
4.1. Physical Impacts	11
4.2. Statutory Controls	18
5. ASSESSMENT OF ENVIRONMENTAL EFFECTS	37
5.1. Section 4.15(1)(a) – Statutory Planning Considerations	37
5.2. Section 4.15(1)(b) – Environmental, Social and Economic Impacts.....	37
5.3. Section 4.15(1)(c) – The Suitability of the Site	38
5.4. Section 4.15(1)(d) – Submissions	38
5.5. Section 4.15(1)(e) – Public Interest	38
6. CONCLUSION	39

Figures

Figure 1. Aerial image showing the site location	6
Figure 2 Elevation of building showing proposed height in relation to the approved design and adjoining development.....	25

Tables

Table 1 Comparison table between approved and modified development.....	8
Table 2 Detailed review of proposed modifications	9
Table 3 Parking Calculations as per current DCP	13
Table 4 Parking Calculations as per the new proposed DCP	13
Table 5 Height of Building Changes from approved to proposed.....	15
Table 6 Height Change Analysis.....	25

Enclosures:

- Access Report (BCA Logic)
- Architectural Plans (Marchese Partners International & CKDS)
- BCA Report (BCA Logic)
- BASIX Assessment (Evergreen Consultants)
- Design Report (Marchese Partners International & CKDS)
- Flood Assessment Review (WDG Infrastructure Design)
- Landscape Plans (Xeroscapes)
- Stratum Subdivision Plans (Delf Lascelles Pty Ltd)
- Updated Traffic Assessment Addendum (Intersect Traffic Consultants)
- Updated Waste Management Plan – Operational (Elephants Foot)
- Construction Staging Plans (GWH Build Pty Ltd)

1. INTRODUCTION

1.1. Overview

This Statement of Environmental Effects (SEE) has been prepared by GWH to accompany a Section 4.55 (2)/4.56 modification to the approved mixed-use development comprising two towers consisting of 193 dwellings, office/commercial premises, retail premises, carparking, associated demolition, landscaping and site works at 1, 17, 19 National Park Street & 484 King Street, Newcastle West NSW, 2302.

It assesses the proposal against matters referred to in Section 4.15 and Section 4.55/4.56 of the *Environmental Planning and Assessment Act 1979 (EPA Act)*. The drawings and documents forming the application and underpinning this SEE are listed in the foreword to this report.

1.2. Consultation

Prior to lodgement, the development has been subject to:

- Pre-lodgement meetings and a previous DA with Newcastle Urban Design Consultative Group (UDCG) / Urban Design Review Panel (UDRP);
- Pre-lodgement meetings and a previous DA with City of Newcastle (CoN); and

The application will undergo referral and public notification during assessment and prior to determination. The consent authority will need to consider any submission received, and if necessary, the applicant will respond to matters raised through this process.

1.3 Overview of Modification

The original approved design has been reviewed by the new owners and several amendments are proposed. These changes reflect a more considered and experienced understanding of the construction requirements of a project of this type and scale, and to better incorporate preferred construction methods. The changes also reflect adjustments to the expected target market and price point for dwelling sales. The range of proposed changes include:

- 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,
 - 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 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 roof top space on southern tower;
 - Moving communal area to northern tower roof top
 - 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

2. SITE DETAILS

2.1. General

The site is known as 1, 17, 19 National Park Street and 434 King Street, Newcastle, situated within the Local Government Area (LGA) of Newcastle. The site is located on a corner with a total area of 4,235m² and has dual street frontage to National Park Street to the west and King Street to the south. The site comprises five allotments, legally described as:

- Lot 1171 in DP 858465;
- Lot 1181 in DP 596950;
- Lot 99 DP 1134475;
- Lot 1 in DP 741514; and
- Lot 100 in DP 612505;

2.2. Site Context

2.2.1. General setting

Development along both sides of King Street has a mix of scale accommodating residential, retail and commercial development, with various historic buildings and uses. The site is located within the Newcastle City Centre in the precinct of the West End. The West End is the western gateway to Newcastle's City Centre and is an area of unrealised potential. It currently accommodates showroom, bulky good facilitates, retail, car dealerships and self-storage land uses. The West End is transitioning to be a revitalized mixed-use precinct.

The site formerly accommodated Newcastle Leagues Club, ANZ Bank and numerous other retail uses. These businesses have relocated, and the buildings are currently being demolished as part of this development application and the 5 allotments are to be consolidated to form the entire proposed development subject site area. The site is level and presents no topographical constraints to the proposed development.

The existing character of the immediate locality is mixed and includes predominantly commercial buildings in the vicinity of the site. It is noted that the site is within Newcastle City Council's West End Precinct which is to be developed as a future CBD in close proximity to the Newcastle Interchange and will feature predominantly commercial and mixed-use development taking advantage of the location.

To the north, fronting Hunter Street are numerous fine grain shop top houses, commercial and retail premises. Verve Residence to the east of the site, comprising a 20 storey shop top housing development (in two towers) including 197 residential apartments, commercial and retail space.

Little Birdwood Park is located opposite the site on the southern side of King Street, and Marketown shopping centre is located just beyond Little Birdwood Park to the south of Gibson Street. To the west across National Park Street are former retail premises including Spotlight

and Anaconda, a site it is understood will be redeveloped in the near future for a similar style shoptown housing development, albeit with a 90m height of building control.

Figure 1 below shows an aerial image of the site.



Figure 1. Aerial image showing the site location

2.2.2. Site Description

The site comprises a total land area of 4,235m² and has a frontage of approximately 80 metres to National Park Street and 70 metres to King Street. The site currently accommodates the former Newcastle Leagues Club, ANZ Bank and numerous other retail uses. These buildings are currently being demolished as part of this development application. The site is level and presents no topographical constraints to the proposed development.

The National Park Street and King Street verge comprise of concrete footpath, kerb and gutter road formation. National Park Street verge benefits from two vehicle crossovers, whilst King Street verge benefits from a vehicle crossover and three large street trees. Restricted parking is located along both street frontages, with a bus zone located directly in front of 19 National Park Street.

2.2.3. Slope Stability and Soils

The site has no exposed soils. It is a relatively level site with no apparent slope stability or other obvious soil issues.

2.2.4. Acid Sulfate Soils

The site IS identified as potentially containing Class 4 acid sulfate soils (ASS).

2.2.5. Stormwater

Stormwater infrastructure consists of a pit and pipe system capturing roof and surface water

and discharging it to kerb inlet pits on both frontages, where it is via the street gutter to kerb inlet pits connected to the trunk stormwater systems.

2.2.6. Flooding

The 1% AEP Flood level for the site is 2.5m AHD and the FPL for the site is 3.0m AHD.

2.2.7. Mines Subsidence

It IS in a mine subsidence district and subject to surface development controls.

2.2.8. Heritage

The site is located within the Newcastle City Centre Heritage Conservation Area.

2.2.9. Access and Parking

The car parking areas and access driveways have been designed in accordance with DCP 2012 and AS2890. The proposed development incorporates 257 on-site car parking spaces inclusive of 3 disabled spaces, plus 226 bicycle storage spaces and 12 motorcycle spaces to be contained within the carpark of the building, featuring 5 carpark levels, sleeved by the retail/commercial tenancies and apartments.

Access into the carpark will be provided direct from National Park Street, at grade, via a 6.8-meter-wide vehicle crossing. This accessway is a combined vehicular entry and exit point for the site. Right of carriageway has also been maintained to enable Lot 1 DP322516, Lot 1 DP723739, Lot 1 DP 194117, Lot 2 DP 194117, Lot 1 DP 197971, Lot 1151 DP549069 and Lot 1 DP198157 (the piano key sites) unimpeded access into the subject site along the subject sites northern boundary. This is enabled due to the pylon structure design for the podium.

Once inside the subject site car parking area, vehicles are directed toward a two-way at grade driveway, rounding the cold-water pump room and loading zone to an inclined ramp leading to ground floor parking. The ramps work in a clockwise motion up to the final parking level in the podium via double width lanes. Carparking associated with the commercial premises and visitor's parking is conveniently located on the ground and ground mezzanine carpark levels, with the upper carpark levels reserved for resident parking. Appropriate safety measures including boom gates and roller doors have been implemented in the design of the carpark to ensure user safety and functionality.

2.2.10. Public Transport

Newcastle Transport interchange is nearby, providing a range of public transport options (bus, train, light rail).

The area IS also well serviced by taxis and Uber.

2.2.11. Utilities

All utility services are available on National Park Street and King Street.

3. PROPOSED MODIFICATION

The original approved design has been reviewed by the new owners and several amendments are proposed. These changes reflect a more considered and experienced understanding of the construction requirements of a project of this type and scale, and to better incorporate preferred construction methods. The changes also reflect adjustments to the expected target market and price point for dwelling sales. The range of proposed changes include:

- The inclusion of stratum subdivision for the proposal
- The staging/sequencing of the development to allow for staged construction. The development will be split into two stages consisting of,
 - 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 from level 18 and marginal increase in height of South Tower due to changes to core etc.
- Rationalisation of the floor plans, materials and finished to improve construction efficiency and correct issues identified during 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 approved 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 roof top space on southern tower;
 - Moving communal area to northern tower roof top 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

Table 1 below outlines a summary of changes against the key development controls/characteristics.

