

## COUNCIL ASSESSMENT REPORT

### HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSHCC-204 - PAN-330247 - DA2023/00419
<b>PROPOSAL</b>	Demolition of existing buildings and erection of a five-building mixed use development, consisting of shop top housing, commercial premises, and a residential flat building with 195 dwellings, 304 parking spaces and stratum and strata subdivision
<b>ADDRESS</b>	Lot 31-32 DP 864001 Lots A & B DP 388647 Lot 1 DP 77846 Lots 96, 98 & 100 DP 1098095 Lot 1 & 2 DP331535 Lot 1 DP 723967 Lot 1 DP 819134 105, 109, 111 & 121 Hunter St Newcastle 3 Morgan St Newcastle 22 Newcomen St Newcastle 66-74 King St Newcastle
<b>APPLICANT</b>	East End Stage 3 Pty Ltd
<b>OWNER</b>	East End Stage 3 Pty Ltd & East End Stage 4 Pty Ltd
<b>DA LODGEMENT DATE</b>	24 May 2023
<b>APPLICATION TYPE</b>	Development Application
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Section 2.19(1) and Clause 2 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as: Development that has a capital investment value of more than \$30 million.
<b>CIV</b>	\$159,654,715 (excluding GST)
<b>CLAUSE 4.6 REQUESTS</b>	A written request to vary the Clause 4.3 Height of Buildings development standard is provided by the applicant
<b>KEY SEPP/LEP/DCP</b>	<ul style="list-style-type: none"> <li><i>State Environmental Planning Policy (Planning Systems) 2021</i></li> </ul>

	<ul style="list-style-type: none"> <li>• <i>State Environmental Planning Policy (Housing) 2021</i></li> <li>• <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i></li> <li>• <i>State Environmental Planning Policy (Industry and Employment) 2021</i></li> <li>• <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i></li> <li>• <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i></li> <li>• <i>Newcastle Local Environmental Plan 2012</i></li> <li>• Newcastle Development Control Plan 2012</li> <li>• Newcastle Development Control Plan 2023</li> </ul>
<b>TOTAL &amp; UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS</b>	29 submissions have been received; 26 objections and 3 in support (31 May 2023 to 31 October 2024)
<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	Documents submitted for consideration are listed in Section 9 of this report
<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)</b>	Not applicable
<b>RECOMMENDATION</b>	Approval, subject to recommended conditions of consent
<b>DRAFT CONDITIONS TO APPLICANT</b>	28 November 2024
<b>SCHEDULED MEETING DATE</b>	5 December 2024
<b>PREPARED BY</b>	Patch Planning (consultant town planners appointed to undertake independent assessment)
<b>DATE OF REPORT</b>	28 November 2024



## EXECUTIVE SUMMARY

This development application relates to the third and fourth stages of the 'East End Development'. It should be noted that references to 'Stage 3' and 'Stage 4' are used solely to distinguish the two parts of the development. The proposal does not seek consent for 'staged development', and should approval be granted, future works would be carried out concurrently.

The proposal is now reported for determination due to the recent modification of the Concept DA (ref. **RE2024/00002**). The proposal is a detailed development application to undertake work under a Concept DA (as modified).

Stage 3 and Stage 4 of the 'East End Development' represent the final stages of a broader approval which covers land bound by Hunter, Newcomen, King, and Thorn Streets. The detailed designs for Stage 1 and Stage 2 were approved pursuant to ref. **DA2017/00700** and ref. **DA2018/00354**, on 2 January 2018 and 15 March 2019, respectively. Construction is complete for Stage 1 and nearing completion for Stage 2.

The Stage 3 and Stage 4 land comprises 105-137 Hunter Street, 3 Morgan Street, 22 Newcomen Street, and 66-74 King Street, Newcastle. Specifically, the Stage 3 block is bound by Hunter Street (northern boundary), Morgan Street (eastern boundary), Laing Street (southern boundary) and Thorn Street (western boundary). The Stage 4 block is bound by Hunter Street (northern boundary), Newcomen Street (eastern boundary), King Street (southern boundary) and Morgan Street (western boundary), but excludes the sites located at 103 Hunter Street and 16-18 Newcomen Street.

The Stage 3 and Stage 4 DA was submitted following a competitive design process that was undertaken in July 2022. It was lodged concurrently with modification application (ref. **MA2023/00175**) to amend the Concept DA, on 24 May 2023 and 1 June 2023, respectively.

