



URBIS

CLAUSE 4.6 VARIATION REQUEST - HEIGHT OF BUILDINGS

East End Stage 3 & 4

Prepared for
IRIS CAPITAL
November 2024

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CLAUSE 4.6 VARIATION REQUEST - HEIGHT OF BUILDINGS - EAST END
STAGE 3 & 4 - NOVEMBER 2024

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1. INTRODUCTION

1.1. KEY POINTS

This Clause 4.6 Variation Request (**'the Request'**) has been prepared on behalf of East End Stage 3 Pty Ltd and East End Stage 4 Pty Ltd (**'the applicant'**) and accompanies a Development Application (**'DA'**) for a mixed-use development at 105-137 Hunter Street, 3 Morgan Street, 22 Newcomen Street and 66-74 King Street, Newcastle. The proposed development was subject to a Design Competition where four competitors participated to prepare design proposals for the site and is now subject to the Development Application process.

The East End Precinct is very unique in many respects, namely as it straddles multiple allotments, heritage and contributory buildings, significant level changes, and sensitive interfaces with surrounding sites and the public domain. Accordingly, the site also has multiple height controls applicable to different parts of the site, which was determined prior to a number of recent changed conditions around the site (including the demolition of Council's adjacent car park, as well as the desire for improved pedestrian connections and view lines to the Cathedral).

Within this context, as part of pre-lodgement engagement with Council, the design competition brief for the site sought to emphasise the need for any future built form and massing to respond positively (and flexibly) to these changed conditions, by an overt focus on the key objectives of the height standard and creating a 'better' planning outcome by allowing a degree of flexibility to the current height standards applicable to the site.

The proposed variation to the height standards demonstrates that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient planning grounds to justify this variation. In summary, these circumstances can be summarised as follows:

- **The proposed height variation will assist in delivering a better heritage and conservation outcome for the Municipal Building.** The LEP controls allow for additional built form to be constructed on top of the Municipal Building. The Municipal Building has been retained 'freestanding' and unencumbered of additional storeys. This is because of the redistribution of building mass. Given this key move, the building mass above the Municipal Building was distributed and contributed to the height variation. The heritage benefit outweighs the impacts associated with the additional height of Stage 3.
- **The proposed height variation allows for a significantly improved public domain experience, enhanced public views, and pedestrian experience by the redistribution of massing.** The LEP controls allowed for a smaller 'Market Square.' In conjunction, with unlocking the view corridor, the reconfiguration improves the public domain experience and improves solar access to the City of Newcastle site to the south which will also be required to contribute to the Harbour to Cathedral link.
- **The re-massing of the Stage 3 unlocks the view corridor between the Harbour and the Cathedral, which was not envisaged in the original Concept DA and LEP.** The LEP controls allowed building mass across the view corridor. This building mass has been located atop of the proposed building to deliver CN's desired public domain outcome and preserves the high amenity enjoyed by the Applicant that was inherent in the approval building mass scheme.
- **The proposed variation does not result in any unreasonable impacts to surrounding private and adjacent properties.** The additional building height (above the original Concept DA) will not result in unreasonable impacts to public spaces adjacent residential developments. Most overshadowing falls within the previously approved concept DA massing with only small increments of shadow falling outside of the approved envelopes. The private view sharing impacts a minor for Segenhoe Apartments, the Herald Apartments and Newcomen Apartments. The view impact for the Newcastle Club as a whole is moderate, such that the view sharing outcome in the context of the relevant controls is reasonable and acceptable. It is noted that the Newcastle Club is a commercial building rather than a residential dwelling.

Overall, the additional height as a result of the re massing is considered justifiable from an environmental planning perspective as it delivers a significant public benefit.

1.2. HEIGHT CONTROLS

The Request seeks an exception from the height prescribed for the site under clause 7.10 of the Newcastle Local Environmental Plan 2012 (NLEP). NLEP prescribes the maximum heights across the site as:

- Building 3 West: RL + 30.00
- Municipal Building: RL + 20.00 (previously Building 3 North)
- Building 3 South: RL + 30.00
- Building 4 North: RL + 29.00
- Building 4 South: + 42.00

The proposed heights are outlined below:

- Building 3 West: RL + 34.40
- Municipal Building: RL+20.43
- Building 3 South: RL + 45.65
- Building 4 North: RL + 36.92
- Building 4 South: RL + 51.70

Under clause 7.5(6) of the NLEP development that exhibit design excellence are eligible for an additional 10% height. Subclause (6) reads:

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

This development, at the request of CN, has undergone an Architectural Design Competition where four competitors put forward their designs in accordance with a robust Design Excellence Brief and Strategy. SJB in collaboration with DBJ and Curious Practice scheme was recommended by the Jury as the winning scheme in the competitive design process. The applicant has sort to ensure the highest level of design excellence for this highly strategic site by providing a variety of design responses to respond positively to the opportunity. The scheme has also been reviewed by the established Design Integrity Panel (DIP) over 6 meetings post conclusion of the Design Competition.

A concurrent section 4.55(2) modification has been progressed with CN to amend the Concept DA (D/2017/00701) to align with this Detailed DA. The section 4.55 (2) modification was approved by the Hunter and Central Coast Planning Panel (the Planning Panel) on the 28 October 2024 via a section 8.2 review process. The Planning Panel approved the following:

- Re-distribution of building massing out of the central view corridor towards other parts of Stage 3 and Stage 4 and toward the Christ Church Cathedral. This amendment will ensure the proposal remains in accordance with the NDCP 2012 and aligns with CN's vision of the view corridor.
- Realignment of Market Square as per the Design Excellence Competition scheme. Market Square is aligned with CN's desired public domain outcome and opens the view corridor to the Christ Church Cathedral.
- Amendment to the height of building envelope as a result of the redistributed mass and addition 10% design excellence provision, as per below:
 - Building 3 West: RL + 34.40
 - Municipal Building: RL+20.43
 - Building 3 South: RL + 45.65
 - Building 4 North: RL + 36.92
 - Building 4 South: RL + 51.70

- Amendment to the floor space ratio as a result of the redistributed mass and addition 10% design excellence provision, as per below:
 - Stage 3: 3.24:1
 - Stage 4: 4.35:1
 - Total: 3.90:1

Note: the Newcastle Local Environmental Plan 2012 (NLEP) prescribed an FSR of 4:1 (excluding design excellence bonuses).

There are sufficient environmental and planning grounds to vary the height standard given the variation results in no unreasonable impacts. The variation is request is made pursuant to clause 4.6 of NLEP to ensure adequate delegation to approve the height is available to the consent authority.

For a request to meet the requires of clause 4.6(3) of the NLEP, it must adequately demonstrate:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

1.3. REASONING FOR JUSTIFICATION

The request contains justified reasoning for the proposed variation to the height standard and demonstrates that:

- The Applicant holds a valid Concept DA that was approved in 2018, which has generally determined the proposed bulk and scale. The Applicant initially submitted a Design Competition Brief to CN which complied with Concept DA. Subsequently, CN advised of their desired public domain vision. To facilitate the delivery of this important public domain benefit, competitors in the design competition were encouraged to carefully examine the current approved building envelope configuration in Block 3 and present creative and sensitively designed responses that provide an alternative massing arrangement in the precinct whilst maintaining the amenity of the massing form enjoyed by the Applicant as approved by the Concept DA.
- A key driver for the proposal is to strategically redistribute height and floor space from the part of the approved Concept DA (specifically the part of the building envelope which impeded the visual and pedestrian links to the Cathedral).CN were not supportive of a competition brief for proposals which would have maintained the building envelope/form of the approved Concept DA. Therefore, the competition winning scheme (and subsequent DIP and UDRP meetings following this) have reviewed the appropriateness of this change to the original Concept DA in a very detailed manner from a design, form and impact perspective.
- The scheme has been through a rigorous Design Excellence process. The SJB, DBJ and Curious Practice scheme was recommended by the Jury as the winning scheme in the competitive design process. The design is a result of iterative detailed engagement and input from various CN teams including planning, waste, engineering, heritage, retail activation, and public domain; and the Chair of CN's UDRP.
- The scheme has been through six Design Integrity Panel (DIP) sessions with Paulo Macchia (GANSW), Dr Philip Pollard and Sandra Furtado. During DIP Session 1 the following observations regarding the height exceedance were made:
 - *The DIP commented that removing a storey from Building 3 South does not improve the urban design outcome of the proposal based upon the information presented.*
 - *The DIP supports the Competition Scheme height exceedance and arrangement based on the illustrated views from Hunter Street, and Newcomen Street provided. However, the visual impacts need to be further explored via a robust a view assessment.*
- The DA was accompanied by a Visual Impact Assessment prepared by Urbis, in response to the DIP's feedback. The DIP has confirmed that the fundamental elements of design excellence have been retained and in the opinion of the Panel the scheme can achieve design excellence.

- The proposal delivers a significant public benefit by the redistribution of floor space from within the identified view corridor for the “Harbour to Cathedral Park” to Building 3 South (DBJ) providing a generous and publicly accessible space. CN have a desired public domain outcome for the site, which is reflected in the Newcastle DCP 2012. The desired public outcome is currently restricted by a component of the western end of Building 3 South.
- 11 public views were assessed by Urbis in the Visual Impact Assessment which concluded that:
 - 7 views had a low visual impact, 1 view had a low-medium impact and 3 had a medium visual impact.
 - The proposed redistribution of massing from the view corridor, as approved by the Concept DA, results in an improved public view from View 4 and View 5 towards the Christ Church Cathedral. If the Concept DA arrangement was retained, View 4 and View 5 would be greatly impacted and the Christ Church Cathedral would be obscured.
 - The additional building height predominately blocks views to vegetation or open sky beyond, and generally does not block views of scenic or highly valued features. The additional height is not visible from View 7 and does not result in any view loss or impact.
 - The re-massed built forms results in lower visual impacts and a better public domain view sharing outcome. This is achieved by the inclusion of a wide view corridor between the Hunter River and the Cathedral and the protection of NDCP view 21.
- 4 private domain views were assessed by Urbis being, Segenhoe Apartments, the Herald Apartments and Newcomen Apartments (residential views) and the Newcastle Club (commercial view). The conclusions are as follows:
 - The view impact for the Newcastle Club as a whole is **moderate**, such that the view sharing outcome in the context of the relevant controls is reasonable and acceptable.
 - The view impact for the Segenhoe Building as a whole is **minor**. Almost all views from most units are not affected or are affected to a very limited extent, such that the view sharing outcome in the context of the relevant controls is reasonable and acceptable.
 - The view impact for the Herald Apartments as a whole is **minor**, such that the view sharing outcome in the context of the relevant controls is reasonable and acceptable.
 - The view impact for the Newcomen Apartments as a whole is **minor**, such that the view sharing outcome in the context of the relevant controls is reasonable and acceptable.
- The additional building height (above the Concept DA) will not result in unreasonable impacts to public spaces adjacent residential developments. The majority of overshadowing falls within the approved concept DA massing with only small increments of shadow falling outside of the approved envelopes.
- Iris Capital development is a critically important project with the purpose of rejuvenating the heart of the Newcastle CBD. A city centre that had been neglected and in decay for many years, the East End development is the single largest investment that has and continues to reshape the Hunter Street precinct.
- The variation to height does not result in non-compliance to the Apartment Design Guidelines (**ADG**) visual privacy guidelines and does not result in unreasonable setbacks or street wall heights inconsistent with Newcastle Development Controls 2012 (**NDCP**) objectives. The design is sympathetic to the surrounding context and does not overwhelm the public domain.

1.4. STRUCTURE OF REPORT

This report should be read in conjunction with the Statement of Environmental Effects prepared by Urbis Pty Ltd and dated May 2023.

The following sections of the report include:

- **Section 2:** description of the site and its local and regional context, including key features relevant to the proposed variation.
- **Section 3:** brief overview of the proposed development as outlined in further detail within the SEE and accompanying drawings.

- **Section 4:** identification of the development standard, which is proposed to be varied, including the extent of the contravention.
- **Section 5:** outline of the relevant assessment framework for the variation in accordance with clause 4.6 of the LEP.
- **Section 6:** detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the Land and Environment Court.
- **Section 7:** summary and conclusion.

1.5. RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION

This Request has been updated in December 2023 to response to the Request for Information (RFI) dated 13 November 2023. This variation request responses to the following points of the RFI:

- *CN comment: The approved concept plan and NLEP allow for specific rectangular polygons which detail height on a RL basis. The application has proposed buildings which are outside these polygons and these portions are subject to the 24-metre height limit, resulting in an increased variation than detailed in the cl.4.6 variation request.*

Response: Section 5 of the Request has been updated to address the areas outside of the polygon that are subject to the 24-metre height limit.

- *CN comment: The calculation of the 10% 'bonus' under cl7.5(6) is incorrect for areas affected by the maximum RL height standard. The 10% 'bonus' is an increase to the allowable RL, for example, 30 metre RL becomes 33 metre RL with the 10% bonus.*

Response: This Request has been updated to reflect the height with the 10% bonus as per CN's calculations.

- *CN Comment: The variation request does not adequately address Cl4.6(3)(a) as it does not consider cl.4.3(1)(a) in terms of the height objectives and must be updated to demonstrate how the proposed variations still meet the objective of '...desired built form, consistent with the established centre hierarchy.'*

Response: Table 3 has been updated to provide commentary regarding how the proposed variations still meet the objective of '...desired built form, consistent with the established centre hierarchy.'

- *CN Comment: When addressing the MU1 - Mixed Use zone objectives, the incorrect objectives have been addressed (i.e., they are the previous zone's objectives).*

Response: Table 5 has been updated to address the correct MU1 – Mixed Use zone objectives.

- *Additional information regarding the impact on views, as detailed in email correspondence dated 27 October 2023 and outlined again below, is to be incorporated within the amended variation request.*

Response: This Request has been updated to incorporate the findings of the revised visual impact assessment.