Table 1 Comparison table between approved and modified development

Issue / Control	Total		South Tower		North Tower	
	Approved	Proposed	Approved	Proposed	Approved	Proposed
Site Area	4238	No change				
GFA	23,036	23,069.12				
FSR 5.5 (23310.85 m ²)	5.435	5.44				

	Total		South Tower		North Tower	
Issue / Control	Approved	Proposed	Approved	Proposed	Approved	Proposed
Commercial / Retail GFA	1406	1285.6	565	Nil	N/A	N/A
Dwellings	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	116 34 x 1 Bed 68 x 2 Bed 14 x 3 Bed	117 21 x 1 Bed 76 X 2 Bed 20 X 3 Bed	77 28 x 1 Bed 40 x 2 Bed 9 x 3 Bed	82 18 x 1 Bed 54 x 2 Bed 10 x 3 bed
Communal Space	Overall 1552.3m ²	Overall 1599.7m ²				
Height of building (66m)	78.380 AHD 76.18m	80.00 AHD 77.8m	78.380 AHD 76.18m	80.00 AHD 77.8m + 1.62m	65.98 AHD 63.78m	73.82 AHD 71.62m + 7.84m
Parking	248	257				

Table 2 outlines proposed modifications in more details.

Table 2 Detailed review of proposed modifications

Modification	Discussion
Subdivision	<ul style="list-style-type: none"> The approval does not make provision for subdivision. Modification proposes 1 into 4 stratum to separate non-residential uses and reflect construction staging / financing of residential towers. This cannot be achieved using Complying Development Provisions and is proposed as part of the modification, along with proposed strata subdivision of the strata. The proposed stratum subdivision is consistent with the requirements under relevant legislation.
Staging/ Sequencing	<ul style="list-style-type: none"> The approval makes no provision for staging or sequencing of the construction Staging/Sequencing is required for construction of the towers and to facilitate financing by staging the total development costs into feasible portions. The proposed stages/sequences are as follows: Stage 1- Includes all site preparation and construction and fit out of the podium levels and southern residential tower Stage 2- Includes the construction of the northern tower A staging plan has prepared to accompany application As a result of staging, the conditions of consent will need to aligned to reflect the appropriate stages.
Residential	<ul style="list-style-type: none"> Per table above, dwelling mix is adjusted with 24 less 1 bed designs replaced by additional 23 x 2 bed options and 7 x 3 bed dwellings including: <ul style="list-style-type: none"> Replacing aboveground office space in the southern tower with additional dwellings; and Moving the communal open space in the northern tower to the rooftop with an additional dwelling replacing where it was previously located. Additional floor added to the Northern Tower Reconfigure floor plates to reflect the revised core and structural design.

Modification	Discussion
	<ul style="list-style-type: none"> • Changes to dwelling configuration to reflect new dwelling mix and floor plans. • Dwellings remain ADG compliant.
Height of Building	<ul style="list-style-type: none"> • Increase maximum HOB by 1.62m to adjust for structural transfers and servicing requirements, incorporating changes to the southern tower rooftop communal space, lift over run and screening of services on roof. • Height of northern tower to increase by one storey and roof top communal space, increasing in height by 7.84 metres to 71.62m, still below overall approved maximum height.
Parking	<ul style="list-style-type: none"> • Increase the number of car spaces to facilitate the increase in dwellings and to reflect a more efficient design of the car parking levels. • Parking remains AS2890 compliant.
Communal Space	<ul style="list-style-type: none"> • The overall quality and amount of communal space has been improved, with a pool, cinema and gym now incorporated into the podium level • A rooftop communal space has been moved to the roof top of the northern tower • Landscaping has been rationalised with a slight decrease in the amount provided, but the overall quality and survivability increased.
Amended Conditions	<ul style="list-style-type: none"> • Some of the conditions consent need to be amended to reflect the updated proposal including; <ul style="list-style-type: none"> ○ Condition 1- Refer to amended plans ○ Condition 3- Contributions to be adjusted to proposed sequencing and updated to reflect Councils new 7.11 contributions plans ○ Condition 4- Number of carparks to be amended as per modified proposal ○ Condition 66- Updated in line with modified proposal ○ Conditions to be aligned for proposed sequencing

4. REVIEW OF ENVIRONMENTAL IMPACTS

4.1. Physical Impacts

The modification impacts are summarised below. The majority of physical impacts do not change as a result of the modification, as the footprint of the development generally stays the same, with only the overall height of both towers increasing. The modified proposal overall is considered to be an improvement on the approved buildings, by improving environmental impacts, improving overall efficiency of the design and better achieving the desired outcomes outlined in the relevant legislation and design guides. These items are discussed in further individual detail in the following paragraphs.

4.1.1. Ecology

No change to the approved development impact.

4.1.2. Vegetation and Landscaping

The impact on vegetation on the site and on National Park Street remains that same as the approved development. The street trees have approval to be removed. An updated landscape plan has been provided showing proposed landscaping for the two towers. Whilst overall landscaped areas have decreased, the overall quality and survivability of the landscaping has increased. Landscaping has been removed from the south facing areas, as these areas are unlikely to support plants given the low light shaded environment and wind impacts. The landscaping has been increased on the podium area and the north facing areas to maximise exposure to beneficial aspect.

4.1.3. Earthworks and Slope Stability

No changes to proposed earthworks or soil works as part of the proposed modification.

4.1.4. Acid Sulfate Soils

No changes proposed to approved site and soil works.

4.1.5. Stormwater

No changes are proposed to the approved stormwater management approach for the site.

4.1.6. Flooding

The 1% AEP Flood level for the site is 2.5m AHD and the FPL for the site is 3.0m AHD. The proposed courtyard levels and retail spaces have a lower level with a design level of 2.80m and 2.22m respectively. As per the previous flood report for the site the courtyard retail and lobbies have a finished floor level (FFL) of 2.80m AHD – a freeboard of 320mm to the 1%AEP. This has been based on the maximum level achievable to maintain disabled access.

Along the western and southern road frontages, the retail space has a lower level with an FFL of 2.52m AHD, which is 580mm below the 1% AEP flood level.

These FFLs are proposed to optimise street activation potential along King Street and National Park Street, minimising the use of ramps and stairs to allow for disabled access compliance. In order to accommodate these reduced levels, it is recommended;

- the surface finishes below the FPL are durable and flood compatible to allow for more frequent clean up and minimise financial loss
- the retail areas with the low floor levels have high ceilings which may facilitate adaptable floor levels should changes be made to the King Street or National Park Street Road reserves

- provision is made to store stock and valuable goods above the FPL to minimise financial loss

Although numerically the site is not compliant it is suggested that the risk to property has been minimised through provision of on- site refuge, a selection of carpark levels and a merit-based assessment for retail floor levels with recommendations for structural certification and a flood emergency response plan. The proposed modification does not propose any significant changes in relation to dealing with flooding on the site, from what was previously approved.

An updated civil covering letter by a qualified/practicing Engineer is provided in support of the modification.

4.1.7. Heritage

No significant changes are proposed that would change the impact on any item of heritage significance. The proposed development is generally the same in regard to appearance, bulk and scale and footprint. The original heritage impact assessment concluded that the proposal is deemed acceptable in terms of heritage impact on the HCA and on nearby items of heritage significance.

4.1.8. Vehicle Access

Vehicle access for the development is not proposed change as a result of the modification. The proposed access crossing will be 6.8 metres wide and provides ground level entry and exit to the carpark of the building for vehicles. There is sufficient space for a vehicle to queue between the road and the carpark entry point.

Internal to the building, all vehicles can enter and exit the site in a forward direction and circulate around the carpark in a clockwise direction as required. There is sufficient space on the ramps for two-way traffic movements, as well as pedestrian and cyclist safety access. Included on the ground level is easy disabled access leading from the 2 disabled car spaces to the northern tower platform lift access point and lift lobby which complies with the BCA Advice in the appended report.

The carpark areas and access ramps have been designed to generally satisfy the applicable requirements of AS/NZS2890.1-2004 “Off-Street car Parking” and AS/NZS2890.6-2009 “Off-Street Parking for People with Disabilities”.

The main pedestrian entry to the building is provided via an urban plaza and central lobby at ground level on National Park Street, from which access can be gained to all levels and carpark levels of the building. Pedestrian and cyclist access to the carpark is provided via a secure door adjacent to the vehicle entry in both the North and South tower as well as from the central lobby. From the carpark levels, access to the central lobby is obtained via stairwell and carpark elevator. Secured access is available to all levels of the building via the stairwell and two main elevators. A further access point can be utilized toward the car park via the south-east corner with stairs and a secured door leading to the area.