The DA seeks consent for a mixed-use development which comprises five buildings. The uses across the site include shop top housing, commercial premises, and a residential flat building, which are permissible with consent in the MU1 Mixed Use zone, pursuant to the *Newcastle Local Environmental Plan 2012* ('NLEP 2012').

A total of 195 apartments are proposed, comprising a mix of one through to four x bedroom apartments. A mix of commercial premises will activate the ground level and are to be dispersed across four of the five buildings. A café is also proposed to be located between the two buildings on Newcomen Street. A four lot Stratum, and a 195 lot strata subdivision is also proposed. A significant public domain offering will be delivered in the form of Market Square, which is 1,125m<sup>2</sup> in area.

On-site parking is to be provided within two respective three-level basement carpark, and associated road upgrade works are included as part of the proposal. This relates to the changing of Laing Street to a one-way operation east to west and the introduction of pedestrian through-site links from Newcomen Street through to Thorn Street.

The DA was publicly notified between 31 May and 14 July 2023. 29 Submissions have been received; 26 in objection and 3 in support.

The proposal is integrated development pursuant to the *Mine Subsidence Compensation Act 1961*, and the *Water Management Act 2000*.

The application was also referred to the following external authorities: Transport for NSW, Department of Planning and Environment ('DPE') – Heritage NSW, DPE – Water, Ausgrid, and WaterNSW and Subsidence Authority NSW as Integrated Development referrals.

The main issues identified in the assessment and/or raised within the public submissions are as follows:

- Building height;
- Heritage conservation;
- Carparking provision; and
- View impacts.

The Applicant has submitted a request pursuant to Clause 4.6 of the Newcastle Local Environmental Plan 2012 ('NLEP 2012') to vary the height of buildings development standard for both Stages 3 and 4. However, in accordance with the findings of the NSW Land & Environment Court ('LEC') in *Karimbla Properties (No. 59) Pty Limited v City of Parramatta Council [2023]* NSWLEC 1365, it is not considered that a 4.6 variation request is required to be submitted in this instance as the DA is a detailed application in relation to a Concept Approval. Nevertheless, for completeness, it has been assessed and the variation is deemed to be sufficient and justified in the circumstances.

The proposal is consistent with the approved Concept DA (as modified) and represents a betterment of the winning architectural scheme from the design competition process held. The proposal is compliant with the approved building heights, building envelopes, Floor Space Ratio ('FSR'), parking quantum and uses as approved in the Concept DA (as modified). Compliance is also achieved with the applicable conditions of consent from the Concept DA (as modified) and a table is provided at **Attachment 15** to this effect.

The proposal has been designed to deliver a DCP defined visual corridor between the Christ Church Cathedral and the Newcastle Harbour, which can now be achieved as a result of the demolition of the former King Street car park. The proposal will deliver a substantial offering of public domain amenity within Market Square, as well as a well-considered architectural outcome that exhibits design excellence.

In addition, it will deliver a significant provision of much needed new homes within the Newcastle Local Government Area ('LGA'), to assist in tackling the housing crisis. Additional employment generating floor space will also be provided as part of the proposal, which will further contribute to the revitalisation of the Newcastle City Centre.

#### Recommendation

That the HCCRPP grant consent to ref. **DA2023/00419**, subject to the conditions contained at **Attachment 1** of this report.

## 1. THE SITE AND LOCALITY

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### 1.1 The Site

The East End Development site comprises various land parcels located between the Hunter Street Mall and Christ Church Cathedral and is bounded by Perkins Street (west), Hunter Street (north), Newcomen Street (east), and King Street (south) as shown in **Figure 1**. The total area of the site is 16,611 m<sup>2</sup>, and it extends approximately 280m in length east to west and 90m north to south.

The East End Development site is in the eastern portion of the Newcastle City Centre, within the Hunter Street Mall Precinct. Surrounding land uses include a mix of commercial, retail, and residential premises, predominantly two to three storeys in height along Hunter Street, and up to six storeys along Newcomen Street.