- *CN Comment: Additional shadowing information (i.e., 3D shadow diagrams) is requested below, please note this information will assist in addressing the height objective of cl.4.3(1)(b) and should be incorporated into the amended cl.4.6 variation request.*

Response: Section 7.3 of this Request has been updated to incorporate the updated shadow diagrams.

2. SITE CONTEXT

2.1. SITE DESCRIPTION

The site is comprised of two separate blocks of land known as Stage 3 and Stage 4. The site addresses are 105-137 Hunter Street, 3 Morgan Street, 22 Newcomen Street and 66-74 King Street, Newcastle and are legally described as:

- Lot 32, DP 864001 (137 Hunter Street) – Block 3
- Lot 31, DP 864001 (121 Hunter Street) – Block 3
- Lot A, DP 388647 (111 Hunter Street) – Block 4
- Lot B, DP 388647 (109 Hunter Street) – Block 4
- Lot 1, DP 77846 (105 Hunter Street) – Block 4
- Lot 100, DP 1098095 (3 Morgan Street) – Block 4
- Lot 1, DP 331535 (22 Newcomen Street) – Block 4
- Lot 2, DP 331535 (3 Morgan Street, Newcastle) – Block 4
- Lot 98, DP 1098034 (3 Morgan Street) – Block 4
- Lot 96, DP 1098068 (3 Morgan Street) – Block 4
- Lot 1, DP 723967 (3 Morgan Street) – Block 4
- Lot 1, DP 819134 (66-74 King Street) – Block 4

Altogether, Stage 3 and Stage 4 parcels of land have an area of 6,450m².

Stage 3 – Hunter Street

Stage 3 site is approximately 3,365m² and has frontages of approximately 81m to Hunter Street to the north, 81m to Laing Street to the south, 42m to Morgan Street to the east and 42m Thorn Street to the west. The site originally accommodated an older style brick, two storey commercial building, which has recently been demolished. The rear of the site has a direct interface with a vacant site, which previously accommodated a five-storey car park owned by City of Newcastle. The car park has since been demolished as it was no longer in use and City of Newcastle are exploring opportunities for redevelopment.

Part of the site is a local heritage item, namely a Municipal Building (No. I403) located at 121 Hunter Street. Directly opposite is a locally listed heritage item, Former Hotel Hunter (No. I405) located at 152-160 Hunter Street and diagonally north-west from the site, another Municipal Building (No. I406) located at 164-170 Hunter Street.

Located south of the site is a state heritage item, known as Christ Church Cathedral, Cemetery and Cathedral Park (No. I562), situated at 52A Church Street.

Stage 4 – Newcomen Street

Stage 4 is approximately 3,085m² and has frontages of approximately 30m to Hunter Street to the north, 55m of Newcomen Street to the east, of 40m of King Street to the south and 42m of Morgan Street to the west. The site accommodated multiple mixed-use buildings, exhibiting ground floor retail uses along the Hunter Street frontage with residential use becoming more prominent on the Newcomen Street frontage. The direct middle of the site accommodated a small hardstand car park, with three commercial buildings surrounding (visible via king street frontage), all of these buildings have recently been demolished.

Both Stage 3 and Stage 4 are located within the Newcastle City Centre Heritage Conservation Area.

The site is located within the City of Newcastle's 'East End Precinct' which is characterised by hilly topography and a mix of uses focusing on the retail spine of Hunter Street Mall. The site area is illustrated in Figure 1 and site photos are provided in Figure 2.

Figure 1 – Site and surrounding context



Source: Urbis

Figure 2 – Site photos



Picture 1 – Stage 3

Source: Iris



Picture 2 – Council car park site | Looking North-West toward Stage 1 & 2

Source: SJB



Picture 3 – Stage 4 site | King Street

Source: Google Maps



Picture 4 – Stage 4 | King Street frontage

Source: Google Maps

2.2. LOCALITY CONTEXT

The site is located within an area of Newcastle that is principally of commercial use. Development along both sides of King Street and Hunter Street have a mix of scale accommodating residential, retail and commercial development, with various buildings and uses.

- To the **west** of the site directly is Thorn Street. DA2018/00354 was approved by the Hunter and Central Coast Regional Planning Panel on 15 March 2019, for a mixed-use development at 147-153 Hunter Street (Stage 2). The approved development includes residential (121 dwellings), retail and commercial, and associated demolition and site works. This development is Stage 2 of Iris Capital's East End project. Construction is currently underway, with the heritage façade being retained. Further east is the completed Stage 1 of the East End project, consisting of the revitalised David Jones Building now QT Hotel Newcastle and new residential and retail facilities.
- The Former Hotel Hunter (I405) is located to the **north** of the site at 152-160 Hunter Street. The building is a three storey, commercial premises of the traditional federation style, with semi-circular arches rendered flush with brick façade. This building adds to the heritage significance of the area.
- Diagonally **north-west** from the site, a Municipal Building (I406) located at 164-170 Hunter Street. DA2019/00331 was approved by CN on 21 October 2019 for alterations and additions to the existing building for adaptive re-use to 5 storey level mixed-use development. Construction is yet to begin on this project.
- Further **north-west** from the site, DA202/01505 is currently under assessment by Council. The proposed development at 182 Hunter Street, is for shop-top housing and includes commercial tenancy and alterations and additions.
- **North** of the site, directly between the Former Hotel Hunter and Municipal Building is public open space, known as the Market Square. Further north is Queens Wharf Hotel, Newcastle Ferry Terminal, Queens Wharf light rail stop and additional public domain.
- To the **east** of the site at Newcomen Street is the former Newcastle Herald Building. DA2015/10299 was approved by the Hunter and Central Coast Regional Planning Panel on 22 September 2016. The approved development was for alterations and additions to the existing commercial building to include an eight-storey residential flat building, 121 units plus three level basement car parking with 161 parking bays. This development is now built and occupied.
- To the **south** of Block 3 is King Street, and the former CN car park, the building are now demolished and the site is currently vacant.
- Further to the **south** is State heritage item No. I562, Christ Church Cathedral, Cemetery and Cathedral Park. The Cathedral is situated at 52A Church Street, adjacent to Church Street on the southern, highest part of the site with the rest park (former cemetery) laid out on the slope to the north and bounded on its northern edge by King Street. The Cathedral and surrounding grounds are a significant part of the

Newcastle East End precinct, and this item must be taken into consideration when designing the subject site.

- Located to the **south** of the subject site and adjacent to the Cathedral, is a state heritage item (No. 1437) known as the Newcastle Club. It is located at 40 Newcomen Street.

Figure 3 below shows the site and surrounding locality.

Figure 3 – Site and surrounding locality.



Source: Urbis

3. KEY BACKGROUND

3.1. CONCEPT DA (DA2017/00701)

On the 02 January 2018, the Hunter and Central Coast Planning Panel granted consent for a Concept Development Application (DA2017/00701) across the site (**Figure 4**), for the following:

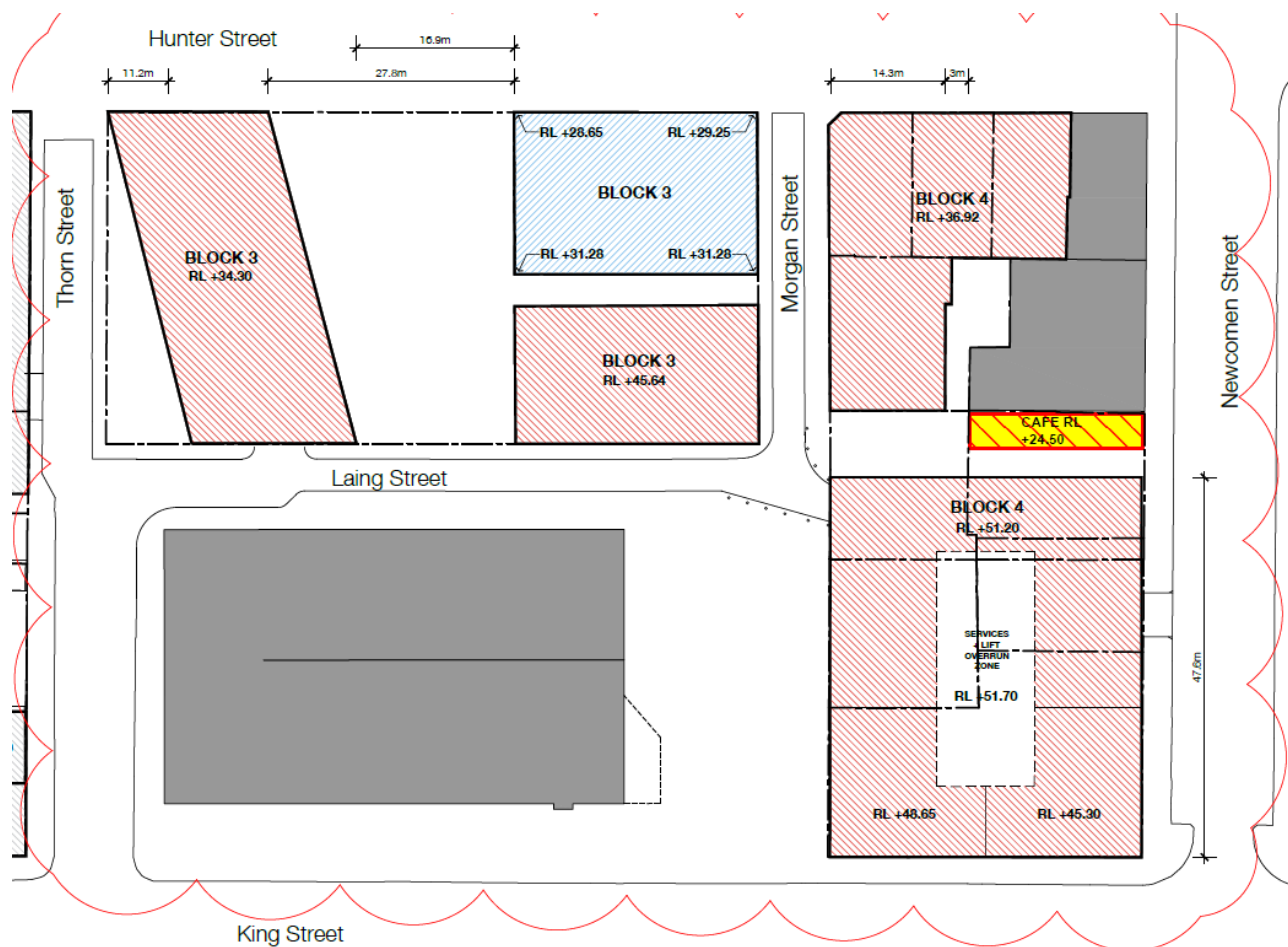
Concept Development Application for a major redevelopment of Hunter Street Mall, a mixed-use development comprising retail, commercial, public spaces, residential (563 apartments), associated car parking & site works.

A concurrent section 4.55(2) modification has been progressed with CN to amend the Concept DA (D/2017/00701) to align with this Detailed DA. The section 4.55 (2) modification was approved by the Hunter and Central Coast Planning Panel (the Planning Panel) on the 28 October 2024 via a section 8.2 review process. The Planning Panel's key reasons for the decision are summarised as (referenced from the Final Determination and Statement of Reasons, dated 28 October 2024):

- The Review Panel is satisfied that the modified Concept Approval is substantially the same development as the originally approved Concept Approval.
- While the proposed building envelopes for Building 3 (West), 3 (South) and 4 (South) exceed NLEP 2012 height controls the Panel is satisfied that the proposed increased heights area reasonable and can be supported.
- The modification facilitates the delivery of a significantly enhanced public domain outcome including opening the visual link between Newcastle Harbour and the Cathedral as envisaged by Newcastle DCP 2012, as well as reconfigured Market Square.
- The Panel considers the additional impacts on the identified public and private views are reasonable when balanced against the considerable public benefits arising from the new built form envelope massing across Stage 3 and 4 of the development sites.
- The proposal is fully compliant in terms of providing resident parking for every proposed apartment and the shortfall in commercial parking is attributable to Stages 1 and 3 which are either constructed or under construction. The panel further notes that DCP 2023 adopts a new approach to parking in the Newcastle CBD, moving from prescribing minimum parking rates to a merits-based assessment approach with maximum parking rates to promote sustainable transport choices and increased use of public transport.
- The proposed concept development as modified remains consistent with the objectives for the Newcastle City Centre in clause 7.1 of the NLEP 2012 and relevant provisions of DCP 2012 as it will facilitate the revitalisation of the East End Precinct and the Newcastle City Centre more generally, contributing to employment, other economic growth opportunities and much needed housing stock. The Panel therefore considers that approval of the review application is consistent with the objectives of the Environmental Planning and Assessment Act 1979, and in the public interest.

In summary, the Review Panel formed the view that the modification was in the public interest and worthy of support. This Detailed DA is aligned with the approved Concept Plan (as modified).

Figure 4 – Approved Building Envelope Floor Plan (DA D2017/00701)



Source: SJB

The approved Concept DA envelopes have not incorporated the potential for an additional 10% in building height provided under the design excellence provisions in the NLEP. This additional building height may be granted by the consent authority as part of the competitive design process.

Considering this, the allowable heights with the 10% bonus provision are outlined below:

- Building 3 West: RL + 33m
- Municipal Building: RL + 22m
- Building 3 South: RL + 33m
- Building 4 North: RL + 31.9m
- Building 4 South: RL + 46.20m

It is noted that some inconsistencies exist between the approved building heights in the Concept DA and the height of buildings map in NLEP, these were recognised in the Design Competition.