An updated Traffic Impact Assessment has been prepared to accompany the modification and is appended to this report.

4.1.9. Traffic

The proposed development will not have a noticeable impact on traffic flows and is unlikely

to increase traffic congestion on the surrounding road network. Post-development, it has been concluded that the operation of adjoining intersections on the local road network will not be adversely impacted. Due to its location on the western fringe of the Newcastle City Centre, which is well supported by public transport and active travel opportunities, it is considered that many residents would walk, cycle or use public transport when travelling to / from the site towards the CBD.

The traffic movements generated by the proposed development is likely to have a minimal impact on the surrounding road network. Site access can operate with minimal delay or congestion, as the adjacent road network is operating within its technical capacity and has scope to cater form additional traffic generated by the new development.

An updated Traffic Impact Assessment has been prepared to accompany the modification.

4.1.10. Parking

The car parking required in accordance with SEPP65 is calculated below, based on the provisions of the RMS (now TfNSW) *Guide to Traffic Generating Development* and the current Newcastle DCP, and a comparison with the draft DCP (exhibited 16 May 2022 to 12 June 2022) is also provided.

Table 3 Parking Calculations as per current DCP

Proposed Use	SEPP / DCP Parking Rate	GFA / No. Units	Car Spaces Required	Car Spaces Proposed
Commercial	1 per 60m ²	1285m ²	22	26
Residential			183	210
- studio / 1 bdm	0.6	38	23	38
- 2 bdm	0.9	131	118	130
- 3+ bdm	1.4	30	42	42
- visitor	1 per 5	72	41	21
		Total	246	257

Table 4 Parking Calculations as per the new proposed DCP

Proposed Use	SEPP / DCP Parking Rate	GFA / No. Units	Car Spaces Required	Car Spaces Proposed
Commercial	1 per 50m ²	1285m ²	26	26
Residential		199	229	210
- studio / 1 bdm	1	38	38	38
- 2 bdm	1	131	131	130
- 3+ bdm	2	30	60	42
- visitor	0	0	20 (nominated)	21
		Total	275	257

Based on the current DCP the modified development has a surplus of 11 carparks on the

requirements, with a surplus of 27 residential car parks. The justification for the surplus carparks is as follows:

- The current apartment market in Newcastle demands that each unit must have its own car space, it is difficult to sell an apartment without a car park. This approach aligns with the Council draft DCP, as they recognise the need for each unit to have its own parking space, and for larger units to have 2 spaces each.
- The demand for each unit to have a car park is somewhat driven by the lack of accessibility to good public transport on the broader scale, as it is historically difficult to travel outside of the CBD area using public transport to areas such as eastern Lake Macquarie, Port Stephens, Cessnock, Kurri Kurri and beyond.
- This approach to parking is backed up by the current ABS data indicating that regardless of dwelling size or type, each household has an average of 1.8 vehicles.
- To provide the required additional residential parking the required visitor car parking has been reduced by 50 %. It is considered this more closely resembles the real demand for visitor car parking in large residential developments and there is opportunity within the development to allow visitor car parking in the commercial car parking spaces during out of business hours. This approach has been successful in a number of similar developments in the Newcastle CBD area.
- The removal of existing access crossings on National Park and King Streets will result in an increase of available on-street parking which would be available to the general public and visitors to the development.
- The proximity of the development to numerous public carparks within walking distance or close to public transport routes including No. 2 Sportsground, Market Town, Little King Street/Birdville Park, Spotlight carpark, The Store/Interchange parking.
- Minimising visitor car parking at residential developments is considered an excellent strategy to increase public ridership levels on the adjacent public transport services such as the light rail.
- The Draft DCP allows for an evidence-based approach to visitor parking. From our experience and involvement with a number of similar projects, the proposed number of visitor parks is appropriate given the above justification

As can be seen in the comparative assessment of the parking against the draft DCP, the development has a deficiency of 18 parks overall, however, this is based on our visitor parking justification. Nevertheless, it does display a residential deficiency of 18 parks. It is our contention that given that the draft DCP adopts a more reasonable and acceptable rate of apartment parking, that any surplus parking under the current DCP should not count towards GFA in this circumstance, as there is a discrepancy in approach between the two documents, and we align with the future intent of Councils parking policy.

In relation to the deficiency of visitor parking displayed under the current DCP, from our experience the requirement for 41 visitor parks far outweighs the actual demand and use, hence the updated approach taken by Council in the draft DCP. The development provides 21 visitor parks on the ground floor area, separate from the residential parks. This enables clear separation between the visitor/commercial area from the residential parking area and improves security and access. There is also scope to be able to use the commercial parks after hours as visitor parks, which brings the development closer to compliance. The justification for the deficiency in visitor parking is as follows:

- The removal of existing cross-overs on National Park and King Streets will result in an increase of available on-street parking, being available to the general public and visitors to the development.
- The proximity of the development to numerous public carparks within walking distance or close to public transport routes including No. 2 Sportsground, Market Town, Little King Street/Birdwood Park, Spotlight carpark, The Store/Interchange parking.
- The Draft DCP allows for an evidence-based approach to visitor parking. From our experience and involvement with a number of similar projects, the proposed number of visitor parks is appropriate given the above justification.

4.1.11. Pedestrian Access

The primary pedestrian access is from National Park St. This provides a clearly delineated, at grade entry to the residential foyers, with a direct line of sight and path of travel to the lift lobby. Each commercial premises has direct frontage to and access from the respective street frontages. There is a continuous canopy that covers the pedestrian entries and increases amenity. It also differentiates active and non-active elements of the frontage.

4.1.12. Non-discriminatory Access

An updated Access Report has been prepared for the modified development. The report assessed the development against current accessibility legislation. While some details are to be confirmed during detailed construction documentation, the report concluded that:

The architectural design documentation as referred to in report has been assessed against the applicable provisions of the Building Code of Australia, (BCA) and Disability (Access to Premises – Standards) Building 2010. It is considered that such documentation complies or is capable of complying with those Codes.

Key design elements relating to non-discriminatory access include a continuous and accessible path of travel from the street to commercial tenancies, residential lobby, communally accessible spaces, and residential dwellings.

The National Construction Code requires one accessible parking space per 100 spaces. These spaces are provided on the Ground level and have a continuous accessible path of travel to the building's main entry, via the lift.

4.1.13. Height

As has been demonstrated in Table 1, the height of both towers are proposed to increase from the approved heights. The changes are outlined below:

Table 5 Height of Building Changes from approved to proposed

Tower	Approved Height	Proposed Height	Change
North	65.98 AHD 63.78m	73.82 AHD 71.62m	Increase in height by 7.84m
South	78.380 AHD 76.18m	80.00 AHD 77.8m	Increase in height by 1.62m

The proposed change in height for the south tower is mainly a result of the adjustment for

structural transfers and servicing requirements, incorporating changes to the southern tower rooftop communal space, lift over run and screening of services on roof. The resulting change in height is considered minor and does not increase the impacts of the development including overshadowing or views.

The change in height for the north tower is more significant, with the overall height increasing by 7.84m. The increase in height consists of the inclusion of an extra floor of dwellings and the relocation of the communal open space from level 18 to the rooftop. The addition of the extra floor was a design response to the disparity between the heights of the approved towers, with the 13m difference between the towers considered to be lacking symmetry and was not consistent with other design approaches in close proximity, including Verve which has two towers of similar height, and Dairy Farmers corner with two towers of similar height. The raising of the north tower will reduce visual disparity between the two towers and will be unnoticeable at ground level.

The updated design, when compared to the future desired character of 90m to 99m height limits in close proximity to the site, is considered to respond to the potential development of the Spotlight site by creating a transition in heights as you move East along Hunter Street that would be somewhat unnoticeable at street level.

The increase in height has been achieved without increasing the overall GFA to non-compliance.

It is important to note that the proposed modified height of the northern tower is below the approved maximum height of 76.18m, with the impacts of the maximum height assessed during the previous development application. The increase in height of the northern tower will have similar impacts to those that were previously assessed and approved.

Further assessment of the height impacts are included in Section 4.2.5.

4.1.14. Noise

The original noise assessment prepared by Muller Acoustic Consulting is considered relevant to the modified proposal. The report recommends that that apartments located in the southern tower include windows/sliding doors, openable with 6mm monolithic glass for Category 2 and 6.38mm laminated glass for Category 3 with full perimeter acoustic seals, due to quantified noise intrusion from transportation noise and emissions. The northern tower is also recommended to provide glazing upgrades as it is considered Category 1 and 2. With respect to the noise attenuation and to protect the internal acoustic amenity of the development the recommended mitigation measures are being adopted, with condition 85 of the current approval requiring acoustic treatments to be installed and implemented in accordance with the recommendations set out in the Muller report.

4.1.15. Waste Management

An updated operational waste management (Elephants Foot) accompanies the application. In summary, operational waste will use waste chutes in residential lobbies, discharging general and comingled recycling into a waste room at ground level. There is bin storage, bulk waste storage and commercial waste storage at ground level that is sized to meet calculated demand.