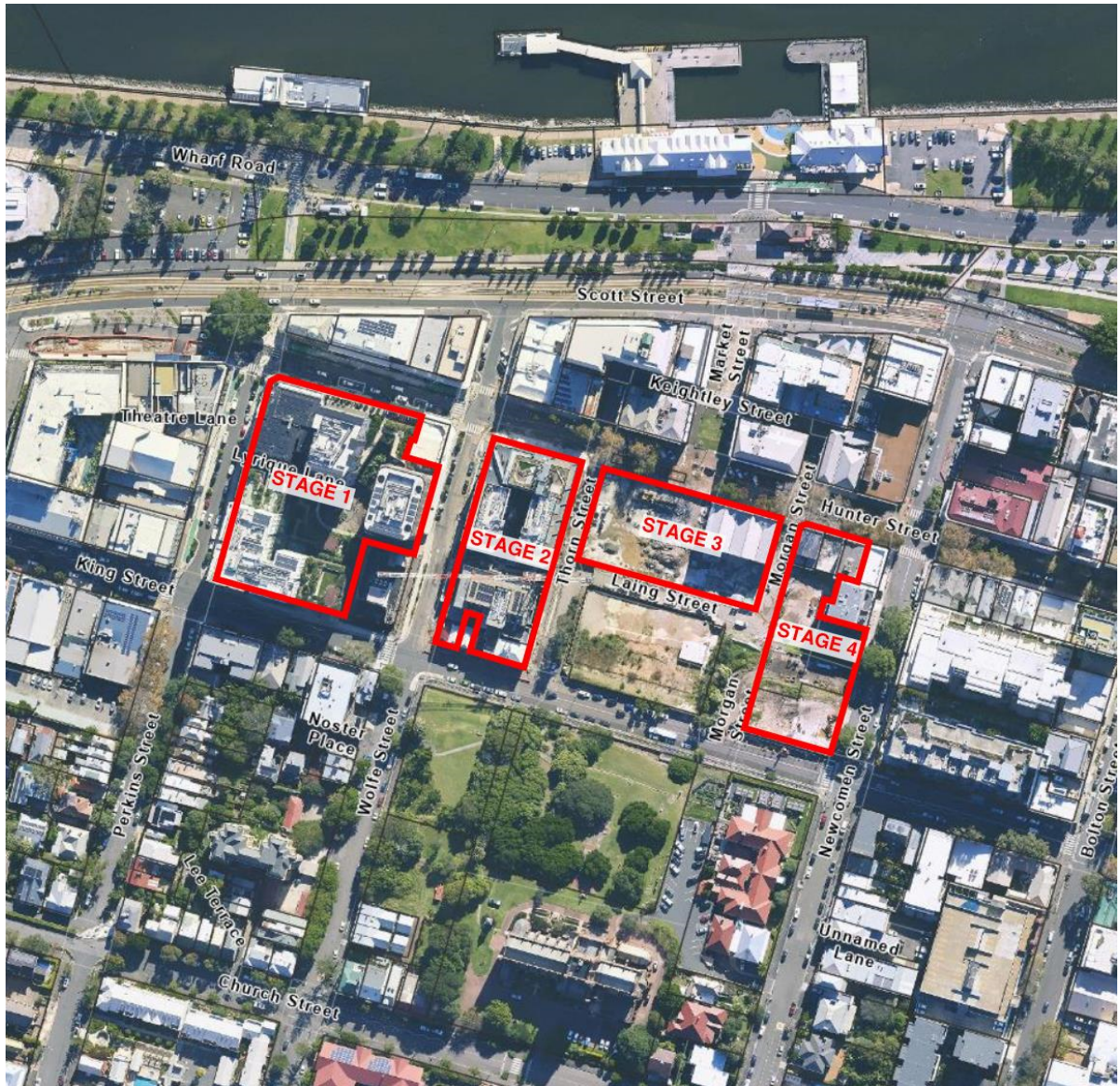
The Concept DA provided concept approval for the East End Development site, which comprises the major redevelopment of the four city blocks. Block 1 and Block 2 have been completed or are near completion, and they are commonly known as East End Stage 1 and Stage 2, respectively.

The proposal relates to the land identified as 'Block 3' (Stage 3), and 'Block 4' (Stage 4). The associated site addresses are 105-137 Hunter Street, 22 Newcomen Street, and 66-74 King Street, Newcastle, which are legally described as follows:

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

The site area of Stage 3 equates to 3,365 m<sup>2</sup>, and the site area of Stage 4 equates to 3,085 m<sup>2</sup>. References to the site within this report refer to these two portions of the land.