A key driver for the proposal is to strategically redistribute height and floor space from the part of the approved Concept DA (specifically the part of the building envelope which impeded the visual and pedestrian links to the Cathedral). CN were not supportive of a competition brief for proposals which would have maintained the building envelope/form of the approved Concept DA. Therefore, the competition winning scheme (and subsequent DIP and UDRP meetings following this) have reviewed the appropriateness of this change to the original Concept DA in a very detailed manner from a design, form and impact perspective.

3.2. DESIGN COMPETITION AND DESIGN INTEGRITY

An Architectural Design Competition was undertaken in July to August 2022. At the conclusion of the Competition, the Selection Panel determined that the scheme by SJB in partnership with Durbach Block Jagers and Curious Practice as the winner of the Competitive Design Process as it best met the objectives of the Competition Brief and was most capable of achieving design excellence.

The proponent invited four Architectural firms to lead / undertake competitive process in accordance with clause 7.5 of the NLEP and the GANSW draft Design Excellence Competition Guidelines (**GANSW draft Guidelines**).

The Jury assessed each scheme against the brief to select the highest quality architectural and urban design approach for the development. Following consideration of the four schemes, SJB in partnership with DBJ and Curious Practice was the winning scheme noting it demonstrated an appropriate response design, planning, and commercial objectives of the Brief. In the opinion of the Jury, this scheme is the most capable of achieving design excellence.

Post the Design Competition, the Design Team went through 6 Design Integrity Panel sessions. After a rigorous assessment and refinement process, the DIP determined they were comfortable with the height exceedances of Building 3 South subject to further view impact assessment, required for DA stage. The DA was accompanied by a Visual Impact Assessment (VIA) prepared by Urbis. The DIP has confirmed that the fundamental elements of design excellence have been retained and in the opinion of the Panel the scheme has achieved design excellence. The VIA lodged with the DA was an accurate estimate of view impacts. At the request of CN, the Applicant has obtained access to the properties that objected to the development, and a further VIA will be provided to CN shortly.

3.3. CN DESIRED PUBLIC DOMAIN OUTCOME

The Applicant holds a valid Concept DA that was approved in 2018, which has generally determined the proposed bulk and scale. The Applicant initially submitted a Design Competition Brief to CN which complied with Concept DA. Subsequently, CN advised of their desired public domain vision and requested the Applicant amend the Design Competition Brief to encourage competitors to explore variations to the approved Concept DA.

Given the DCP is in place (noting that the CN approved the Concept DA after the DCP was in place), any future development on CN's site must also deliver the through site link. At present, there are no publicly available plans for CN's site but in any event the approved Concept DA would have an impact on overshadowing of this site.

CN's desired public domain outcome for the site, is reflected in the Newcastle DCP 2012 and in Figure 5 below. The blue hatched area is an 'important view corridor to Christ Church Cathedral'. The Newcastle DCP 2012 states the future character as:

This precinct has the potential to develop as boutique pedestrian-scaled main street shopping, leisure, retail and residential destination. Infill development is encouraged that promotes activity on the street and which responds to heritage items and contributory buildings. Views to and from Christ Church Cathedral and the foreshore are retained and enhanced. Foreshore access is improved.

CN see the Harbour to Cathedral Park (previously called the Stairway to Heaven) concept as the pathway to achieve the desired future vision.

The Harbour to Cathedral Park was first imagined by EJE Architecture in 2006, but related to a different site and some different sites. The concept was delivered by a group of Novocastrian architects and proposed to link Cathedral Park to the south of the site to Newcastle Harbour to the north of the site. The concept would result in view lines from the Harbour foreshore and Hunter Street Mall to Cathedral Park and the northern transept of the cathedral.

The desired public outcome was (prior to the determination of the recent 8.2 review) restricted by a small component of the western end of Building 3 South. For context, Building 3 South was placed and approved in the current location with CN's endorsements to obscure the existing CN carpark to the south of the site. This context for CN has changed since the approval of the Concept DA, and car park site is vacant with exploration of redevelopment opportunities being explored by CN.

To facilitate the delivery of this important public domain benefit, competitors in the design competition were encouraged to carefully examine the current approved building envelope configuration in Block 3 and

present creative and sensitively designed responses that provide an alternative massing arrangement , whilst allowing the Applicant to maintain built form amenity, in the precinct.

The key moves identified by the Design Team to facilitate this outcome were:

- The concept DA (as approved) proposes 3 buildings in Stage 3 of commensurate height, size, type and yield. This includes building a substantial addition on the Municipal Building. This proposal retains the Municipal Building without an addition over. This allows the Municipal Building to be a hinge for Stage 3 and Stage 4 along Hunter Street. The built form surrounding the Municipal building creates a Square.
- Stage 3 West twists to hold the corner of Hunter Street and Thorn Street, increase setback to Stage 2, create views to harbour for apartments, and most importantly creates a visual corridor to the Christ Church Cathedral. The Christ Church Cathedral axis is created by pulling back Stage 3 South. The view corridor is further re-enforced by subtly tapering Stage 3 South (reducing its footprint as it becomes taller) and twisting Stage 3 West.
- Stage 3 South pulls in from the west to align with Municipal Building, establish view corridor to the cathedral and form a new public space.

In responding positively to the opportunity to unlock the public domain improvements in Stage 3, the design response achieves an equivalency in the provision of ADG compliance, views, aspect, and residential amenity from the distributed massed. The redistributed mass a makes a positive contribution toward the desired built form, consistent with the established centres hierarchy. It also results in a better daylight access to both the public domain.

The map illustrates the Christ Church Precinct, bounded by Scott St to the north, King St to the south, Perkins St to the west, and Newcomen St to the east. Key features include:

- Streets:** Scott St, Market St, Hunter St Mall, Thom St, Laing St, Wolfe St, Perkins St, King St, and Newcomen St.
- Buildings:** Various colored blocks representing different building types: grey for heritage buildings, light blue for contributory buildings, and white for other buildings. Some buildings have height restrictions indicated by red (18m), orange (16m), or purple (22m) outlines.
- Parks and Open Space:** Cathedral Park is located south of King St. A yellow hatched area represents a shared zone to be retained and improved.
- Proposed Improvements:**
 - Green dashed lines indicate proposed new pedestrian crossings and links.
 - Blue hatched areas represent important view corridors.
 - Yellow hatched areas represent zones for proposed new open space or courtyards.
 - Black dashed lines indicate active frontage requirements.
 - Black solid lines indicate the key precinct boundary.
- Landmarks:** The Victoria Theatre is marked with a star symbol to the west of Perkins St.
- Infrastructure:** A railway corridor is shown at the top of the map.

Legend:

- Urban block, nil setback to street boundary
- 18m maximum street wall height
- 16m maximum street wall height (typical)
- 22m maximum street wall height
- Proposed new open space / courtyard
- Important view corridor to Christ Church Cathedral
- Proposed new pedestrian crossing (replacing footbridge)
- Proposed new open pedestrian link (preferred location)
- Proposed new through-site link / arcade (preferred location)
- Zone in which proposed new link should occur
- Connection to be retained and improved
- Special emphasis on corner building
- Active frontage required
- Heritage building
- Contributory building (desired reuse)
- Heritage building outside precinct boundary
- Important landmark / destination outside precinct boundary
- Public green open space
- Cadastre boundary
- Key precinct boundary

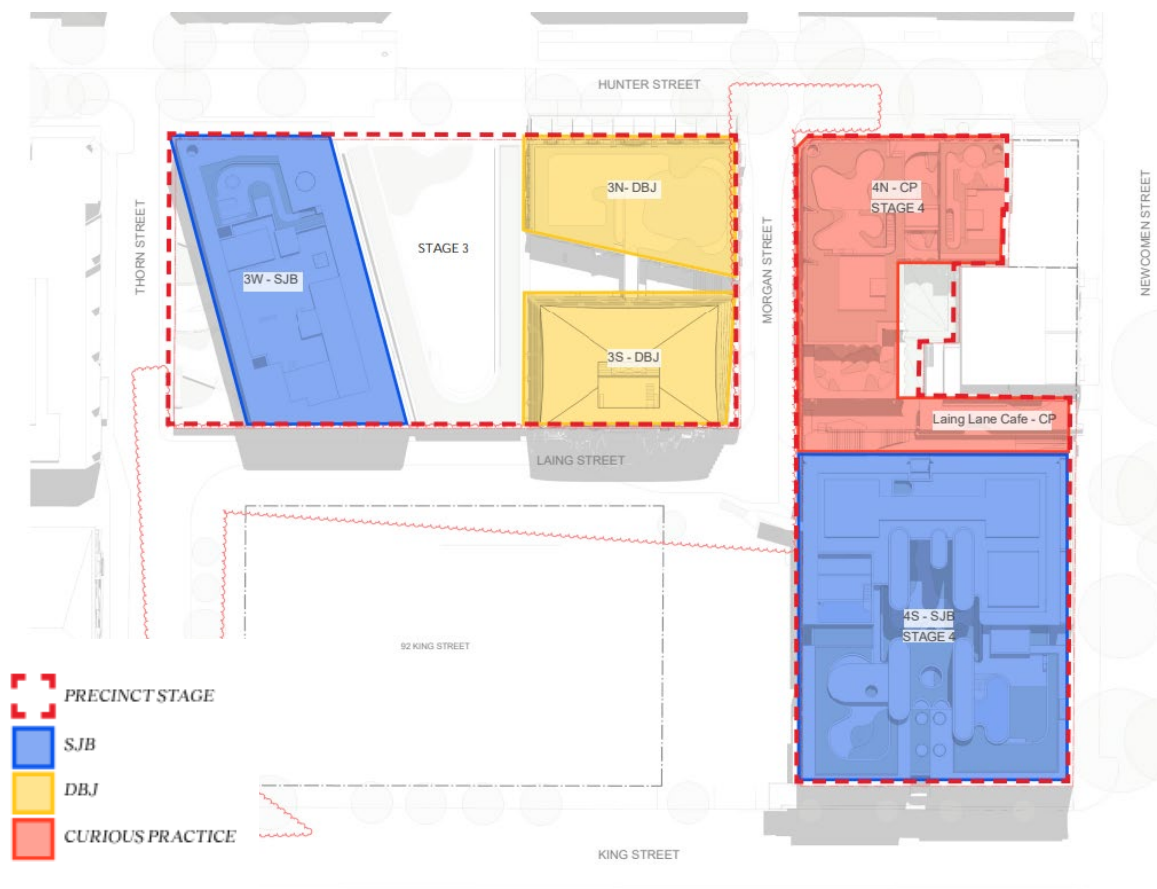
URBIS
CLAUSE 4.6 VARIATION REQUEST - HEIGHT OF BUILDINGS - EAST END
STAGE 3 & 4 - NOVEMBER 2024

The proposal comprises of five separate buildings across 2 street blocks. The Concept DA refers to the street blocks as Stage 3 and Stage 4. The building names and designers are:

- Building 3 West named “Gibbs and Moore” designed by SJB;
- Building 3 North named “Civic” designed by DBJ;
- Building 3 South named “Bluebell” designed by DBJ;
- Building 4 North named “Portline” designed by Curious Practice;
- Building 4 South named “Kingston” designed by SJB; and
- Laing Lane Café designed by Curious Practice.

Figure 6 illustrates the site arrangement plan notating the location of the above buildings.

Figure 6 – Building Allocation Plan



4. PROPOSED DEVELOPMENT

This Clause 4.6 Variation Request has been prepared to accompany a DA for a mixed-use development at 105-137 Hunter Street, 3 Morgan Street, 22 Newcomen Street and 66-74 King Street, Newcastle. The proposed development was subject to a Design Competition where four competitors participated to prepare design proposals for the site and is now subject to the Development Application process.

A detailed description of the proposed development is provided in the Statement of Environmental Effects prepared by Urbis Pty Ltd and dated May 2023. The proposal is also detailed within the architectural drawings and Design Report prepared by SJB that form part of the DA.

Concurrently, a section 4.55(2) modification is being progressed with CN to amend the Concept DA (D/2017/00701) to align with this Detailed DA. It is acknowledged this proposal includes building bulk which falls outside of the approved building envelopes. Therefore, the purpose of the section 4.55(2) modification is to amend the building envelopes approved under the Concept DA to reflect the re-distribution of the massing out of the central view corridor towards other parts of Stage 3 and Stage 4, and the Christ Church Cathedral.

The key features of Stage 3 and 4 are summarised below:

- Demolition of existing remaining Contributory 1 structures onsite, except for the Municipal Building façade and façade of 105 and 111 Hunter Street;
- Construction of a mixed-use precinct forming an active ground level, inclusive of retail and commercial tenancies, with five buildings reaching up to 10 storeys (Building 3 South) and comprising 195 apartments.
- Basement car parking comprising 304 car spaces;
- Communal open space for residents located in Building 3 North, Building 4 North and Building 4 South;
- Vehicle access to the site via Thorn Street and Laing Street;
- Associated landscaping and public domain improvements;
- Commercial tenancies will front Hunter Street and the internal Market Plaza to enhance activation of the ground plane and pedestrian traffic. These will be accompanied by appropriate landscaping features to enhance the public domain;
- Market Square forms part of Stage 3 and provides further opportunities for activation. Market Square is aligned with CN's desired public domain outcome and opens the view corridor to the Christ Church Cathedral; and
- Construction of ancillary infrastructure and utilities as required.

The design is a result of iterative detailed engagement and input from various CN teams including planning, waste, engineering, and heritage. In addition, the Chair of CN's Urban Design Review Panel, Dr Philip Pollard, inputted into the Design Brief and competition process to ensure that this provided the best framework for design responses that balanced the public and private interests in an appropriate manner.

5. VARIATION OF HEIGHT OF BUILDING STANDARD

This section of the report identifies the development standard, which is proposed to be varied, including the extent of the contravention. A detailed justification for the proposed variation is provided in **Section 6** of the report.