The amount of waste likely to be generated by the commercial premises and apartments has been evaluated using the *NSW EPA Better Practice Guide For Resource Recovery in Residential Developments 2019* and Council's Waste Management Technical Manual. These rates are detailed within the Amended Waste Management Plan by Elephants Foot for the proposed development.

4.1.16. Social Impacts

The proposal will result in minimal, if any, negative social impact, the most likely being possible noise and dust impacts during construction. These will be managed by appropriate conditions of consent and construction management techniques. Once occupied the development will increase residential and commercial opportunities within the City, and an increase in the permanent residential population will support businesses and services.

The improvement of communal open space areas in regard to increase in size and amenity, along with the provision of rooftop areas for both towers, pool, a cinema room, gymnasium and function spaces will all lead to positive social outcomes for the development. The communal spaces enable a feeling of inclusion and involvement for all residents and will improve the overall community feel of the development.

The social impacts of the development were assessed as a part of the original application and do not change as a result of the modification.

4.1.17. Economic Impacts

Construction and operation will generate indirect and direct employment, with multiplier effects for the broader community including:

- Expenditure in the trade and construction sector;
- Increased employment; and
- Increased trade for businesses that can support to day to day needs of the workforce.

Occupation of the development will provide business for real estate agents, removalists, and potentially local whitegoods and furniture suppliers as purchasers / tenants take up residence. Public finances will benefit from an injection of development contributions and ongoing Council rates that will help fund the delivery of services and infrastructure.

The development will provide a positive and ongoing economic impact.

4.2. Statutory Controls

4.2.1. Environmental Planning and Assessment Act 1979

It is considered that the modification of the approved development will result in substantially the same development as that for which the original consent was granted. Accordingly, the approval path for the proposed modification is s4.55(2) Other Modifications and s4.56 under the EP&A Act 1979:

Section 4.55 Modification of consents

(2) Other Modifications

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

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

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

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

(i) the regulations, if the regulations so require, or

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

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

Subsections (1) and (1A) do not apply to such a modification.

Substantially the same [s4.55(2)(a)]

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.

Consultation [s4.55(2)(b)]

The site is within a Mine Subsidence District. Subsidence Advisory (SA) provided approval for the development. The application will need to be referred to SA advising them of the changes and seeking any revised general terms of approval.

Hunter Water provided a notice of requirements identifying works required as part of the development. The building footprint is retained and there are only minor changes to the GFA /dwelling numbers, so there are no significant changes in potential impact on water and sewer assets.

TfNSW will also be consulted with during the approval process given that the development is classified as Traffic Generating Development.

Further consultation will also be undertaken with the UDRP to assure the development is achieving design excellence.

Notification [s4.55(2)(a)]

Council will need to consider whether the modification application requires notification in accordance with the requirements of existing policies.

Submissions [s4.55(2)(a)]

Should Council notify the modification application the consent authority will need to consider any submission received, and if necessary, the applicant may also choose to respond to matters raised through this process.

Section 4.55 (3) of the EPA Act provides that:

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

Further considerations of section 4.15 follow in this report.

4.56 Modification by consent authorities of consents granted by the Court

As development consent for the original development was issued by the Land and Environment Court (LEC 2019/00393097) on 21st September 2020, the consent authority is required to assess the application against the relevant sections under this clause, including being satisfied that the development is substantially the same. The justification provided against section S4.55 (2) satisfies this requirement.

4.2.2. State Environmental Planning Policies

The development has been assessed against SEPPs and found to be either consistent with relevant provisions, or otherwise not affecting the application of SEPPs that apply to the land. A summary of relevant SEPPs is below.

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

The proposal is development to which the SEPP applies. BASIX certificates have been prepared and lodged as part of the modification application.

State Environmental Planning Policy 65 – Design Quality of Residential Flat Buildings

The proposal is consistent with the provisions of SEPP65 in that:

- The application has been referred to the Newcastle Urban Review Panel, being the appointed design review panel for the Newcastle local government area. The application will again be referred to the UDRP post lodgment seeking advice regarding the design quality of the development.
- The development has been designed in accordance with the design quality principles and apartment design guidelines. The consent authority, in determining the application, is required to evaluate the design quality of the development relevant to these principles and to take into consideration any advice received from the UDRP.

A summary of the development against the design quality principles and ADG is contained in the design report prepared by the project architect (Marchese Partners & CKDS) that forms part of the modification application.

State Environmental Planning Policy (Resilience and Hazards) 2021

Coastal Management: In accordance with the Coastal Management interactive map published by the state government, the site is within the Coastal Environment Area, however, is not identified within the Coastal Use Area. The proposal is not likely to create any adverse impacts having regard to coastal zone considerations. Due to the minor excavation of the site (lift shaft and building foundation – associated footings, substructure piers to rock) and the building design (podium comprising of car parking/residential apartments/commercial) there are negligible risks associated with the proposed development.

Remediation of Land: The modification does not propose a change in approach to the original development application. The original Preliminary Contamination Assessment is considered relevant. The development remains compliant with the section.

State Environmental Planning Policy (Transport and Infrastructure) 2021

The consent authority is to give written notice and consider any response received from the following bodies, in accordance with provisions of the SEPP:

- The electricity supply authority (AusGrid) as ground penetration work is expected to be undertaken in proximity to underground electricity power lines.
- King Street is a classified road, and the vehicular access for the proposal is located on National Park Street, to ensure that the proposal will not adversely affect the safety, efficiency and ongoing operation of the classified road. The two existing combined entry/exit driveways at King Street will be removed and can potentially be converted into on-street parking.
- A residential flat building having 75 or more dwellings with a site access within in 90 metres of a classified road is defined as traffic generating development. The proposed development comprises 199 dwellings and proposes a vehicular crossing within 90 metres of a classified road, specifically King Street. The proposal is therefore classified as traffic generating development and will be required to be referred to RMS during the assessment process for comment.

An updated Traffic Impact Assessment Report has been provided by Intersect Traffic assessing the carparking, access and traffic implications of the development.

4.2.3. Hunter Regional Plan 2036

The HRP is a strategic level land use planning document that guides local planning and informs decisions regarding delivery and funding of infrastructure and services. It establishes a framework and delivery targets for local planning. The proposed development is a minor scale in relation to the strategic level context of the HRP 2036. Notwithstanding, the proposed development is consistent with the HRP in that it is consistent with the local planning provisions of Newcastle City Council that are the delivery mechanism for the HRP.

4.2.4. Newcastle Local Strategic Planning Statement (LSPS)

The LSPS is Council's strategy that will guide land use planning toward 2040, implementing priorities from the Community Strategic Plan and Newcastle 2030.

The development is consistent with the LSPS in that it represents a development that is consistent with the finer grain local planning controls that have evolved from and are the delivery mechanism for the LSPS.

It will provide opportunities to continue to develop the Newcastle economy in an established business support area. It will do so in a manner that mitigates adverse environmental impacts in an area already developed and serviced for business purposes.

4.2.5. Newcastle Local Environmental Plan 2012

The development is consistent with applicable LEP provisions as discussed below.

Clause 1.2 Aims of Plan

The proposed development is consistent with the aims of the plan, specifically in that it will:

- Contribute to a diverse and compatible mix of land uses in and adjacent to Newcastle City Centre, supporting increased patronage of public transport and helping reduce travel demand and private motor vehicle dependency,
- Contribute to a diversity of housing types in a location that improve access to employment opportunities, public transport, community facilities and services, retail, and commercial services,

- Achieve a building that demonstrates design excellence appropriate to a regional city.

Clause 2.3 Zone Objectives and Land Use Table

The site is zoned B3 Commercial Core use. Shop top housing developments are permissible in the zone. The proposal is consistent with the following zone objectives:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*

The development is a mixed use proposal that combines commercial, retail and residential uses within the one building. The retail and commercial uses will not only potentially service residents within the building but also the wider community.

- *To encourage appropriate employment opportunities in accessible locations.*

The development provides commercial and retail premises that will provide employment to local people. The construction of the buildings will also provide ongoing employment within the construction sector, and job opportunities will also be created through the ongoing management of the building.

- *To maximise public transport patronage and encourage walking and cycling.*

The development is located in the prime position to maximise patronage of public transport including the light rail, bus network and heavy rail infrastructure. The site is located in close proximity to a number of public transport interchanges including the Newcastle Interchange and Market Town. The development is also located adjacent to walking and cycling infrastructure on both Hunter and King Street.

- *To provide for commercial floor space within a mixed-use development.*

The proposed development provides 1288m² of commercial space spread over two levels, with ground floor retail/commercial space and office space located on level 1.

- *To strengthen the role of the Newcastle City Centre as the regional business, retail and cultural centre of the Hunter region.*

The development strengthens the role of the City Centre as the regional business, retail and cultural centre of the Hunter Region by providing a mixed use development that grows the available retail and commercial space within the city centre. The development also provides for dwellings within the City Centre area to increase the patronage of existing commercial facilities. The public art proposed as part of the development will increase the amount of art within the CBD, cementing its position as the cultural centre of the Hunter.