The site has notable changes in level, with a crossfall of approximately 20m from the south (rear) to the north (front). The site contains limited vegetation. Existing buildings that remain are in a relatively dilapidated state. Refer to **Figure 2 - Figure 6** for recent site photos taken from Hunter, Newcomen, and King Streets.



**Figure 1:** Aerial map with East End Development site shown outlined red with Stages 3 and 4 being located to the east. Source: CN, OneMap





**Figure 2:** Existing Municipal Building (Stage 3) looking south from Hunter Street. Source: CN



**Figure 3:** Existing building (Stage 4) adjacent to Morgan Street. Looking south from Hunter Street. Source: CN





**Figure 4:** Stage 4 behind the black hoarding, including Blackall House to the right of the image. Looking north-west from King Street. Source: CN



**Figure 5:** Stage 3 behind the colourful hoarding, including the Municipal Building (pink coloured) in the centre of the image. Stage 2 of East End to the left of image. Looking north from King Street. Source: CN

## 1.2 Site context

Stage 3 of the East End Development occupies the entire block between Thorn Street (west), Hunter Street (north), Morgan Street (east), and Laing Street (south). Stage 3 borders the Hunter Street Mall to the north, while beyond Laing Street to the south is the former Council carpark site, demolished in 2021/22.

Stage 4 comprises the entire block between Morgan Street (west), Hunter Street (north), Newcomen Street (east), and King Street (south), excluding 103 Hunter Street and 16-18 Newcomen Street.

The site is centrally positioned in the heart of Newcastle's eastern portion of the Newcastle City Centre, in the Hunter Street Mall Precinct (as referred to within *Newcastle Development Control Plan 2012* ('NDCP 2012')). In recent decades, the Hunter Street Mall has benefited from urban renewal and has developed from a declining environment to one that caters for a variety of activities including specialty retail, dining, entertainment, nightlife, and events.

The site is in the Newcastle City Centre Heritage Conservation Area, and there are local and State listed heritage items within and/or in its vicinity. Most notably, Stage 3 includes the locally listed Municipal Building (Listing no. I403), and to the south of the site is the local and State listed Christ Church Cathedral (Listing Nos. I561 and 01858, respectively).

The area has been in transition for many years, reflected in the varying age and nature of surrounding and nearby developments, including several newer apartment buildings (e.g. East End Stages 1 & 2, refer to **Figure 6** below, and the Herald Apartments on the corner of King and Newcomen Streets).

The absence of the CN carpark is a notable change to the site context in recent years. It occupied land to the south of the site fronting King Street and is now vacant (demolished in 2021/2022). Beyond the former carpark site to the south is Cathedral Park and Cemetery, and the Christ Church Cathedral. To the east of the Cathedral is the Newcastle Club. Refer to **Figure 7 - Figure 11** for photographs of the surrounding site context, including the Hunter Street Mall, Christ Church Cathedral and Newcastle Club.



**Figure 6:** Stage 1 of East End Development as viewed from Hunter Street, looking west. Source: CN





**Figure 7:** Surrounding site context, looking west along King Street. Newcastle Club to the left of the image and the Herald Apartments to the right. Stage 4 is located behind the black hoarding. Source: CN



**Figure 8:** Surrounding site context, looking southwest from the corner of Newcomen Street and Hunter Street. Newcomen Apartments and No. 103 Hunter Street in the centre of the image. Source: CN





**Figure 9:** Surrounding site context, west along Hunter Street Mall. Stage 4 located to the left of image behind fencing. Source: CN





**Figure 10:** Surrounding site context, looking south along Morgan Street. The Newcastle Club is in the background, with the Municipal Building (3N) to the right of image and 4N siting to the left. Source: CN



**Figure 11:** Surrounding site context, looking southeast from Hunter Street Mall and Thorn Street junction. Christ Church Cathedral and the Newcastle Club in the background. Stage 2 of East End to the right of image, and the proposed siting of building 3W is behind the black hoarding. Source: CN

## 2. PLANNING HISTORY AND BACKGROUND

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### 2.1 Development approved under DA2017/00701 (as modified)

The original Concept DA (ref. **DA2017/00701**) was approved on 2 January 2018, by the then Joint Regional Planning Panel, now the Hunter and Central Coast Regional Planning Panel ('HCCRPP'). The Concept DA provided concept approval for the site including setting the FSR, height, building envelope, car parking and land use parameters for each stage of development.