5.1. DEVELOPMENT STANDARD

The Request seeks an exception from the height prescribed for the site under clause 7.10 of the NLEP. NLEP prescribes the maximum heights across the site as:

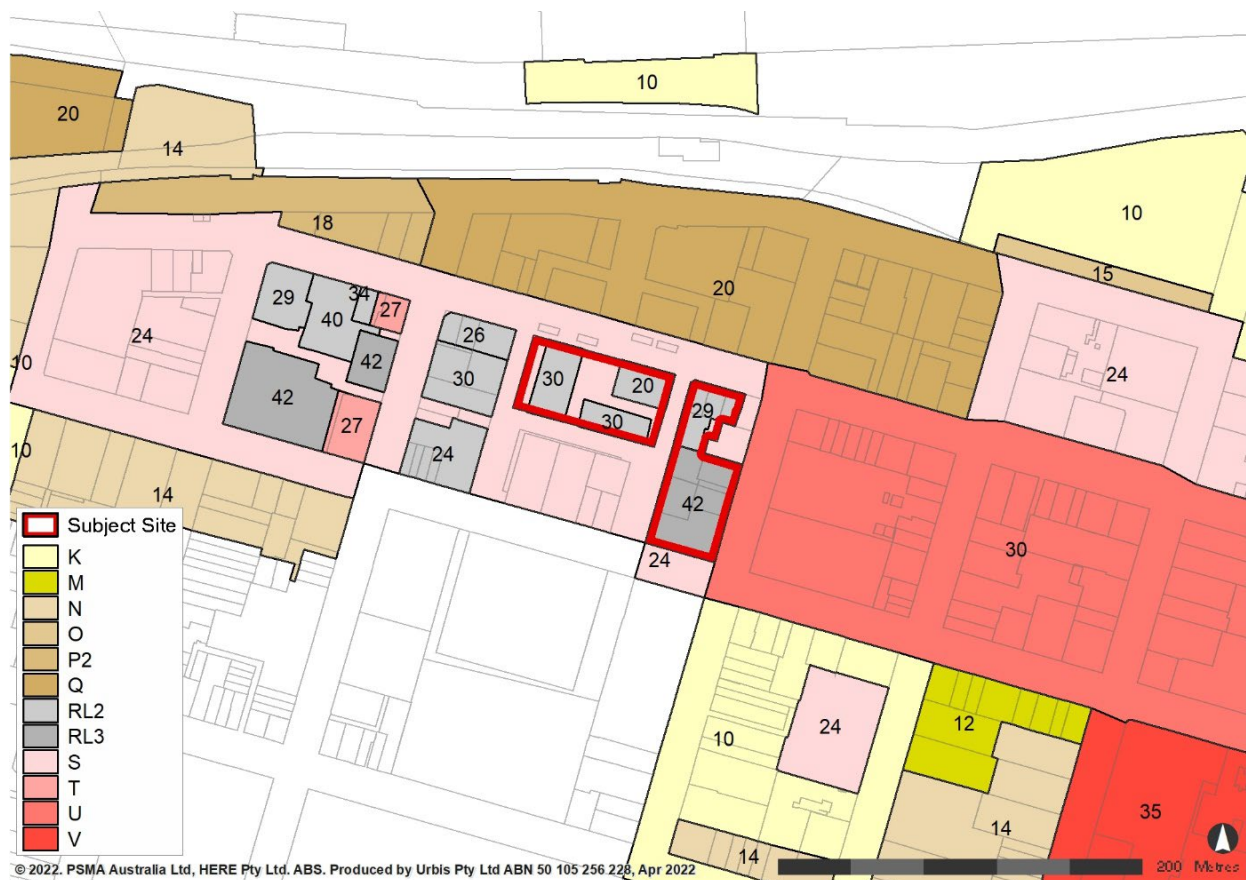
- Building 3 West: RL + 30.00
- Municipal Building: RL + 20.00
- Building 3 South: RL + 30.00
- Building 4 North: RL + 29.00
- Building 4 South: + 42.00

Subject to achieving design excellence, clause 7.5(6) of the LEP provides for an additional 10% bonus either height or FSR. Subclause (6) reads:

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

The consent authority may grant an additional 10% of building height subject to demonstrating design excellence and the building being reviewed by a design review panel.

Figure 7 – Height of Buildings



Source: Urbis

5.2. PROPOSED VARIATION TO CLAUSE 4.3 OF THE NLEP

This clause 4.6 variation request seeks to gain approval for a variation to the maximum height as prescribed by clause 4.3 of the NLEP. The maximum heights prescribed by the NLEP are:

- Building 3 West: RL + 30.00
- Municipal Building: RL + 20.00
- Building 3 South: RL + 30.00
- Building 4 North: RL + 29.00
- Building 4 South: + 42.00

It is noted that some inconsistencies exist between the approved building heights in the Concept DA and the height of buildings map in NLEP.

Subject to achieving design excellence, clause 7.5(6) of the LEP provides for an additional 10% bonus in either height or FSR. Subclause (6) reads:

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

The scheme has been through a Design Excellence process. The DIP has confirmed that the fundamental elements of design excellence have been retained and in the opinion of the Panel the scheme can achieve design excellence.

Considering the allowable 10% height bonus, the following are the maximum height provisions:

- Building 3 West: RL + 33m
- Municipal Building: RL + 22m
- Building 3 South: RL + 33m
- Building 4 North: RL + 31.9m
- Building 4 South: RL + 46.20m

A summary of the numerical details of various height controls is outlined below.

CN advised on 13 November that *an assessment of the submitted architectural drawings identified inconsistencies in this regard. Further information is required for CN to be satisfied that the proposed maximum RL's used in the applicant's written request are accurate.* The maximum heights outlined below have been verified by the Design Team and the architectural plans have been cross check.

It is noted that the site also has a 24-metre height limit outside the LEP height RL polygons, which allows for height within the proposed public domain. The Applicant seeks to deliver a high-quality scheme with a significant public benefit by not proposing height across the site entirely. There are significant parts of the site (Block 3) that are at-grade and have no height applied to the land at all.

Table 1 – Numeric Overview of Various Height Controls

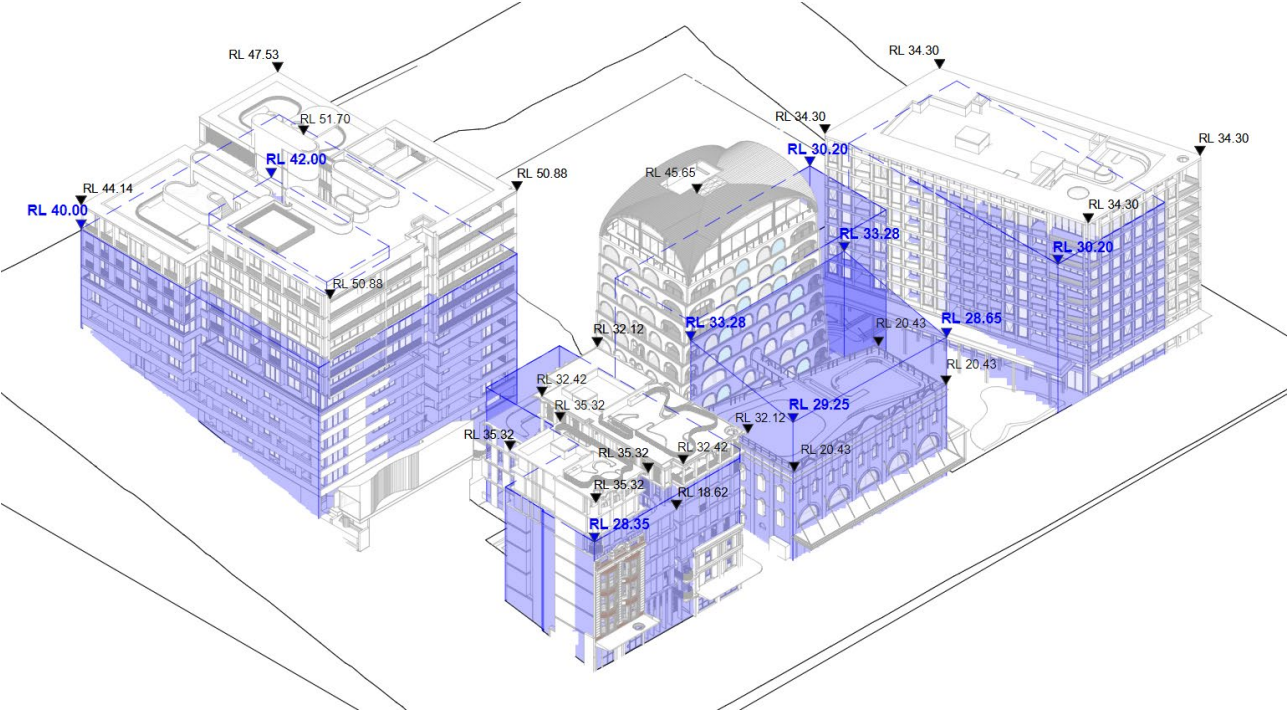
Building	LEP Height RL	LEP Height RL + 10%	Proposed Height RL	Variation in metres	Variation in %
Building 3 West	RL + 30	RL + 33	RL + 34.30	1.30 metres	3.94%
Municipal Building	RL + 20	RL + 22	RL + 20.43	1.57 metres Decrease from the LEP height standard and previous Concept DA.	-7.136% Decrease from the LEP height standard and previous Concept DA.
Building 3 South	RL + 30	RL + 33	RL + 45.65	12.65	38.33%
Building 4 North	RL + 29	RL + 31.9	RL + 36.92	5.02 metres	15.74%
Building 4 South	RL + 42	RL + 46.2	RL + 51.70	5.50 metres	11.9%

The below figures illustrate:

- Figure 8: Previous Concept DA RL in blue compared to proposed height in white
- Figure 9: LEP Height RL in blue compared to the proposed height in white
- Figure 10: LEP Height RL + 10% design excellence bonus in green compared to the proposed height in white

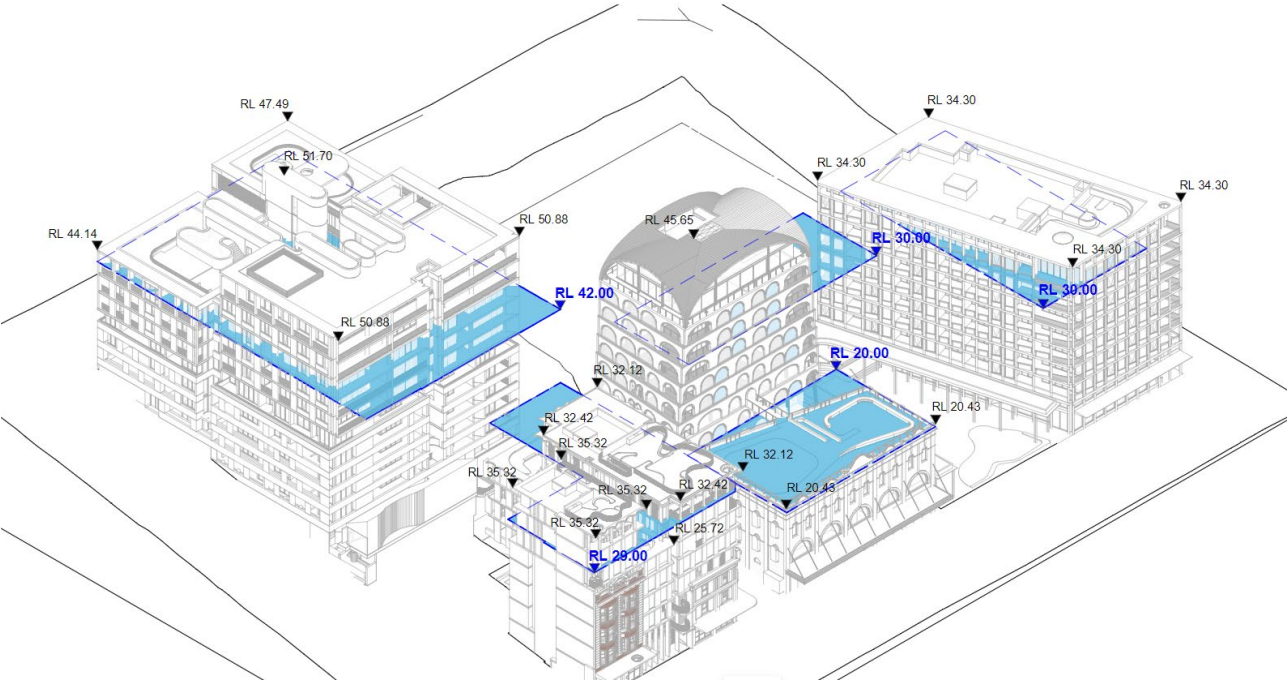
This comparison illustrates the variations when the bonus is included and excluded. It is evident that the variation relates to Building 3 West, Building 3 South, Building 4 North and Building 4 South.