- *To provide for the retention and creation of view corridors.*

The modified development does not impact on any view corridors.

The proposed modified remains consistent with the objectives of the zone.

Clause 4.3 Height of Buildings

The height of building control is 60m with a 10% variation as discussed under clause 7.5 which provides a control of 66m.

The original development was approved with a maximum height of 76.18m being the overall height of the south tower to the top of the lift over run. The north tower was approved at a height of 63.78m, below the 66m height control. Table 5 below shows the approved and proposed heights, along with the proposed increase.

Tower	Approved Height	Proposed Height	Change	% Change
North	65.98 AHD 63.78m	73.82 AHD 71.62m	Increase height 7.84m in by	10.9%
South	78.380 AHD 76.18m	80.00 AHD 77.8m	Increase height 1.62m in by	2%

[illegible]

SEE 1 National Park Street Newcastle West

The proposed change in height for the south tower is mainly a result of the adjustment for structural transfers and servicing requirements, incorporating changes to the southern tower rooftop communal space, lift over run and screening of services on roof. The resulting change in height is considered minor and does not increase the impacts of the development including overshadowing or views.

The change in height for the north tower is more significant, with the overall height increasing by 7.84m. The increase in height consists of the inclusion of an extra floor of dwellings and the relocation of the communal open space from level 18 to the rooftop. The addition of the extra floor was a design response to the disparity between the heights of the approved towers, with the 13m difference between the towers considered to be lacking symmetry and was not consistent with other design approached in close proximity, including Verve which has two towers of similar height, and Dairy Farmers corner with two towers of similar height. The raising of the north tower will reduce visual disparity between the two towers and will be unnoticeable at ground level.

The updated design, when compared to the future desired character of 90m to 99m height limits in close proximity to the site, is considered to respond to the potential development of the Spotlight site by creating a step down in heights as you move away the Hunter Street that would be somewhat unnoticeable at street level.

The increase in height has been achieved without increasing the overall GFA to non-compliance, with a reduction in overall GFA.

It is important to note that the proposed modified height of the northern tower is below the approved maximum height of 76.18m, with the impacts of the maximum height assessed during the previous development application. The increase in height of the northern tower will have similar impacts to those that were previously assessed and approved.

The proposed development has been carefully designed by Marchese Partners and CKDS having regard to the context of the site, the desired future character (ie 'desired built form') of the locality as reflected by the current suite of planning controls, and consists of a high quality, architecturally designed building that, in terms of its 'scale', makes a positive contribution to the street frontage of both National Park Street and King Street. The design is generally consistent with the adjacent 'Verve towers'. Its scale is appropriate through the site internally and we note that the two towers in the proposed development are of different heights and appropriately spaced. The proposed bulk, height and scale demonstrates a small floor plate which although the towers exceed the building height development standard, the entire development is deployed to address the specific site conditions and utilise an integral piece of urban land for efficient urban infill. The proposed development will be appropriate in the local context, facilitating the population growth with a variety of accommodation, supporting the shifting needs of the community. Whilst not strictly adhering to the building height standards within the site, the design response is suitable for the site and enables the achievement of high-quality development with minimal impacts on surrounding land.

The proposed built form will reflect the character of the Newcastle City Centre and assist in achieving the aims of this zone, including the key aim of promoting the revitalization of Newcastle City Centre. The projection of the building above the height limit in relation to one tower will not result in an overbearing visual impact and would barely be perceptible (if at all) from a pedestrian perspective. The exceedance in height will have minimal impacts on surrounding development and the public domain.

The movement of the communal space for the northern tower to the rooftop enhances the amenity of the development for the residences and was supported by the UDRP. The

proposed rooftop level has incorporated substantial landscaping to introduce visual interest. The provision of this terrace and associated communal areas results in positive social and amenity outcomes for future users, without resulting in any unreasonable impacts such as overshadowing.

The extent of the height variation to the main roof lines is in part reflective of the variation change in levels of the towers. The UDCG supports providing some variation in the skyline which in turn is dependent on providing some height disparity between the two towers. It was considered that the approved heights with a difference of 13m between the towers created a lopsided effect on the development and created too much visual disparity between the two towers, resulting in a feeling that the towers were not part of the same development. The proposed raising of the Northern tower now brings the difference of the two towers back to 6.2m, which is considered to maintain that visual connectiveness between the towers, whilst maintaining the desired variation in heights.

Considering the small floor plate size and slender tower design, the proposed development seeks to contribute to the public benefit through providing appropriate solar access, outlook, ventilation, activation and privacy, enhancing residents and employee's quality of life and respecting the development potential of neighbouring properties.

In relation to the proposed height variation, the UDCG suggested that a height exceedance could potentially be supported on the basis of the reduction in building height achieved through the variation in tower heights. The minor redistribution of height in the towers was worthy of support from the UDCG because of the aesthetic benefits demonstrated in the variation and the minimal additional impact that the lift overruns, and roof terrace heights would have on overshadowing and view loss.

The proposed development achieves the objectives of clause 4.3.

(a) to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,

The proposed development has been designed by Marchese Partners and CKDS and consists of two high quality, architecturally designed buildings that make a positive contribution to the West End of Newcastle. The proposed design response improves the potential for the Newcastle West Precinct to achieve the strategic direction and goals mentioned throughout the Hunter Regional Plan, Greater Newcastle Metropolitan Plan, Newcastle Urban Renewal Strategy, Newcastle Urban Transformation and Transport Program and Newcastle Community Plan.

These strategies and plans focus on the revitalisation in Newcastle City Centre and the long term-growth of the West End. The design enhances the vitality, identity and diversity of Newcastle City Centre through the revitalisation of a corner site along the one of the City's major classified roads (King Street). The proposed development will assist in housing the growing population, attract consumers from precincts in close proximity and enhance the ambiance of the West End.

As stated in Initial Action (2018) at 87 and 88, there is no requirement that the impacts be neutral or non-existent, rather the test is simply whether the objectives of the development standard are met.

The proposed development represents a compatible mixed-use development for the site and is consistent with the desired future vision for this area of the West End Precinct to emerge as a revitalised commercial and residential precinct. By providing a mix of retail and office premises, located alongside the 'Verve' towers and opposite Marketown Precinct, the

proposal will enhance the economic success of the Newcastle City Centre.

Further, the proposed development incorporates small floorplates compared to the typical standard for such developments and thereby ensures that the future towers are less visually imposing. This smaller floorplate contributes toward the high-quality visual aesthetics of the proposed design.

(b) to allow reasonable daylight access to all developments and the public domain.

Reasonable daylight access is provided to all surrounding developments. Due to sensitive design and siting, the proposed height variation will not result in any detrimental impact to any neighbouring land uses. The proposed development will not unreasonably overshadow the properties to the east, south or west; and will not cause significant overshadowing of the public domain. The two towers are oriented east-west and are offset not only to minimise direct views from opposing habitable rooms, but also to maximise solar access, privacy and ventilation. The small footprint of the towers, splayed balconies and articulation of the base mean the apartments will enjoy extended sunshine and extensive views.

The proposed development achieves the objective of the clause and therefore strict compliance with the 66m height standard of the site would be unreasonable, unnecessary, and would not achieve a greater planning or urban design outcome.

Clause 4.4 Floor space ratio

In accordance with clause 7.10 and 7.5(6) of the LEP, the FSR for the site is determined to be 5.5:1. The development was approved with an overall GFA of 23,036m² or an FSR of 5.43:1. Through the rationalisation of the floor plans and amendments to the core and floor layouts, a total GFA of 23,069.12m² has been achieved, resulting in an FSR of 5.44:1.

Clause 4.6 Exceptions to development standards

Clause 4.6 does not apply to modifications.

Clause 5.10 Heritage conservation

No significant changes are proposed that would change the impact on any item of heritage significance. The proposed development is generally the same in regard to appearance, bulk and scale and footprint. The original heritage impact assessment concluded that the proposal is deemed acceptable in terms of heritage impact on the HCA and on nearby items of heritage significance.

Clause 5.21 Flood planning

The 1% AEP Flood level for the site is 2.5m AHD and the FPL for the site is 3.0m AHD. The proposed courtyard levels and retail spaces have a lower level with a design level of 2.80m and 2.22m respectively. As per the previous flood report for the site the courtyard retail and lobbies have a finished floor level (FFL) of 2.80m AHD – a freeboard of 320mm to the 1%AEP. This has been based on the maximum level achievable to maintain disabled access.

Along the western and southern road frontages, the retail space has a lower level with an FFL of 2.52m AHD, which is 580mm below the 1% AEP flood level.