Several modifications have been approved since development consent was granted to ref. DA2017/00701. Most recently, the 8.2(1) review application (ref. **RE2024/00002**) which approved a modification to the Concept DA (ref. **MA2023/00175**). These two inter-related applications are discussed in **Section 2.3** of this report.

The previous modifications to the Concept DA are summarised below:

- On 15 March 2019, modified development consent ref. DA2017/00701.01 was granted. The modifications added hotel and motel accommodation and serviced apartments to the approved uses and increased the number of residential apartments from 563 to 582. It included an increase in gross floor area ('GFA') across the site, resulting in an FSR of 3.75:1 from 3.68:1, and changes to the building envelope over the northern part of the site and 61 additional car parking spaces.
- On 24 April 2020, modified development consent to Stage 1 ref. DA2017/00701.02 was granted. This altered the approved mix of uses, reduced the number of residential apartments from 582 to 566, introduced a hotel use, and increased the GFA resulting in an FSR of 3.83:1 (from 3.75:1).
- On 10 November 2020, modified development consent ref. DA2017/00701.03 was granted. The modifications related to the percentage of residential units within each stage of the development that are to be adaptable housing.

### 2.2 Competitive Design Process

A competitive design process ('design competition') was undertaken for the detailed design of Stage 3 and Stage 4 of the development. On 6 July 2022, following three-months of engagement with CN, the Government Architect NSW ('GANSW'), and the Applicant, the Design Competition Brief was endorsed by GANSW and CN. A key criterion within the Brief was the delivery of the 'Harbour to Christ Church Cathedral' view corridor, it stated the following:

*"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 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 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 currently underway with exploration of redevelopment opportunities being explored by CN.*

*The Applicant draws to competitors' attention that the approved Concept DA has been the subject of a detailed assessment and approval by the Joint Regional Planning Panel, and any future detailed DA needs to be consistent with that approval (or facilitated by a future modification which is 'substantially the same' to support any future changes).*

*To facilitate the delivery of this important public domain benefit, competitors are encouraged to carefully examine the current approved building envelope configuration in Block 3 and prepare creative and sensitively designed responses that provide an alternative massing arrangement in the precinct. However, it is fundamentally important to the Proponent that any re-positioning of the built form in Block 3, maintains (or enhances) the current amenity and commercial value enjoyed by the position of future apartments that results from alternative massing arrangements."*

In the opinion of the Design Competition Jury, the winning design was the most capable of achieving design excellence, notwithstanding the departures from the then-approved concept envelope (pursuant to ref. **DA2017/00701**). **Section 6.1.1** of this report discusses the Jury's feedback from the Design Competition Report and sets out how the winning scheme underwent further testing and refinement as part of the Design Integrity Panel ('DIP') and Urban Design Review Panel ('UDRP') processes in response.

The approved building envelopes needed amending for this winning scheme to come forward. As such, the Applicant submitted a modification application (ref. **MA2023/00175**).

### **2.3 Modification application ref. MA2023/00175 and development approved under ref. RE2024/00002**

The modification application (ref. MA2023/00175) primarily amended the building envelopes approved under the Concept DA to enable the delivery of the winning architectural scheme. This required re-distribution of development massing from the centre of the Stage 3 site, to elsewhere within Stages 3 and 4. This change was essential to ensure the Harbour to Christ Church Cathedral view corridor, a key criterion of the architectural competition design brief.

Under ref. **MA2023/00175**, the height of building envelopes for the five respective buildings were increased to the following:

- 3 West: RL 34.30
- 3 North (Municipal Building): RL 20.43
- 3 South: RL 45.65
- 4 North: RL 36.92
- 4 South: RL 51.70

Consequently, minor uplifts to the FSRs permitted across both stages were proposed, as follows:

- Stage 3: 3.24:1
- Stage 4: 4.35:1

This resulted in a total FSR of 3.90:1 across the four stages of the East End Development, which remains under the permitted 4:1.

Ref. **MA2023/00175** was refused by the HCCRPP on 15 May 2024. The HCCRPP overturned this decision on 28 October 2024 under an 8.2(1) review application; (ref. **RE2024/00002**). The Concept DA was subsequently modified (under ref. **RE2024/00002**) to permit the above referenced building envelopes and FSR.

## 2.4 Submission of DA2023/00419

Ref. **DA2023/00419** was lodged on 24 May 2023. As detailed above, modification application ref. **MA2023/00175** was lodged concurrently, as to facilitate the winning design scheme for Stages 3 and 4, the originally approved concept building envelope needed to be amended.