Figure 8 – Previous Concept DA RL and Proposed Height



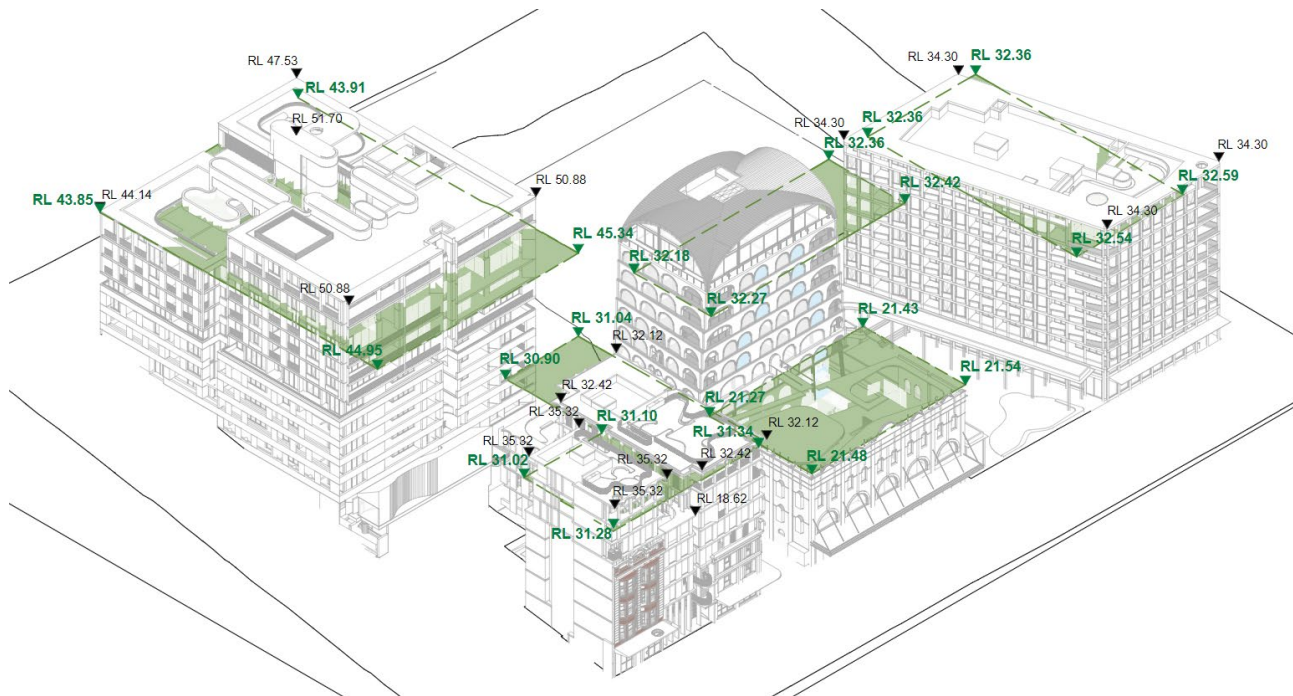
Source: SJB

Figure 9 – LEP Height RL and Proposed Height



Source: SJB

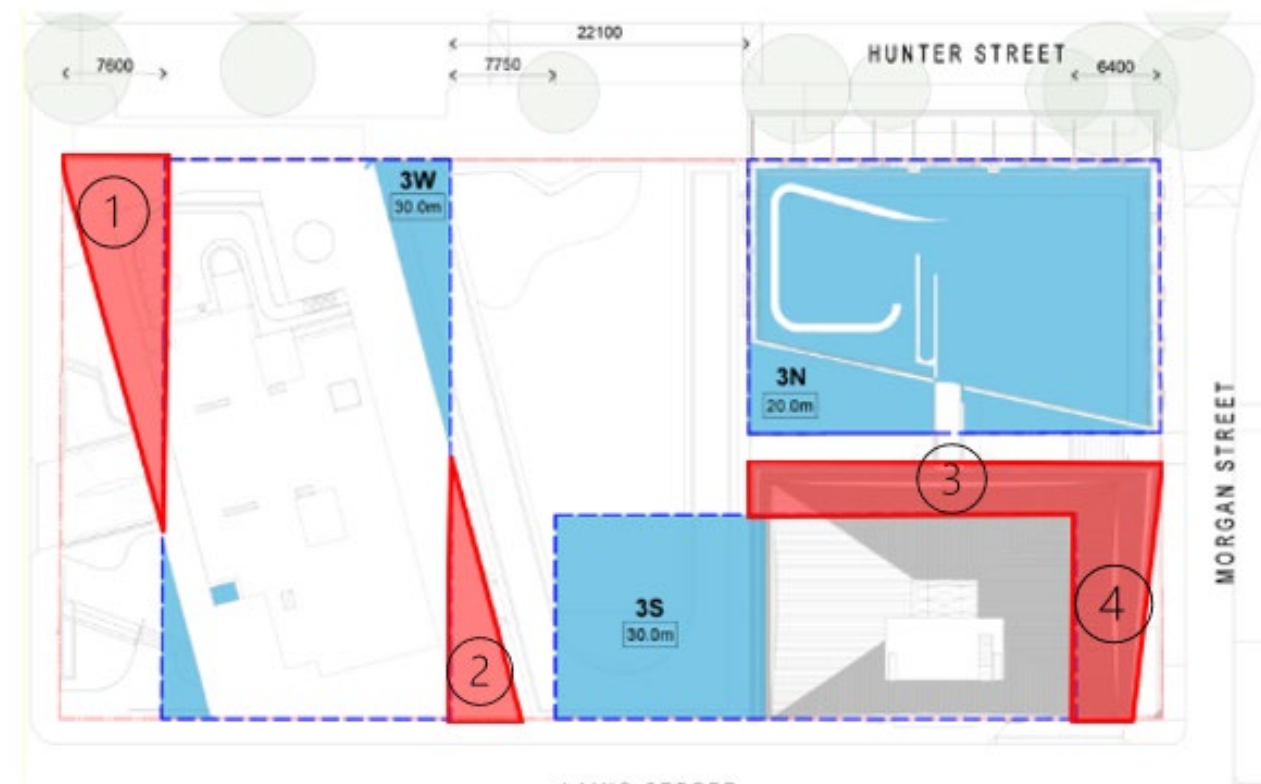
Figure 10 – LEP Height RL + 10% and Proposed Height



Source: SJB

As a result of CN requiring the re massing of the Concept DA to deliver their desired public domain outcome, built form sits outside of the LEP height RL polygons specifically for Building 3 West and Building 3 South. The areas outside of the EP height RL polygons are identified below in red.

Figure 11 – Areas outside of the LEP height RL polygons identified in red



Source: SJB (modified by Urbis)

Table 2 – Numeric Overview of Various Height Controls (outside of LEP height RL polygons)

#	Building	LEP Height	LEP Height + 10%	Proposed Height	Variation in metres	Variation in %
1 Ground Level: RL 3.85	Building 3 West (north west corner)	24 metres	26.4 metres	30.45 metres (RL 34.30)	4.05 metres	15.34%
2 Ground Level RL 6.420	Building 3 West (south east corner)	24 metres	26.4 metres	27.88 metres (RL 34.300)	1.48 metres	5.6%
3 Ground Level RL 6.493	Building 3 South	24 metres	26.4 metres	39.157 metres (RL 45.65)	12.757 metres	48.157%
4 Ground RL 7.806	Building 3 South	24 metres	26.4 metres	37.844 metres (RL 45.65)	11.44 metres	43.35%

In addition to the 10% provision, the reasons for the additional building height are outlined below:

- The redistribution of the approved GFA enhances the characteristic of Newcastle’s silhouette and does not deliver a ‘flat top’ planning envelope. The redistribution of height across Stage 3 reinforces the notion of a playful skyline, creating a positive contribution to Hunter Street when compared to the Concept DA scheme.
- The scheme has been through six Design Integrity Panel (DIP) sessions with Paulo Macchia (GANSW), Dr Philip Pollard and Sandra Furtado. During DIP Session 1 the following observations regarding the height exceedance were made:
 - *The DIP commented that removing a storey from Building 3 South does not improve the urban design outcome of the proposal based upon the information presented.*
 - *The DIP supports the Competition Scheme height exceedance and arrangement based on the illustrated views from Hunter Street, and Newcomen Street provided. However, the visual impacts need to be further explored via a robust a view assessment.*
- After a rigorous assessment and refinement process, the DIP are comfortable with the height exceedance of Building 3 South subject to further view impact assessment, required for DA stage. The DA is accompanied by a Visual Impact Assessment prepared by Urbis. The DIP has confirmed that the fundamental elements of design excellence have been retained and in the opinion of the Panel the scheme can achieve design excellence.

- The proposal delivers a significant public benefit by the redistribution of floor space from within the identified view corridor for the “Harbour to Cathedral Park” to Building 3 South (DBJ) providing a generous and publicly accessible space. CN have a desired public domain outcome for the site, which is reflected in the Newcastle DCP 2012. The desired public outcome is currently restricted by a small component of the western end of Building 3 South. For context, Building 3 South was placed and approved in the current location with CN’s endorsements to obscure the existing CN carpark to the south of the site. This context for CN has changed since the approval of the Concept DA, and demolition of the car park is now complete with exploration of redevelopment opportunities being explored by CN.
- The additional height is supportable from a visual impact perspective due to the limited impacts from a public and private view perspective. The proposed redistribution of massing from the view corridor, as approved by the Concept DA, results in an improved public view.

The additional building height has been supported by the Planning Panel and CN.

6. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of NLEP includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of NLEP are:

- (c) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (d) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (e) that there are sufficient environmental planning grounds to justify contravening the development standard.*

The November 2023 Guide to Varying Development Standards published by the Department of Environment and Planning removed the Planning Secretary's concurrence requirements, replacing them with a new monitoring and reporting framework.

This clause 4.6 request demonstrates that compliance with the height of buildings prescribed for the site in clause 4.3 of NLEP is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives.

In accordance with clause 4.6(3), the applicant requests that the clause 4.3 development standard be varied.

7. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standards relating to the building height in accordance with clause 4.3 of NLEP.

Detailed consideration has been given to the following matters within this assessment:

- Varying development standards: A Guide, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the Land and Environment Court.

The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the LEP.

7.1. IS THE PLANNING CONTROL A DEVELOPMENT STANDARD THAT CAN BE VARIED? – CLAUSE 4.6(2)

The height of building prescribed by clause 4.3 of NLEP is a development standard capable of being varied under clause 4.6(2) of NLEP.

The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of NLEP.

7.2. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE? – CLAUSE 4.6(3)(A)

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires the objectives of the standard are achieved despite the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

This Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also addresses the third method, that the underlying objective or purpose of the development standard would be undermined, defeated or thwarted if compliance was required with the consequence that compliance is unreasonable (*Initial Action* at [19] and *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24]). Again, this method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also seeks to demonstrate the ‘unreasonable and unnecessary’ requirement is met because the burden placed on the community by not permitting the variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

- ***The objectives of the standard are achieved notwithstanding non-compliance with the standard*** (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43])

The specific objectives of the height of buildings as specified in clause 4.3 of NLEP are detailed in **Table 2** and clause 7.9 of NLEP in **Table 3** below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 3 – Assessment of Consistency with Clause 4.3 Objectives

Objectives	Assessment
<p>(a) to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,</p>	<p>The redistribution of the approved GFA enhances the characteristic of Newcastle’s silhouette and does not deliver a ‘flat top’ planning envelope. The redistribution of height across Stage 3 reinforces the notion of a playful skyline, creating a positive contribution toward the desired built form of Hunter Street.</p> <p>The proposal does not comply with the height controls set out in the LEP, however during the design excellence competition and subsequent design integrity panels, the DIP was in agreeance that the scale of development and heights of the proposal were appropriate to the site and surrounding development context. The proposed built form has been through a rigorous design process and was agreed by the Panel, that it has design excellence, despite being non-compliant with height of buildings control. Overall, given the rigorous architectural process and assessment of the design by leading industry experts, as well as the high-quality design finishes, the proposal will make a highly positive contribution toward the desired built form of the Newcastle city centre and is consistent with the established centres hierarchy.</p> <p>The additional height does not undermine the established centres hierarchy, which is evident in the skyline. In the skyline, the variation is not discernible as it contributes to the playful skyline. The skyline will illustrate the established centres hierarchy with height focused on the Newcastle Interchange.</p> <p>The built form outcome directly responds to its surrounding context, urban setting, orientation, and CN’s desired public domain outcome. This desired public domain outcome is reflected in the Newcastle DCP 2012 and seeks to enhance public views to and from Christ Church Cathedral and the Newcastle Harbour. The proposed built form directly responds to this vision through the building orientation, separation and design which allows for the construction of extensive public open space between Hunter Street and Laing Street, and eventually King Street following the redevelopment of the Council owned former carpark site.</p>

Objectives	Assessment
	<p>The scale and urban arrangement have been reviewed by the DIP. During DIP Session 1 the following observations regarding the height exceedance were made:</p> <ul style="list-style-type: none"> – <i>The DIP commented that removing a storey from Building 3 South does not improve the urban design outcome of the proposal based upon the information presented.</i> – <i>The DIP supports the Competition Scheme height exceedance and arrangement based on the illustrated views from Hunter Street, and Newcomen Street provided. However, the visual impacts need to be further explored via a robust a view assessment.</i> <p>A Visual Impact Assessment (VIA) has been prepared by Urbis and considers the Planning Principal ‘views – general principle’ namely <i>Tenacity Consulting v Warringah Council</i> [2004] NSWLEC 140 at 25-29. The VIA concludes that the re-massed built forms result in lower visual impacts and a better public domain view sharing outcome.</p> <p>The VIA lodged with the DA was an accurate estimate of view impacts. At the request of CN, the Applicant has obtained access to the properties (post lodgement of the Detailed DA) that objected to the development, and a supplementary VIA has been provided to CN. Overall, the VIA concludes that the impacts are reasonable based upon the Tenacity Planning Principal.</p>
<p>(b) to allow reasonable daylight access to all developments and the public domain.</p>	<p>A Shadow Analysis has been prepared by SJB within the Architectural Design Report which accompanies this DA.</p> <p>It demonstrates that most overshadowing falls within the previously approved concept DA massing with only small increments of shadow falling outside of the approved envelopes.</p> <p>The proposed shadow diagrams will pose minimal impacts to surrounding residential dwellings. Noting there will be no additional impacts to Stage 2 East End residents’ solar access, residents will continue to receive a minimum two hours of solar access in mid-winter.</p> <p>The overshadowing impacts are improved with the proposed scheme compared to the previously Concept DA because of the redistributed building mass to CN’s car park site, which will ultimately</p>