These FFLs are proposed to optimise street activation potential along King Street and National Park Street, minimising the use of ramps and stairs to allow for disabled access compliance. In order to accommodate these reduced levels, it is recommended;

- the surface finishes below the FPL are durable and flood compatible to allow for more frequent clean up and minimise financial loss

- the retail areas with the low floor levels have high ceilings which may facilitate adaptable floor levels should changes be made to the King Street or National Park Street Road reserves
- provision is made to store stock and valuable goods above the FPL to minimise financial loss

Although numerically the site is not compliant it is suggested that the risk to property has been minimised through provision of on- site refuge, a selection of carpark levels and a merit-based assessment for retail floor levels with recommendations for structural certification and a flood emergency response plan. The proposed modification does not propose any significant changes in relation to dealing with flooding on the site, from what was previously approved.

An updated civil covering letter by a qualified/practicing Engineer is provided in support of the modification.

Clause 6.1 Acid sulfate soils

The site is identified as having potential acid sulfate soils class 4.

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. For class 4 land, development consent is required for work more than 2 metres below the natural ground surface; and for works by which the water table is likely to be lowered more than 2 metres below the natural ground surface.

As per condition 62 of the consent, prior to works commencing a site management strategy for dealing with any identifying potential for Acid Sulphate Soils (ASS) to be encountered and measures and techniques to be followed in the event that ASS are encountered. This is in the process of being prepared for the site.

Clause 6.2 Earthworks

The proposed works will involve minor excavation works associated with the construction of the lift shaft, building foundations and associated footings and substructure from piers to rock.

The earthworks proposed are not likely have any detrimental impacts on the immediate site or the adjoining properties.

As the site is located within a HCA, suitable measures will be in place during the demolition/construction stage in case an artefact is uncovered.

Clause 7.1 Objects of Part

The proposed development is compatible with these objectives as it will promote the economic revitalisation of the City Centre and encourage employment growth during both construction stage and operational stage. The design of the development integrates architectural features that reflect the historical context of Newcastle whilst providing a high-quality development with complementary finishes to the locality and the proposed mix of uses will enhance activity during the day time and evening to ensure the City Centre is a safe and attractive place for locals and visitors.

Clause 7.3 Minimum Building Street Frontage

In accordance with this clause, a building erected on land in Zone B3 Commercial Core must have at least one street frontage of at least 20 metres.

The site has a frontage of more than 20m and less than 100m both along National Park Street

and King Street, and accordingly satisfies the requirements of this clause.

Clause 7.4 Building separation

The separation distances between the towers approved under the original DA have been increased from a maximum of 22.35m to 22.77m. The impacts of the variation were assessed under the previous approval. The slight increase in separation improves the overall outcomes of the objectives of this clause and is considered beneficial.

Clause 7.5 Design excellence

Development consent must not be granted for the erection of a new building on land within the Newcastle City Centre unless the consent authority considers that the development exhibits design excellence.

(3) In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters:

- (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
- (b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,*
- (c) whether the development detrimentally impacts on view corridors identified in the Newcastle City Development Control Plan 2012,*
- (d) how the development addresses the following matters:*
 - (i) heritage issues and streetscape constraints,*
 - (ii) the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
 - (iii) bulk, massing and modulation of buildings,*
 - (iv) street frontage heights,*
 - (v) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*
 - (vi) the achievement of the principles of ecologically sustainable development,*
 - (vii) pedestrian, cycle, vehicular and service access, circulation and requirements,*
 - (viii) the impact on, and any proposed improvements to, the public domain.*

The proposed development exhibits a high standard of architectural design, with high quality materials selected for the design, well suited to the locality. The design contributes positively to the public domain not only as a visually striking element of the built landscape but also in its improved amenity to the public domain through awning design, active street frontage, improved streetscape planting and connectivity of the site with the locale.

The development has suitably responded to its context and site attributes and considers each of the items expressed within subclause (d). Specifically:

- (i) The impact of the proposed development on heritage is negligible, as discussed in previous sections.
- (ii) The proposed building does not impede development of the neighbouring site.
- (iii) The building has a distinct base, middle and top and is well balanced.

- (iv) The street wall height is consistent with the desired built form for the location;
- (v) The design is sustainable and does not present any adverse shadowing, wind or reflectivity concerns.
- (vi) The design incorporates ecologically sustainable building design elements including apartment orientation for natural light, ventilation and aspect; active transport options; building materials with good thermal mass; native and hardy vegetation selection; screening and planting on the building.
- (vii) The design incorporates suitable facilities to encourage active transport use.
- (viii) The design proposes improvements to the public domain including tree and garden planting and pavement improvements; and contributes to an active and vibrant street front.

This SEE provides overall discussion on how the proposed development achieves design excellence. The proposal has undergone review by the UDCG panel on numerous occasions prior to lodgment with the Design Excellence Panel. The design of the proposal has been resolved through the implementation of the Panel recommendations and with consideration to planning instruments, the proposed development is considered to achieve a high level of design excellence.

A design waiver from the NSW Government Architect was issued for the original development. It is our understanding that the proposed modification only needs to be assessed by the UDRP, as the waiver states *'This waiver is granted subject to the project team presenting to the UDCG in an ongoing arrangement through project delivery.'* We would consider a modification application as part of the project delivery process, with the UDCG continuing as the design review panel in any assessment, determination, and the ongoing review of subsequent design documentation, as required by the conditions of the development consent. The waiver also explicitly states *'GA NSW nominates the UDCG membership as the design review panel for the date of this letter until project completion. We recommend reviews be undertaken prior to DA submission, prior to the issue of CC, and as deemed necessary by the consent authority.'* The proposed modification can be classified as a DA submission.

Clause 7.6- Active Street Frontage in Zone B3 Commercial Core

The objective of this clause is to promote uses that attract pedestrian traffic along street frontages in Zone B3 Commercial Core.

This clause specifies that the proposal, being on land zoned B3, is required to have an active street frontage excluding any part of the building that is used for any of the following:

- (a) entrances and lobbies (including as part of mixed-use development),
- (b) access for fire services,
- (c) vehicle access.

In this clause, a building has an active street frontage if all premises on the ground floor of the building facing the street are used for the purposes of business premises or retail premises.

The proposal has provided an active street frontage and satisfies the requirements of this clause.

Clause 7.9 Height of Buildings

The site is not within 'Area A' or 'Area B', and accordingly the requirements of this clause do

not apply to the proposal. Height has been considered in accordance with Clause 7.5(6) (with reference to clause 4.3) of the LEP 2012. Assessment of the height has been considered under Clause 4.3.

Clause 7.10 Floor Space Ratio for certain development in Area A

The proposal is seeking an FSR of 5.44:1. It is considered that the proposed development is compliant with clause 7.10 Floor Space Ratio, due to the provisions of clause 7.5(6) of the Newcastle LEP. Assessment of the FSR has been considered under clause 4.4.1

4.2.6. Newcastle Development Control Plan 2012

The development has been designed having regard to the provisions of DCP 2012. It is compliant with the Objectives of all relevant sections and any variation from numerical controls in the acceptable solutions is justified in the summary report below. Minimal changes are proposed that would impact on compliance with the DCP when compared to the original DA.

DCP	Compliant	Comments
3.10 Commercial Uses	Yes	Ground floor commercial is proposed on both frontages. These spaces have extensive glazing to provide visual connection with the street. Infrastructure and services are integrated within the building design and capable of being managed separately to the residential requirements. While exact uses are not yet known, with the revitalisation of the west end of Newcastle, these areas will see increased pedestrian activity and are ideally located to leverage off the proximity to public transport, services, retail, and increasing residential facilities.
4.01 Flood Management	Yes	Impacts of flooding were assessed under the original development application, with minimal to no change proposed as part of the modification. The development remains compliant with Council requirements.
4.03 Mine Subsidence	Yes	Approval required from SA NSW and will be sought under integrated development provisions
4.04 Safety and Security	Yes	Minimal changes have been proposed that change the development in relation to safety and security. The development remains consistent with the original CPTED assessment.
4.05 Social Impact	Yes	The development is in keeping with the urban context and will increase housing supply within the developing west end of the City. The site is highly accessible to public transport, essential community infrastructure and services. There is a mix of dwelling types to provide housing diversity. It will increase the city centre population and help activate the area and improve the streetscape.
5.01 Soil Management	Yes	No basement levels are proposed so excavation and bulk earthworks are limited in depth and area to those required for structural outcomes (foundations, mine grouting etc.). All earthworks will be supported by appropriate geotechnical investigations. The civil documentation contains measures to control erosion and sedimentation (stabilised access, sediment fencing, and pit filters).
5.02 Land Contamination	Yes	There are no changes proposed that will impact the previous assessment of contamination. The approved process will be followed to assure that any contamination is dealt with accordingly.
5.03 Vegetation Management	Yes	The original application dealt with the removal of the trees on site and within the public domain. Tree removal has been completed as part of the early site works.
5.04 Aboriginal Heritage	Yes	A AHIMS database search did not identify any site or listed places within 50m of the site. As an urban infill site with limited excavation, the proposal is considered acceptable with respect of potential impact on aboriginal heritage. Statutory protections apply and appropriate conditions can be applied to reaffirm the management of unexpected finds.
5.05 Heritage Items	Yes	The original application assessed the impacts of the development on any heritage items and was found to be consistent with the relevant legislation and requirements. The proposed changes do not modify the impact on any items of heritage significance.