Following the recent approval of ref. **RE2024/00002**, the subject DA can now be determined as it is consistent with the Concept DA (as modified). This is evidenced in the proceeding sections of this report, and the table at **Attachment 15**, which sets out the proposal's compliance with the conditions of consent of the Concept DA (as modified).

Since lodgement of the DA, the Applicant has provided additional information in response to CN's Requests for Information ('RFIs'), as detailed below in **Section 2.6** of this report.

A chronology of the DA since lodgement is outlined in Table 1 below.

Table 1: Chronology of the Review Application	
Date	Event
24 May 2023	Application lodged
26 May 2023	Application referred to internal and external agencies
31 May 2023	Exhibition of the application
5 July 2023	Proposal reviewed by UDRP
14 July 2023	Extended end date for exhibition
2 August 2023	Preliminary briefing with HCCRPP
12 October 2023	RFI from CN to applicant in relation to traffic engineering, environmental issues, heritage, gross floor area calculations, city greening, and external agency requests for additions information.
10 November 2023	Applicant submitted response to 12 October 2023 RFI
13 November 2023	RFI from CN to applicant concerning matters requested in the 12 October RFI and additional items (CN noted in this RFI that it superseded the RFI of 12 October)
7 December 2023	Second briefing with HCCRPP
8 December 2023	Applicant submitted response to 13 November 2023 RFI
23 December 2023	RFI from CN to Applicant in relation to traffic engineering, parking, public domain, and heritage matters.
24 January 2024	Applicant submitted response to 23 December 2023 RFI



Table 1: Chronology of the Review Application	
Date	Event
5 June 2024	Letter from CN to Applicant confirming application cannot proceed until determination of 8.2(1) review application (ref. RE2024/00002) is finalised
27 September 2024	RFI from CN to Applicant in relation to consistency of documentation for assessment.
30 October 2024	Applicant submitted response to 27 September 2024 RFI
8 November 2024	Applicant submitted documentation in response to 27 September 2024 RFI

## 2.5 Preliminary Panel Briefing

A preliminary briefing to the HCCRPP was undertaken on 2 August 2023. A subsequent briefing was held on 7 December 2023. It is noted these briefings considered both the subject DA (ref. **DA2023/00419**) and modification application ref. **MA2023/00175**.

Key matters discussed of relevance to ref. **DA2023/00419** included the following:

- Differing height controls in the Concept Plan approval and LEP and how this is to be addressed in the required Clause 4.6.
- Assessment of acoustic impacts in relation to later operating hours.
- Chronology of the application, RFIs and responses, response to the height changes and impacts on SEPP 65 compliance.
- URDP support in relation to the proposed design.

**Table 2** below outlines responses to the key matters discussed at the HCCRPP briefings.

Table 2: Key matters raised by the HCCRPP response table	
Matter raised (Extracts from HCCRPP Record of Briefing)	Response
<i>The Panel wanted an overview of the differing height controls in the Concept Plan approval and LEP and this is to be addressed in the required Clause 4.6</i>	<p>The Applicant has provided a Clause 4.6 request to vary the Clause 4.3 Height of buildings development standard. It is noted the proposed building heights are consistent with the approved Concept DA (as modified).</p> <p>The Land and Environment Court has found that a Clause 4.6 request is not required for a subsequent DA following a concept approval pursuant to Division 4.4 of the EP&amp;A Act 1979. This was established in <i>Karimbla Properties (No. 59) Pty Limited v City of Parramatta Council</i> [2023] NSWLEC 1365, where Commissioner O'Neil found the following:</p> <ul style="list-style-type: none"> <li>• The height of the proposal is fixed by the concept approval. The height of the concept approval exceeded the height of buildings development standard for the site. The consent</li> </ul>