Objectives	Assessment
	<p>carry the 'Hill to Cathedral' link. The re massing and inclusion of the view corridor improves solar access between 9am and 1pm. Considering this, the proposed scheme does not impact the developability of this site more than that identified in the Concept DA assessment, and results in an improved outcome.</p> <p>The proposed Market Square receives more than 2 hours of solar access and provides an improved daylight access solution compared to the Concept DA.</p> <p>Refer to Section 7.3 of this Request for a detailed assessment of overshadowing.</p>

Table 4 – Assessment of Consistency with Clause 7.9 Objectives

Objectives	Assessment
(a) to allow sunlight access to key areas of the public domain by ensuring that further overshadowing of certain parks and community places is avoided or limited during nominated times,	<p>The Concept DA and LEP controls allowed for a smaller 'Market Square.' The reconfiguration improves the public domain experience and improves solar access to the CN site to the south which will also be required to contribute to the Harbour to Cathedral link.</p> <p>The overshadowing impacts are improved for the CN site (which will ultimately be a key public domain area) with the proposed scheme compared to the previously Concept DA because of the redistributed building mass. The re massing and inclusion of the view corridor improves solar access between 9am and 1pm. Considering this, the proposed scheme does not impact the developability of this site more than that identified in the previously Concept DA assessment, and results in an improved outcome.</p> <p>The proposed scheme will no impact sunlight access to other key areas of the public domain.</p>
(b) to ensure that the built form of Newcastle City Centre develops in a coordinated and cohesive manner,	<p>The proposal forms part of the East End precinct, which has been developed in a coordinated and cohesive manner as per the approved previously Concept DA, DCP and the winning Design Competition scheme.</p>

Objectives	Assessment
(c) to ensure that taller buildings are appropriately located,	<p>The buildings have been through a reiterative design process to ensure the taller buildings are appropriately located within the precinct.</p> <p>The proposed variation does not result in any unreasonable impacts to surrounding private and adjacent properties. The additional building height (above the previously Concept DA) will not result in unreasonable impacts to public spaces adjacent residential developments. Most overshadowing falls within the approved previously concept DA massing with only small increments of shadow falling outside of the approved envelopes.</p>
(d) to nominate heights that will provide a transition in built form and land use intensity in Newcastle City Centre,	<p>The nominated heights provide a transition in built form and land use intensity, and also contribute to a 'playful' skyline. The heights are compatible with the desired vision of East End.</p> <p>The redistribution of height across Stage 3 reinforces the notion of a playful skyline, creating a positive contribution to Hunter Street when compared to the previously Concept DA scheme. The Concept DA results in "flat tops" which is not aligned with clause 7.1(c) of LEP: <i>to protect and enhance the positive characteristics, vitality, identity, diversity and sustainability of Newcastle City Centre, and the quality of life of its local population.</i></p> <p>The proposed design response provides a distinctive playful identity for East End which is aligned with the vision for Newcastle City Centre. The skyline also results in a unique and identifiable development appropriate to a regional city (clause 7.1(e)). Further, the proposed skyline responds to the sloping topography of East End and is characterised by the detailed parapets of the historical buildings.</p>
(e) to ensure the preservation of view corridors that are significant for historic and urban design reasons.	<p>The re-massing of the Stage 3 unlocks the view corridor between the Harbour and the Cathedral, which was not envisaged in the original Concept DA. The LEP controls allowed building mass across the view corridor. This building mass has been located atop of the proposed building to deliver CN's desired public domain outcome and preserves the high amenity that was inherent in the approval building mass scheme.</p>

Objectives	Assessment
	The proposal results in a better outcome from a view corridor perspective than the original Concept DA.

The objectives of the development standard are achieved, notwithstanding the non-compliance with the standard in the circumstances described in this variation report.

- **The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable** (the third method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43] as applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24])

Not relied upon.

- **The burden placed on the community (by requiring strict compliance with the FSR standard) would be disproportionate to the (non-existent or inconsequential) adverse consequences attributable to the proposed non-compliant development** (cf *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

Not relied upon.

7.3. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD? – CLAUSE 4.6(3)(B)

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, assists in considering the sufficient environmental planning grounds. Preston J observed:

“...in order for there to be ‘sufficient’ environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and

...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. These include:

Visual Impact – Public Views

A VIA has been prepared by Urbis and accompanies documentation for the DA. This provides an assessment of potential impacts on public domain views and provides views because of the development.

11 views from representative and significant public places, as identified by the NDCP 2012, were selected for modelling in photomontages and were used for further analysis to consider the extent of visual change, the effects of those changes on the existing visual environment and the importance of those changes, being the final rating of visual impacts.

The view assessment concludes that for public views:

- Of the 11 public domain views analysed, 7 views had a low visual impact, 1 view had a low-medium impact and 3 had a medium visual impact.
- The proposed redistribution of massing from the view corridor, as approved by the Concept DA, results in an improved public view from View 4 and View 5 towards the Christ Church Cathedral. If the original Concept DA arrangement was retained, View 4 and View 5 would be greatly impacted and the Christ Church Cathedral would be obscured.

- The additional building height predominately blocks views to vegetation or open sky beyond, and generally does not block views of scenic or highly valued features. The additional height is not visible from View 7 and does not result in any view loss or impact.
- The re-massed built forms results in lower visual impacts and a better public domain view sharing outcome. This is achieved by the inclusion of a wide view corridor between the Hunter River and the Cathedral and the protection of NDCP view 21.

It is therefore shown that the proposal can be supported on as the proposed development creates low to medium visual effects on the majority of baseline factors such as visual character, scenic quality and view place sensitivity from public domain view locations.

Visual Impact – Private Views

A VIA has been prepared by Urbis and is included in the accompanying documentation for this DA. This provides an assessment of potential impacts on public domain views and provides views because of the development.

Urbis determined that three close neighbouring developments were likely to be affected to some extent by potential view loss. The three buildings include:

- Segenhoe Flats at 50 Wolfe Street (specifically upper-level apartments)
- Herald Apartments at 60 King Street (specifically upper-level apartments)
- Newcomen Apartments at 16-18 Newcomen Street,
- The Newcastle Club at 40 Newcomen Street (specifically north facing areas). It should be noted that the Newcastle Club is a commercial premises not a residential premises.

The conclusions are as follows:

- The view impact for the Newcastle Club as a whole is **moderate**, such that the view sharing outcome in the context of the relevant controls is reasonable and acceptable.
- The view impact for the Segenhoe Building as a whole is **minor**. Almost all views from most units are not affected or are affected to a very limited extent, such that the view sharing outcome in the context of the relevant controls is reasonable and acceptable.
- The view impact for the Herald Apartments as a whole is **minor**, such that the view sharing outcome in the context of the relevant controls is reasonable and acceptable.
- The view impact for the Newcomen Apartments as a whole is **minor**, such that the view sharing outcome in the context of the relevant controls is reasonable and acceptable.

It is therefore shown that the proposal can be supported on view sharing grounds.

Overshadowing

A Shadow Analysis has been prepared by SJB within the Architectural Design Report which accompanies this DA. Additional shadow diagrams also accompany the RFI response (13 November 2023). As pictured below in **Figure 12**, most overshadowing falls within the approved Concept DA massing with only small increments of shadow falling outside of the approved envelopes.

In terms of key surrounding development:

- **CN's carpark site:** the overshadowing impacts are improved with the proposed scheme compared to the Concept DA because of the redistributed building mass. The re massing and inclusion of the view corridor improves solar access between 9am and 1pm. Considering this, the proposed scheme does not impact the developability of this site more than that identified in the Concept DA assessment, and results in an improved outcome.
- **The Newcastle Club:** the overshadowing impacts are marginally increased, specifically for the northern garden area. The building itself will not be overshadowed after 11am. However, the additional shadowing does not prevent the northern façade of the club receiving solar access between 9am and 3:00pm.
- **The Herald:** the Herald apartments in the south-west corner of the site will be slightly impacted by the additional height between 1:00pm and 2:00pm at level 1 only – it is assumed 1 to 2 apartments are

impacted briefly. Apartments above Level 02 will receive solar access at 1:00pm (refer to **Figure 12**). The original concept DA massing would have overshadowed The Herald after 2:00pm.

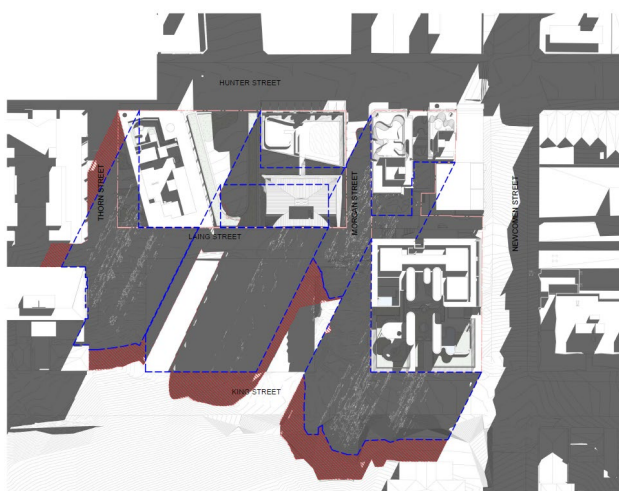
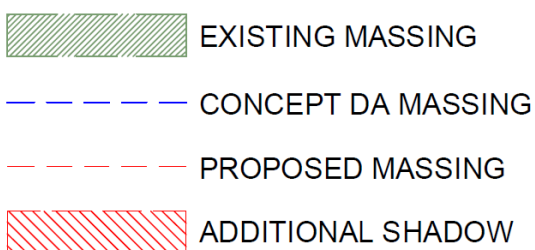
- **Newcomen Street residents (eastern side):** the eastern side of Newcomen Street will be self-shadowed between 9am and 10am. These residents will receive solar access between 11am and 1pm (2 hours).
- **Newcomen Street residents (western side):** the western side of Newcomen Street will receive morning sun between 9am and 11am.

The diagrams also reveal that the proposed overshadowing does not fall onto public open spaces and the proposed Market Square will receive plenty of sunlight during mid-winter making it a pleasant space for residents and visitors to enjoy. This assessment is based upon the winter solstice and improved solar access would be experienced during the summer solstice.

Figure 12 – Shadow Diagrams

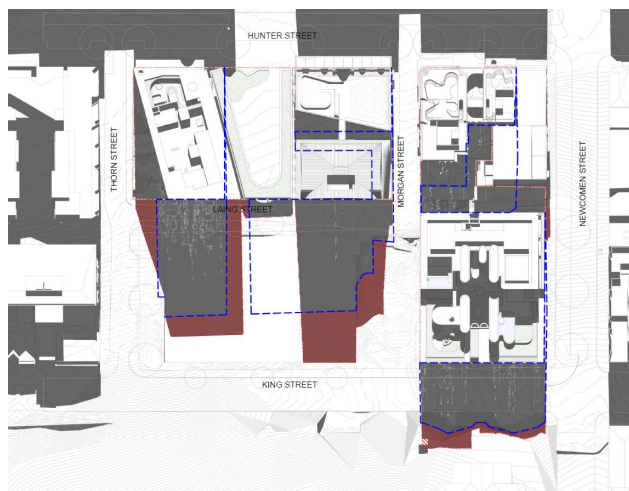
SHADOW ANALYSIS LEGEND

*DIAGRAMS PREPARED FOR THE
21st JUNE PERIOD



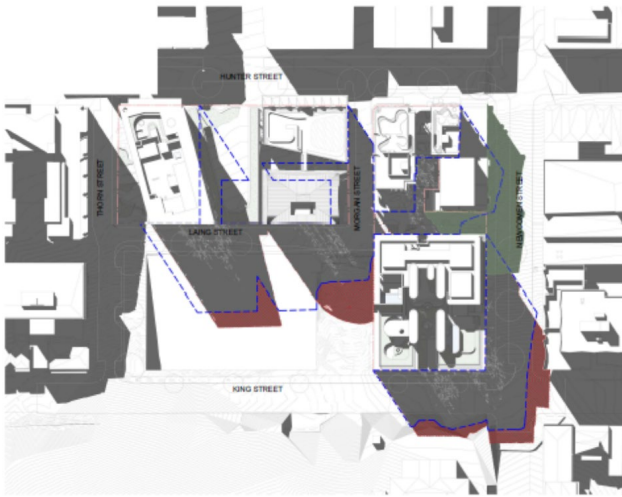
Picture 5 – 9am

Source: SJB



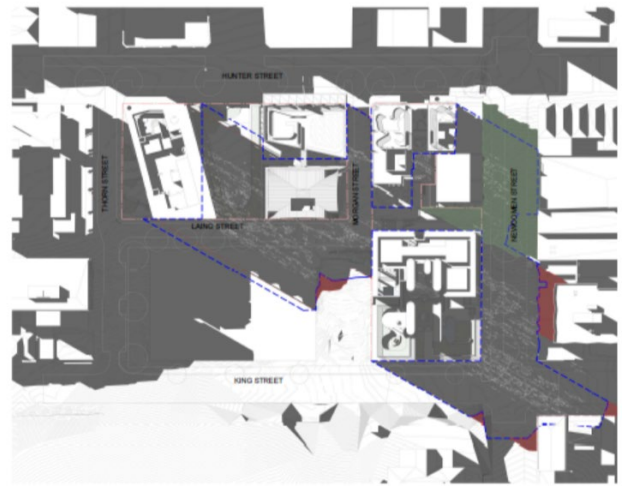
Picture 6 – 11am

Source: SJB



Picture 7 – 1pm

Source: SJB



Picture 8 – 3pm

Source: SJB

Figure 13 – 60 King Street POV at 1:00pm



Source: SJB

Specifically, the following conclusions are made:

- At 9am the additional shadow created primarily falls within the road reserves of Kings Street and Laing Street and Morgain Street. The Stage 2 development will still retain adequate solar access and the Herald apartments will not be impacts. The impacts to Newcastle Club will be marginally increased, primarily within the northern garden. The Newcastle Club is a commercial premises and will obtain adequate solar access during the day.