DCP	Compliant	Comments
5.06 Archaeological Management	Yes	The site is not identified as being, or in proximity to, nominated archaeological sites. It is an urban site and only limited excavation is proposed. Conditions can be applied, and statutory protections exist to protect unexpected finds during construction.
6.01 Newcastle City Centre	Yes	
6.01.02 Character Areas – West End	Yes	The proposal will enhance the West End and is consistent with the future vision and principles outlined in the Council's Strategy documents and Council's DCP.
6.01.03 General controls		
A Building form		<p>A1 Street wall heights No changes are proposed to the approved street wall heights that were considering appropriate for the development</p> <p>Only minor changes to the setbacks are proposed by the modification. The approved setbacks were considered appropriate with the minor changes not increasing any impacts. UDRP supported the original setbacks for the development.</p> <p>.</p>
		<p>A2 Building setbacks: All setbacks excluding the corner setback to King Street have been increased for the modified proposal. Most of the increases are minor, however improve the overall compliance for the development. The modification does not increase any impacts of the approved development and is considered to be appropriate.</p> <p>The setbacks above the 45m plane were considered appropriate under the original development and are not proposed to change.</p> <p>.</p>
		<p>A3 Building separation: The proposal achieves an internal building separation of 22.77m.</p> <p>A4 Building depth and bulk: The proposed towers comprise a maximum residential floorplate of 562.4m² and contains a maximum building depth of 20.92m.</p> <p>A5 Building exteriors: The proposed development will comprise full height glazing systems with operable vents at overlapping ends, expressed concrete slab edges, precast or off-form blade column corners, anodized aluminium vertical screening, glazed balustrade with flat bar post and rail. A material, colours and finishes board is included in the Architect's drawings package.</p> <p>A6 Heritage buildings: It is considered that there are no identified constraints to the current proposal in relation to built heritage and that there is no evidence to suggest that archaeological remains are presented within the area.</p> <p>A7 Awnings: Awnings are proposed on both frontages to provide pedestrian amenity and define building entries.</p> <p>A8 Design of parking structures: No change is proposed from the approved design which was considered appropriate.</p> <p>A9 Landscaping: Landscaping is concentrated on the podium level including the outdoor communal space. Elements of wall planting are proposed to soften the façade and integrate with the architectural design, materials, and colours.</p>

DCP	Compliant	Comments
B Public Domain	Yes	<p>B1 Improved pedestrian connections are demonstrated along the King Street and National Park Street frontages. The design incorporates effective pedestrian connectivity around and within the site as desired. The development complies with this section with minimal changes proposed to the approved plans in this regard.</p> <p>B2 The site does not affect any views nominated in the DCP. Originally, UDCG provided support to vary the height of buildings to facilitate the skyline visual amenity and maintain view corridors and sight lines.</p> <p>B3 Original compliance with this clause is not impacted by the modified design. The proposal satisfies these criteria, with glazed windows and large entries at ground level, active land uses around the entire ground floor, and attractive, usable pedestrian spaces in and around the building.</p> <p>B4 The building positively addresses the street, with commercial premises' entries at street level; visual connectivity between the ground floor premises and street. This creates optimum surveillance opportunities around the buildings and will contribute to the activity and vibrancy at ground level within this precinct. Entries are identifiable and safe; levels of the building relate to surrounding site levels for ease of access.</p> <p>B5 The public art strategy was approved as part of the original application. This remains unchanged.</p> <p>B6 Solar access is maintained to surrounding public spaces as much as possible and to a reasonable level. The proposal does not affect the significant public spaces listed.</p> <p>B7 Refer to other relevant sections re infrastructure compliance.</p> <p>B8 N/A – not within identified precinct.</p>
6.02 Heritage Conservation Areas	Yes	<p>The site is located within the Newcastle City Centre Heritage Conservation Area and is considered an appropriate development for the future character of Newcastle West, with no hindrance upon the existing character or heritage items within close proximity.</p> <p>The materials proposed have been chosen to complement the heritage conservation area and nearby heritage items.</p> <p>The proposed car parking will be screened within the podium of the proposed development. No additional vehicle crossings are proposed.</p> <p>The development has been designed with consideration to the heritage conservation area. The proposed changes do not change the overall essence or character of the development, which was assessed as appropriate in relation to these clauses under the original approval. The modification does not increase any impact on the heritage conservation area.</p>
7.00 Development Provisions		
7.02 Landscaping, Open Space and Visual Amenity	Yes	<p>Landscape plans incorporate a replacement street trees, podium level green spaces, and further planting on the rooftop communal space.</p> <p>Deep soil planting is not required due to the urban nature of the site.</p> <p>Detailed landscaping outcomes are provided in the landscape plans.</p>
7.03 Traffic, Parking and Access		
7.03.01 Traffic studies and plans	Yes	<p>An amended Traffic Impact Assessment (Intersect) has been provided. It details existing conditions, identifies relevant controls and standards, and assesses the suitability of the project with respect to Traffic, Parking and Access, concluding that the development is acceptable.</p> <p>Demolition and construction are likely to be staged from National Park St, which carries significantly less traffic volumes than Hunter and King St.</p> <p>A construction traffic management plan will be required as part of construction documentation pending a development approval.</p>
7.03.02 Parking provision		

DCP	Compliant	Comments																																								
A Parking rates	Yes	<p>An in-depth assessment of the parking requirement has been undertaken in Section 2.3.8 of this report. The development proposed a surplus of 11 carparks, however, proposes in trying to match the demand for resident parking within current market conditions the applicant is seeking to provide 27 additional resident car parks and reduce visitor car parking from 41 spaces to 21 spaces.</p> <p>Justification for this approach is provided as follows;</p> <ul style="list-style-type: none">• The current apartment market in Newcastle demands that each unit must have its own car space, it is difficult to sell an apartment without a car park. This approach aligns with the Council draft DCP, as they recognise the need for each unit to have its own parking space, and for larger units to have 2 spaces each.• The demand for each unit to have a car park is somewhat driven by the lack of accessibility to good public transport on the broader scale, as it is historically difficult to travel outside of the CBD area using public transport to areas such as eastern Lake Macquarie, Port Stephens, Cessnock, Kurri Kurri and beyond.• To provide the required additional residential parking the required visitor car parking has been reduced by 50 %. It is considered this more closely resembles the real demand for visitor car parking in large residential developments and there is opportunity within the development to allow visitor car parking in the commercial car parking spaces during out of business hours. This approach has been successful in a number of similar developments in the Newcastle CBD area.• The removal of existing access crossings on National Park and King Streets will result in an increase of available on-street parking which would be available to the general public and visitors to the development.• The proximity of the development to numerous public carparks within walking distance or close to public transport routes including No. 2 Sportsground, Market Town, Little King Street/Birdwood Park, Spotlight carpark, The Store/Interchange parking.• Minimising visitor car parking at residential developments is considered an excellent strategy to increase public ridership levels on the adjacent public transport services such as the light rail.• The Draft DCP allows for an evidence-based approach to visitor parking. From our experience and involvement with a number of similar projects, the proposed number of visitor parks is appropriate given the above justification. <p>The development provides the following parking breakdown.</p> <table><tr><th>Proposed Use</th><th>SEPP / DCP Parking Rate</th><th>GFA / No. Units</th><th>Car Spaces Required</th><th>Car Spaces Proposed</th></tr><tr><td>Commercial</td><td>1 per 60m²</td><td>1285m²</td><td>22</td><td>26</td></tr><tr><td>Residential</td><td></td><td>199</td><td>183</td><td>210</td></tr><tr><td>studio / 1 bdm</td><td>0.6</td><td>38</td><td>23</td><td>38</td></tr><tr><td>2 bdm</td><td>0.9</td><td>131</td><td>118</td><td>130</td></tr><tr><td>3+ bdm</td><td>1.4</td><td>30</td><td>42</td><td>42</td></tr><tr><td>visitor</td><td>1 for first 3 then 1 per 5</td><td>199</td><td>41</td><td>21</td></tr><tr><td colspan="3">Total</td><td>246</td><td>257</td></tr></table>	Proposed Use	SEPP / DCP Parking Rate	GFA / No. Units	Car Spaces Required	Car Spaces Proposed	Commercial	1 per 60m ²	1285m ²	22	26	Residential		199	183	210	studio / 1 bdm	0.6	38	23	38	2 bdm	0.9	131	118	130	3+ bdm	1.4	30	42	42	visitor	1 for first 3 then 1 per 5	199	41	21	Total			246	257
Proposed Use	SEPP / DCP Parking Rate	GFA / No. Units	Car Spaces Required	Car Spaces Proposed																																						
Commercial	1 per 60m ²	1285m ²	22	26																																						
Residential		199	183	210																																						
studio / 1 bdm	0.6	38	23	38																																						
2 bdm	0.9	131	118	130																																						
3+ bdm	1.4	30	42	42																																						
visitor	1 for first 3 then 1 per 5	199	41	21																																						
Total			246	257																																						
C Bicycle parking	Yes	Each unit has been provided an area to store a bicycle.																																								
D Motorbike parking	Yes	Eleven dedicated motorcycle spaces are provided in the carpark. The development requires 12 motorbike parks, however, the one park deficit is considered appropriate given the available access to public transport and the ability for a motorbike to use a car space, as an owner of an apartment with a motorbike will be able to park the bike in the designated car space.																																								
E Parking for people with a disability	Yes	Compliance is detailed in the Access Report which confirms the development complies with the requirement of one (1) accessible space per 100. The accessible space has a continuous accessible path of travel, via the lift, to the main building.																																								
7.03.02 Travel demand management	Yes	<p>The site is a highly accessible via bus, heavy rail, and the light rail.</p> <p>Bus stops are located nearby and it is not considered necessary for this proposal to provide additional facilities.</p>																																								

DCP	Compliant	Comments
7.03.04 Design and layout of parking and access	Yes	<p>Parking is suitably integrated into the design to minimise visual impacts while remaining efficient for residential access.</p> <p>The car parking facilities do not detract from the overall development as it is integrated within the development. The podium tower which comprises the car parking enhances the amenity.</p> <p>Parking is located via lifts and stairs with entrances and exits via both the North and South tower.</p> <p>The car parking is separate from pedestrian and cyclist access.</p> <p>A loading zone area is provided within the site, separated from the driveway area.</p> <p>The façade integrated within the podium tower comprising the car parking has been designed with architectural integrity, complementing the building and local character as well as providing screening as public art on the western portion of the site, fronting National Park Street.</p> <p>The proposed car park is screened appropriately via public art and public domain sited apartments. The structure enables natural lighting and ventilation due to good design.</p>
7.04 Movement Networks	Yes	There is no change to movement network proposed.
7.05 Energy Efficiency	Yes	A BASIX certificate was issued confirming that the proposed development is in accordance with the requirements for an efficient energy score.
7.06 Stormwater	Yes	No changes are proposed to the stormwater management system on the site and is considered to align with current requirements which was previously supported by Council.
7.07 Water Efficiency	Yes	A BASIX certificate was issued confirming that the proposed development is in accordance with the requirements for a water efficiency score.
7.08 Waste Management	Yes	<p>An updated Waste Management Plan has been provided addressing waste management procedures during construction and ongoing occupation of the building</p> <p>It is anticipated that a private waste contractor will be used for ongoing waste services for the development.</p> <p>Only minor changes are proposed to the scheme approved by Council, and no further impacts are expected.</p> <p>Demolition has commenced on the site under the original approval and is in accordance with Council requirements.</p>
7.10 Street Awnings and Balconies	Yes	<p>The street awning of the proposed development will provide pedestrians with an appealing scale. The streetscape will be contributory with its eastern neighbour in bulk, scale, podium design and street awnings.</p> <p>The street awnings are set back to enable full growth from the street trees and urban plaza's plantings. The street awnings stretch across the entirety of King Street and National Park Street, into the recessed urban plaza providing shade and cover, whilst creating an attractive design, isolating the commercial uses on the ground floor. The proposal has been designed with sympathetic features to contribute positively to the heritage conservation area in which it is located. The simplicity of detailing will reduce the visual impact from a pedestrian scale.</p> <p>There are no street balconies, with all residential balconies behind the property boundary.</p>

5. ASSESSMENT OF ENVIRONMENTAL EFFECTS

In determining the modification, the consent authority is required to consider Section 4.15(1) of the *Environmental Planning and Assessment Act, 1979*. This is addressed below.

5.1. Section 4.15(1)(a) – Statutory Planning Considerations

Section 4.15(1)(a) requires the consent authority to take into consideration:

(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 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), and*

(v) *any coastal zone management plan (within the meaning of the [Coastal Protection Act 1979](#)),*

that apply to the land to which the development application relates

These matters (and others) are addressed in this report and below. Division 8 of the *EPA Regulations* prescribes additional matters that must be considered by a consent authority in determining development applications, in this case being:

(b) *in the case of a development application for the demolition of a building, the provisions of AS 2601,*

The proposal is permissible with consent and is demonstrated through this SEE as being consistent with the provisions and objectives of the Newcastle LPS; Newcastle LEP 2012; and Newcastle Development Control Plan 2012. The proposal is consistent with SEPPs that are applicable and relevant to the development and demolition will be carried out in accordance with the requirements of AS 2601.

5.2. Section 4.15(1)(b) – Environmental, Social and Economic Impacts

Section 4.15(1)(b) requires the consent authority to consider:

(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*

The relevant matters are addressed in the following paragraphs.

5.2.1. Impacts on the Natural Environment

The proposed development and its environmental impacts have been investigated and addressed in the application documentation. No significant vegetation will be removed and there will be no long term or irreparable impact on the natural environment. Water quality management, and erosion and sediment controls measures are incorporated in the design. These measures, combined with the proposed landscaping and stormwater outcomes, will

mitigate impacts associated with the volume and quality of discharged water.

Impacts on the natural environment are appropriate and acceptable for the nature, context, and scale of the development.

5.2.2. Impacts on the Built Environment

The site is an urban infill site. The development is appropriate given site opportunities and constraints and will facilitate redevelopment to match approvals for redevelopment of adjoining land on two of the three boundaries. The form, scale and positioning of the built form manages potentially adverse environmental impacts, while materials, finishes, and landscaping are compatible with existing and desired future character.

Impact on the built environment is appropriate and acceptable for the nature, context, and scale of the development.

5.2.3. Social and Economic Impacts

The development is consistent with Council's strategic planning and will not result in a significant or dramatic shift in local demographic or economic conditions. Construction expenditure will support local businesses and the local economy. Ongoing operation will provide jobs and promote economic activity.

The development is considered to deliver positive social and economic benefits.

5.3. Section 4.15(1)(c) – The Suitability of the Site

Section 4.15(1)(c) requires the consent authority to consider:

(c) the suitability of the site for the development

The site is identified, through zoning and relevant planning controls, for this type of development. All necessary environmental investigations have been undertaken and where necessary, measures have been identified to ensure the development mitigates adverse environmental impacts. The development responds to its physical characteristics, is compatible with surrounding development, and is a suitable use of the site.

5.4. Section 4.15(1)(d) – Submissions

Section 4.15(1)(d) requires the consent authority to consider:

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

Preparation of this documentation involved consultation with stakeholders. Any representations and submissions received during the assessment and determination will need to be considered by the consent authority. Where necessary the applicant will respond to specific matters raised through this process.

5.5. Section 4.15(1)(e) – Public Interest

Section 4.15(1)(e) requires the consent authority to consider:

(e) the public interest.

Public interest is best served by the orderly and economic use of land for purposes permissible under the relevant planning regime and in accordance with prevailing development controls. The development is permissible and consistent with strategic policies specific to the site, and those dealing more generally with land use supply and economic development within Newcastle. The development will support economic activity and can be delivered with no significant, adverse environmental impacts. The proposal is considered in

the public interest.

6. CONCLUSION

Having regard to site characteristics, nature of the proposed development, and prevailing land uses in the area, the development will provide space for new businesses and residents in a built form that will contribute to the desired character of the area. The form and scale of the proposal is consistent with the local pattern of development, and the site is accessible to all necessary services and infrastructure

The modified development achieves a compact and sustainable urban form whilst considering the context of neighboring buildings and potential future development of neighboring lots. The proposed development represents a high-quality urban design form, which seeks to reinvigorate and enhance the West End of Newcastle with an interesting mixed-use development incorporating additional housing choice for the locality. The proposed development will have a positive impact on the overall amenity and vibrancy of the precinct and define the geographical commencement of the Newcastle City Centre.

Potential impacts have been carefully considered in the evolution of the design for the site. The design is generally compliant with most applicable planning objectives of the LEP 2012 and DCP 2012, with the exception of the overall height, which has been justified and found to be suitable in relation the site constraints given the change in height is a design response to improve overall appearance, and it has been achieved without increasing the overall GFA. The proposed development achieves the desired planning outcomes for the locality and remains consistent with SEPP 65 design principles and the Apartment Design Guide design objectives.

The modified development remains consistent with the desired character and built form of Newcastle City Centre, bringing a diverse range of housing options within one development, consolidating lots and integrating an active streetscape with retail and commercial premises for the convenience of residents and visitors.

The proposal is reasonable and appropriate when considered under the relevant heads of consideration in *Section 4.15 of the Environmental Planning and Assessment Act, 1979*, and is consistent with the provision of Clause 4.55 (2) as the development is considered to be substantially the same as the original approval and is worthy of favourable consideration by Council.