- At 11am the additional shadow will have some impact on the demolished CN car park site, although most of the site will not be impacted by the shadow. From the Concept DA, the demolished CN car park site will have improved solar access in the central part of the site. The impacts to Newcastle Club will be marginally increased, primarily within the northern garden. The building itself will not be overshadowed. The Newcastle Club is a commercial premises and will have adequate solar access during the day. By 11am, the west edge of Stage 2 has solar access. The Stage 2 development will still retain adequate solar access, with no afternoon sun impacts from Stage 3 and 4.
- At 1pm the additional shadow will have some impact on the demolished CN car park site, although most of the site will not be impacted by the shadow. From the original Concept DA, the demolished CN car park site will have improved solar access in the central part of the site. The Stage 2 development will still retain adequate solar access, with no afternoon sun impacts from Stage 3 and 4. The Herald apartments in the south-west corner of the site will be slightly impacted by the additional height between 1:00pm and 2:00pm at level 1 only – it is assumed 1 to 2 apartments are impacted briefly. Apartments above Level 02 will receive solar access at 1:00pm (refer to **Figure 14**). The original Concept DA massing would have overshadowed The Herald after 2:00pm. However, they will receive more than 3 hours of morning sun between 9am and 1pm. The impacts to Newcastle Club will be marginally increased, primarily within the northern garden. The Newcastle Club is a commercial premises and will obtain adequate solar access during the day.
- At 3pm the additional shadow will have some impact on the demolished CN car park site, although most of the site will not be impacted by the shadow. The Stage 2 development will still retain adequate solar access, with no afternoon sun impacts from Stage 3 and 4. The Herald apartments in the south-west corner of the site will be slightly impacted by the additional height, however they will receive more than 4 hours of morning sun between 9am and 12pm. No impacts to the Newcastle Club will occur. Minor increase to overshadowing impacts to properties on the southern side of King and Newcomen Street. These properties are mixed use in nature. These properties will receive more than 4 hours of morning sun between 9am and 12pm.

The shadow impacts of the proposed development are suitable and consistent with the anticipated level of development envisaged by the LEP. In addition, solar access within the precinct has been improved within the public domain, with minor increased impacts to The Herald apartments.

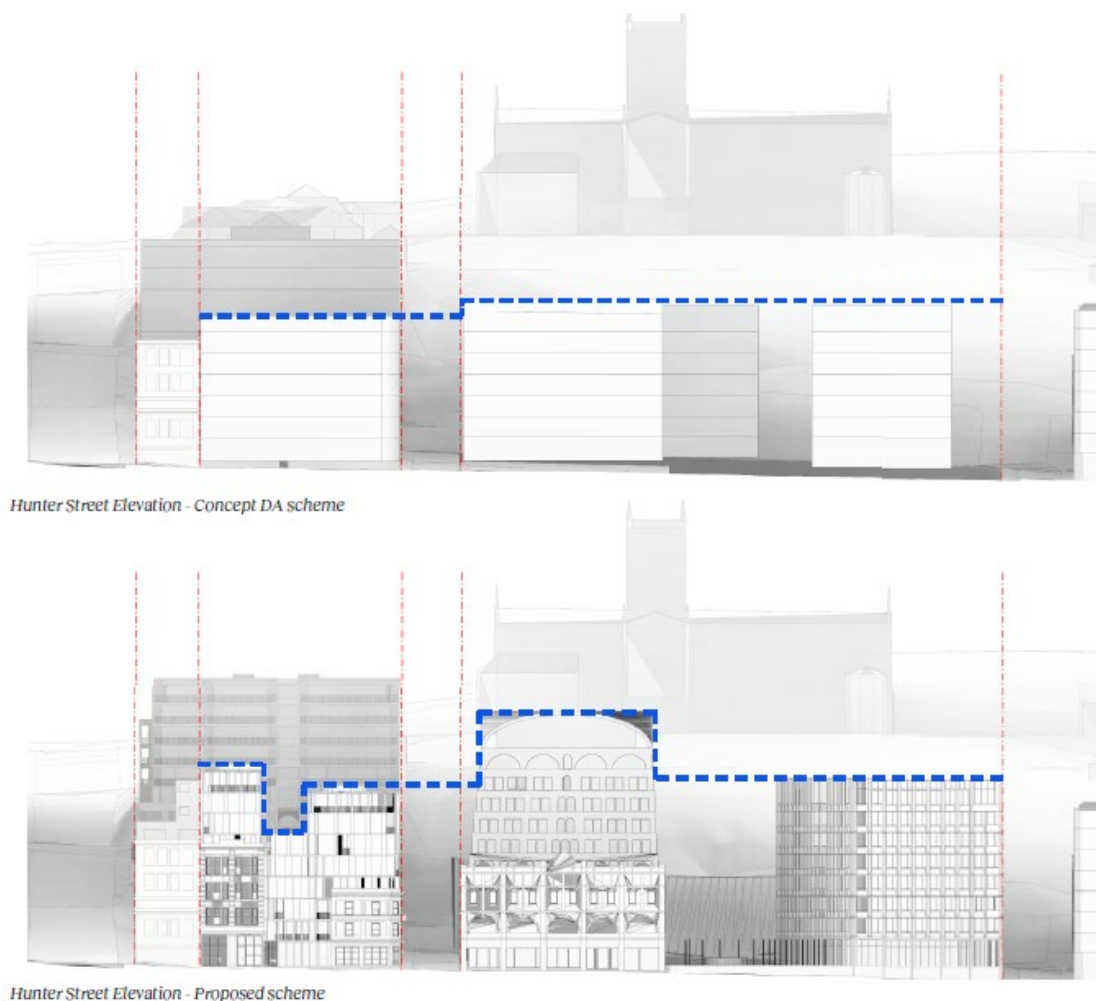
Skyline and Topography

One of the key pieces of feedback from the Design Excellence Competition (by the Jury) was that the height variation across the scheme was positive. Specifically, the following comment was made “the differing heights and rhythms of the proposed buildings, believing the interplay between them works cohesively to create a height amenity precinct of diverse character.”

The redistribution of height across Stage 3 reinforces the notion of a playful skyline, creating a positive contribution to Hunter Street when compared to the original Concept DA scheme. The modified Concept DA results in “flat tops” which is not aligned with clause 7.1(c) of LEP: *to protect and enhance the positive characteristics, vitality, identity, diversity and sustainability of Newcastle City Centre, and the quality of life of its local population.*

The proposed design response provides a distinctive playful identity for East End which is aligned with the vision for Newcastle City Centre. The skyline also results in a unique and identifiable development appropriate to a regional city (clause 7.1(e)). Further, the proposed skyline responds to the sloping topography of East End and is characterised by the detailed parapets of the historical buildings.

Figure 14 – Skyline Comparison between modified Concept DA and Proposed Scheme



Source: SJB

Heritage

Part of the site is a local heritage item, namely a Municipal Building (No. 1403) located at 121 Hunter Street.

The LEP controls allow for additional built form to be constructed on top of the Municipal Building. The Municipal Building has been retained ‘freestanding’ and unencumbered of additional storeys. This is because of the redistribution of building mass.

In the Design Excellence Competition, the Jury noted that the “relative height variation between Municipal building and the Stage 3 South building are successful.”

Given this key move, the building mass above the Municipal Building was distributed and contributed to the height variation of Building 3 South (Bluebell). The adaptive reuse of the Municipal Building will help preserve heritage within the Newcastle’s city centre while also enabling the opportunity to diversify the building’s purpose. The proposal also respects surrounding heritage items and is conscious of their significance.

The State and local heritage values of the Cathedral as being an extraordinary piece of architecture in a most dramatic setting, providing evidence of the early town planning of Newcastle city centre, and its visual dominance defining its city skyline will be respected and preserved while significantly enhancing its appreciation as a landmark through the 'Harbour to Cathedral' visual corridor. This follows the central axis seen in Dangar's 1823 plan.

Additional view corridor has also been created through tapering the new building (3W) to open a new view corridor from the corner of Thorn Street, which did not exist to date. The Creation of these additional and significant view corridors were made possible by the demolition of the Council car park and by the redistribution of the mass and scale to the other parts of the Stages 3 and 4. Considering the positive and

enhanced benefits to the heritage context and State level significance of the Cathedral having marginally increased height and scale towards the north of the Cathedral is an acceptable compromise.

The foreground of the Rest Park was already partially blocked under the original Concept DA and the slight increased obscureness does not adversely affect the dominance and landmark qualities of the Cathedral.

The relatively smaller footprint of Building 3 South and its tapering form allows the building moves more quickly through the sky as one moves around the site. Furthermore, the building continues to diminish as it gets taller to open up the view to the Cathedral more quickly than otherwise larger/latter block form as it was under the original Concept DA.

The eastern end of the city is built on and into The Hill, with existing buildings vary in height, scale and proportion. This forms an undulating urban fabric especially when viewed from a distance across the Harbour.

By adopting a playful skyline, the proposed buildings blend in and are disguised within the pre-existing assembled urban fabric. They are complementary to the cityscape rather than competing with it. The Building 3 South tower adds to the memorable silhouette of Newcastle, although always subservient to the profile of the Cathedral.

The distance between the Cathedral and the closest Buildings 3 South and Building 4 South, which are separated by King Street and the Rest Park coupled with the Cathedral being at the south end of the rounds at the top of The Hill, allows for an appropriate buffer zone for the appreciation of the landmark qualities and dominant presentation of the Cathedral across the close public domain and at distant views and vistas.

The proposal will not impede views to the Cathedral. This key move provides a positive heritage response and delivers a greater public benefit than complying with the height controls.

View Corridor Retention

As outlined in Section 3.3 of this clause 4.6 Variation Statement, CN have a desired public domain outcome for Stage 3 that is identified in the NDCP. The view corridor retention would allow for the delivery of 'The Stairway to Heaven,' which was first proposed by EJE Architecture in 2006.

An updated vision and concept with key principles, parameters and considerations was undertaken by SJB in 2021 for City of Newcastle.

This proposal for Stages 3 and 4 builds on this vision and allows CN to realise their ambitions when redeveloping the council carpark site.

Key Changes to Approved Concept DA Massing (prior to 8.2 Review)– Push and Pull

The key changes to the approved massing are outlined below:

- The concept DA proposes 3 buildings in Stage 3 of commensurate height, size, type and yield. This includes building a substantial addition on the Municipal Building. This proposal retains the Municipal Building without an addition over. This allows the Municipal Building to be a hinge for Stage 3 and Stage 4 along Hunter Street. The built form surrounding the Municipal building creates a Square.
- Stage 3 West twists to hold the corner of Hunter Street and Thorn Street, increase setback to Stage 2, create views to harbour for apartments, and most importantly creates a visual corridor to the Christ Church Cathedral. The Christ Church Cathedral axis is created by pulling back Stage 3 South. The view corridor is further re-enforced by subtly tapering Stage 3 South (reducing its footprint as it becomes taller) and twisting Stage 3 West.
- Stage 3 South pulls in from the west to align with Municipal Building, establish view corridor to the cathedral and form a new public space.
- Stage 4 North pulls in from the south and carves out the middle to create an urban courtyard. This improves the relationship with existing residential development and Stage 4 South improving amenity.
- Stage 4 South pushes and pulls to establish relationships with the Newcomen Street context, adjacent developments and corner of King and Newcomen Street.

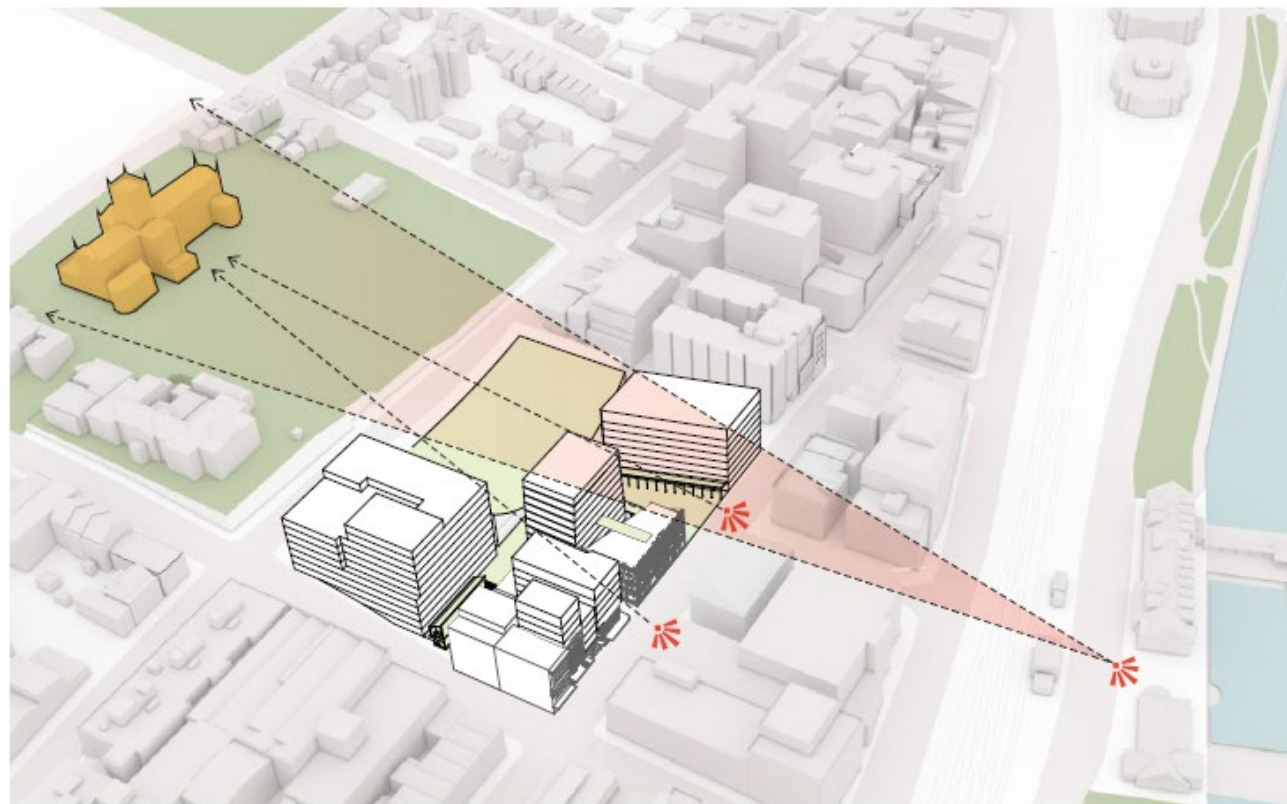
The modifications to the original Concept DA massing have resulted in changes to the distribution of height and floor space across the precinct.

Figure 15 – “Push and Pull” of Original Concept DA



Source: SJB

Figure 16 – “Push and Pull” of Original Concept DA leading to view corridor



Source: SJB

It is important to remember that this Request **only to Stage 3 and 4**. No modification or increase in height is proposed to Stage 1 and 2. Stage 3 and 4 have not been subject to any previous modifications or height increase. The proposed modification and Request must be looked at from a precinct perspective.

Considering this, more than 50% of this mixed-use precinct is complete or near completion. Stage 1 and Stage 2 have delivered:

- 333 apartments from Stage 1 and 2 combined are complete or near complete, comprising 63% of the total apartments for the precinct (528 apartments).
- 4,064 m² of commercial and retail is complete or near complete, comprising 72.8% of the total commercial and retail GFA for the precinct.
- 4,256 m² of hotel accommodation in Stage 1, comprising 100% of the total hotel accommodation GFA for the precinct.

Considering this, averaging the above numeric, 78.6% of the precinct plan has been delivered. Therefore, the argument regarding 'sustainability the same' is related to approximately 20% of the East End precinct

Almost all the additional height impact is the result of the sum of:

- Relocating the massing to that enabled the Harbour to Cathedral Park link, as required by CN.
- Removal of any built form above the heritage Municipal Building allowing it to present as it was constructed.
- The permitted 10% design excellence height bonus that was not envisaged under the Concept DA.

Considering the above, the below explains the GFA that was required to be re massed.

In the Original Concept DA, Building 3 South extended across the corridor by approximately 190m² per level of GFA. Over 8 levels, that is 1,520 m².

In the Original Concept DA, Building 3 North has an approved height of an average height of RL + 31 across the site (the height at the parapet northeast corner is RL + 20.25) as approved, which would allow for 3 extra levels above the existing Municipal Building. The current scheme has a GFA per floor of 444 m² applying the 20% enlargement factor (to square up the building as per the Concept Approval) this results in a loss of 1,599m² from the additional 3 floors that need to be accommodated elsewhere.

Total GFA relocated to other parts of the development to accommodate the requested Harbour to Cathedral Corridor and allow the heritage Municipal Building to stand proud absent any additions above is 3,119 m².

The GFA above the 10% bonus in the DA comp scheme can be summarised as follows:

- Building 3 West – 1 level over height with design excellence RL 33.00 + 715m²
- Building 3 South – 3 levels over height with design excellence RL33.00 + 696m²
- Building 4 North – 2 levels over height with design excellence RL31.9, +356m²
- Building 4 South – 1 level over height with design excellence RL 46.2, + 399 m²

The total GFA that sits over the height limit + 10% that result from design excellence is 2,166m² this represents 70% of GFA that has been moved around to accommodate CN's desired public domain outcome, GFA that was contemplated in the design competition has been to be redistributed to maintain the applicants optimal approved development amenity.

Overall, 70% of the additional height can be directly linked to the re-massing to open the view corridor that CN required and acknowledged in the Brief.

Design Excellence

The endorsed Design Excellence Strategy established the rigorous process which has been undertaken to ensure that the future detailed design of the buildings achieve design excellence. This modification does not seek to amend the Design Excellence Strategy applicable to the site and development.

The revised building envelopes as approved do not undermine the ability of the future detailed design to achieve design excellence in accordance with the Design Excellence Strategy. The design excellence merits

of the proposal have been addressed in the Statement of Environmental Effects prepared by Urbis and accompanying the Detailed DA.

The quantitative analysis in this clause also demonstrates that the development reflected on the Detailed DA and derived through the Design Excellence Competition is substantially the same as the Concept Consent.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed building height non-compliance in this instance.

7.4. HAS THE WRITTEN REQUEST ADEQUATELY ADDRESSED THE MATTERS IN SUB-CLAUSE (3)? – CLAUSE 4.6(4)(A)(I)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the sub-clause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

7.5. IS THE PROPOSED DEVELOPMENT IN THE PUBLIC INTEREST? – CLAUSE 4.6(4)(B)(II)

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

The consistency of the development with the objectives of the development standard is demonstrated in Table 5 above. The proposal is also consistent with the land use objectives that apply to the site under NLEP. The site is located within the MU1 Mixed Use zone. The proposed development is consistent with the relevant land use zone objectives as outlined in Table 6 below.

Table 5 – Assessment of Compliance with Land Use Zone Objectives

Objective	Assessment
<i>To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.</i>	<p>The proposal will contribute to the revitalisation of East End and provide a mixture of diverse land uses including retail and commercial at ground level and residential above.</p> <p>The proposed development will deliver an integrated mixed-use precinct which connects with Stage 1 and 2 of East End.</p> <p>The commercial and retail tenancies will front Hunter Street and the internal Market Plaza, providing employment opportunities for the community.</p> <p>The variation itself does not undermine the ability to deliver a diversity of employment opportunities.</p>
<i>To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.</i>	<p>The proposed development will deliver an integrated mixed-use precinct inclusive of retail and commercial tenancies at ground level and residential land uses above.</p>

Objective	Assessment
	<p>The commercial tenancies will front Hunter Street and the internal Market Plaza to enhance activation of the ground plane and pedestrian traffic. These will be accompanied by appropriate landscaping features to enhance the public domain.</p> <p>Market Square forms part of Stage 3 and provides further opportunities for activation. Market Square is aligned with CN's desired public domain outcomes and opens the view corridor to the Christ Church Cathedral.</p> <p>Overall, the proposal will make a highly positive contribution in creating vibrant, diverse, functional streets and public spaces within the city centre.</p> <p>The variation itself does not undermine the proposals' ability to provide diverse and active street frontages to attract pedestrian traffic or to contribute to vibrant, diverse and functional streets and public spaces.</p>
<p><i>To minimise conflict between land uses within this zone and land uses within adjoining zones</i></p>	<p>The proposed mixed-use precinct minimises land use conflicts by providing a mixture of land uses which complement each other. The proposal is mixed use in nature and is within the inner-city location of Newcastle, it is compatible with the desired future character of the area.</p> <p>The retail and commercial land uses will fit seamlessly into the existing commercial offering within East End and complement the proposed residential.</p> <p>The proposed development will deliver an integrated mixed-use precinct which connects with Stage 1 and 2 of East End.</p> <p>The variation itself does not create a conflict between land uses within this zone and land uses within adjoining zones.</p>
<p><i>To encourage business, retail, community centres and other non-residential land uses on the ground floor of buildings.</i></p>	<p>Similar to Stage 1 and 2, Stage 3 and 4 proposed ground floor commercial which will cater to a range of smaller and unique operators. The scale of commercial is complementary to the residential use and will improve the viability of Hunter Street, which is currently in a state that is void of investment, amenity and is generally an unappealing space of the city centre. A successful Stage 3 and 4 development will attract other business into the</p>

Objective	Assessment
<p><i>To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.</i></p>	<p>Hunter Street area and create a new vibrancy and investment to the area.</p> <p>The design response delivers a well-integrated development with business opportunities at ground level and residential above.</p> <p>The variation itself does not undermine the ability to encourage business, retail, community centres and other non-residential land uses on the ground floor of buildings. Active ground floors are proposed, with the exception of 4 South.</p> <p>The proposal delivers a high-quality mixed used precinct which will support nearby commercial centres. As explored within the Design Competition, the commercial spaces are underpinned by the local market demand for small business opportunities, which will complement existing nearby commercial centres rather than impacting adversely on their viability.</p> <p>The variation itself does not undermine nearby or adjacent commercial centres, given the appropriate amount of commercial space proposed at ground level. The proposal will aim to deliver complementary uses at ground level to service the community from a convenience perspective.</p>

8. CONCLUSION

For the reasons set out in this written request, strict compliance with the height of building contained within clause 4.3 of NLEP is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable and appropriate to vary the height of building to the extent proposed for the reasons detailed within this submission and as summarised below:

- The scheme has been through a Design Excellence process. The SJB, DBJ and Curious Practice scheme was recommended by the Jury as the winning scheme in the competitive design process. The design is a result of iterative detailed engagement and input from various CN teams including planning, waste, engineering, and public domain; and the Chair of CN's UDRP.
- The scheme has been through six Design Integrity Panel (DIP) sessions with Paulo Macchia (GANSW), Dr Philip Pollard and Sandra Furtado. During DIP Session 1 the following observations regarding the height exceedance were made:
 - *The DIP commented that removing a storey from Building 3 South does not improve the urban design outcome of the proposal based upon the information presented.*
 - *The DIP supports the Competition Scheme height exceedance and arrangement based on the illustrated views from Hunter Street, and Newcomen Street provided. However, the visual impacts need to be further explored via a robust a view assessment.*
- After a rigorous assessment and refinement process, the DIP are comfortable with the height exceedance of Building 3 South subject to further view impact assessment, required for DA stage. The DA is accompanied by a Visual Impact Assessment prepared by Urbis. The DIP has confirmed that the fundamental elements of design excellence have been retained and in the opinion of the Panel the scheme can achieve design excellence.
- The scheme has been developed to accommodate CN's desire to create a "Harbour to Cathedral Park" corridor. CN endorsed Competition Design Brief that permitted the Applicant to maintain amenity approved by the Concept DA and deliver the public domain outcome for the community and CN. It is unfair to expect the Applicant to give up premium amenity outcomes validly approved in return for inferior outcomes.
- The proposal delivers a significant public benefit by the redistribution of floor space from within the identified view corridor for the "Harbour to Cathedral Park" to Building 3 South (DBJ) providing a generous and publicly accessible space. CN have a desired public domain outcome for the site, which is reflected in the Newcastle DCP 2012. The desired public outcome is currently restricted by a small component of the western end of Building 3 South.
- The VIA lodged with the DA was an accurate estimate of view impacts. At the request of CN, the Applicant has obtained access to the properties that objected to the development, and a further VIA will be provided to CN shortly and this portion of the Request will be updated in due course. Nevertheless, 11 public views were assessed by Urbis in the Visual Impact Assessment which concluded that:
 - 7 views had a low visual impact, 1 view had a low-medium impact and 3 had a medium visual impact.
 - The proposed redistribution of massing from the view corridor, as approved by the Concept DA, results in an improved public view from View 4 and View 5 towards the Christ Church Cathedral. If the Concept DA arrangement was retained, View 4 and View 5 would be greatly impacted and the Christ Church Cathedral would be obscured.
 - The additional building height predominately blocks views to vegetation or open sky beyond, and generally does not block views of scenic or highly valued features. The additional height is not visible from View 7 and does not result in any view loss or impact.
- The re-massed built forms results in lower visual impacts and a better public domain view sharing outcome. This is achieved by the inclusion of a wide view corridor between the Hunter River and the Cathedral and the protection of NDGP view 21.

- 4 private domain views were assessed by Urbis being, Segenhoe Apartments, the Herald Apartments and Newcomen Apartments (residential views) and the Newcastle Club (commercial view). The conclusions are as follows:
 - The view impact for the Newcastle Club as a whole is **moderate**, such that the view sharing outcome in the context of the relevant controls is reasonable and acceptable.
 - The view impact for the Segenhoe Building as a whole is **minor**. Almost all views from most units are not affected or are affected to a very limited extent, such that the view sharing outcome in the context of the relevant controls is reasonable and acceptable.
 - The view impact for the Herald Apartments as a whole is **minor**, such that the view sharing outcome in the context of the relevant controls is reasonable and acceptable.
 - The view impact for the Newcomen Apartments as a whole is **minor**, such that the view sharing outcome in the context of the relevant controls is reasonable and acceptable.
- The additional building height (above the LEP) will not result in unreasonable impacts to public spaces adjacent residential developments. The majority of overshadowing falls within the site, massing with only small increments of shadow falling outside of the approved envelopes.
- Iris Capital development is a critically important project with the purpose of rejuvenating the heart of the Newcastle CBD. A city centre that had been neglected and in decay for many years, the East End development is the single largest investment that has and continues to reshape the Hunter Street precinct.
- The variation to height does not result in non-compliances to the ADG visual privacy guidelines and does not result in unreasonable setbacks or street wall heights inconsistent with NDCP objectives. The design is sympathetic to the surrounding context and does not overwhelm the public domain.

For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the height of building should be applied.

9. DISCLAIMER

This report is dated November 2024 and incorporates information and events up to that date only and excludes any information arising, or event occurring, after that date which may affect the validity of Urbis Pty Ltd (**Urbis**) opinion in this report. Urbis prepared this report on the instructions, and for the benefit only, of East End Stage 3 Pty Ltd and East End Stage 4 Pty Ltd (**Instructing Party**) for the purpose of Clause 4.6 Variation Request (**Purpose**) and not for any other purpose or use. To the extent permitted by applicable law, Urbis expressly disclaims all liability, whether direct or indirect, to the Instructing Party which relies or purports to rely on this report for any purpose other than the Purpose, and to any other person which relies or purports to rely on this report for any purpose whatsoever (including the Purpose).

In preparing this report, Urbis was required to make judgements which may be affected by unforeseen future events, the likelihood and effects of which are not capable of precise assessment.

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