**Table 2: Key matters raised by the HCCRPP response table**

<b>Matter raised</b> <b>(Extracts from HCCRPP</b> <b>Record of Briefing)</b>	<b>Response</b>
	<p>authority determined the application pursuant to cl 4.6 of the LEP and granted consent to the concept DA.</p> <ul style="list-style-type: none"> <li>• Section 4.24(2) of the EP&amp;A Act 1979 provides that while the concept approval remains in force, the determination of any further development applications in response of the site cannot be inconsistent with the concept approval for the development of the site.</li> <li>• Development consent may therefore be granted to the DA by the operation of s4.24(2) of the EP&amp;A Act 1979, not subject to cl 4.6 of the LEP, because that consideration under cl 4.6(3) and (4) was undertaken when consent was granted to the concept approval.</li> </ul> <p>Notwithstanding, a review of the applicant's Clause 4.6 request has been undertaken and its findings are supported. The variation to Clause 4.3 is adequately justified as discussed in <b>Section 4.3</b> of this report.</p>
<p><i>The Panel noted that acoustic issues were still being assessed in relation to the proposed food and drink premises. Later operating hours have been requested and this needs to be addressed in the acoustic report and mitigation measures.</i></p>	<p>The Applicant has provided an Acoustic Report, prepared by Renzo Tonin &amp; Associates (<b>Attachment 2AA</b>). The report includes a specific chapter for the food and drink/retail premises fronting Hunter Street and Market Square, with operations proposed until 12am. It is acknowledged that the proposed glazing systems for buildings 3W, 3N, and 4N (i.e. those subject to operational noise from outdoor activity on Hunter Street and Market Square) will ensure that internal noise levels within apartments will be below the noise criteria.</p> <p>Furthermore, operational mitigation measures are recommended, including ceasing any outdoor dining from 10pm, closing of windows/doors after 10pm, and music level controls. The report concludes that subject to the adoption of the relevant recommendations made, reasonable acoustic amenity for the site and those in the vicinity will be achieved.</p> <p>The submitted Acoustic Report has been assessed and is found to be acceptable, subject to the imposition of additional conditions as set out within <b>Section 5.2</b> of this report. Refer to <b>Section 6.8</b> of this report for further discussion on this matter.</p>
<p><i>The Panel will expect a detailed assessment and explanation of the chronology of the application and RFIs and responses, response to the height changes and subsequent impacts on SEPP 65 compliance</i></p>	<p>A detailed site and application history is provided in <b>Section 2</b> of this report. <b>Section 2.6</b> of this report includes a breakdown of the various RFIs issued to the applicant and the aspects of the proposed development that have been amended in response.</p> <p>A detailed ADG assessment has been prepared and is provided at <b>Attachment 12</b> which confirms the proposed development is largely compliant with the relevant provisions. Furthermore, detailed discussion is provided in <b>Section 4.1</b> of this report in relation to the</p>

Table 2: Key matters raised by the HCCRPP response table	
Matter raised (Extracts from HCCRPP Record of Briefing)	Response
<i>including internal apartment size and interface and response to heritage as well as the specific details regarding proposed amendments to conditions under the modification application.</i>	<p>components of the proposal which vary the ADG provisions, however, are supported on merit as they are considered consistent with the relevant objectives.</p> <p>Heritage is discussed in detail within <b>Section 6.5</b> of this report. In summary, the proposal is supported, and the assessment finds that the proposal exhibits an appropriate heritage response.</p>

## 2.6 Requests for additional information

During the assessment period several RFIs were issued to the Applicant, as outlined in **Table 1** above. In response, certain elements of the design have been refined and a complete updated set of documentation (superseding previous reports and addendums) has been provided by the Applicant as per **Attachments 2FFF**.

The Applicant supplied additional supporting information in relation to view loss, whereby supplementary viewpoints were tested, and additional photomontages were provided. Minor design refinements were made in relation to the contributory heritage facades along Hunter Street and the relationship of the additions above, in response to CNs heritage assessment . Minor design upgrades were also made to the interface between the retained fabric of the Municipal Building and the internal works. The only other design amendment relates to the access and egress arrangements for building 3S, to accommodate safe vehicular movement to and from the loading dock.



### 3. THE PROPOSAL

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#### 3.1 Overview of Proposal

The subject DA seeks consent for a mixed-use development comprising shop-top housing, commercial premises, and a residential flat building. It consists of five buildings, two of which are connected via central pedestrian bridges\*. The buildings are referred to as follows:

- Building 3 West (3W)
- Building 3 North (3N)\*
- Building 3 South (3S)\*
- Building 4 North (4N)
- Building 4 South (4S)

The proposal varies in height across the five buildings, between 3 and 10 storeys, with a maximum building height of RL 51.70 (4S). The GFA for Stages 3 and 4 is 24,330 m<sup>2</sup> (64,750 m<sup>2</sup> across the entire development) which equates to an overall FSR of 3.90:1.

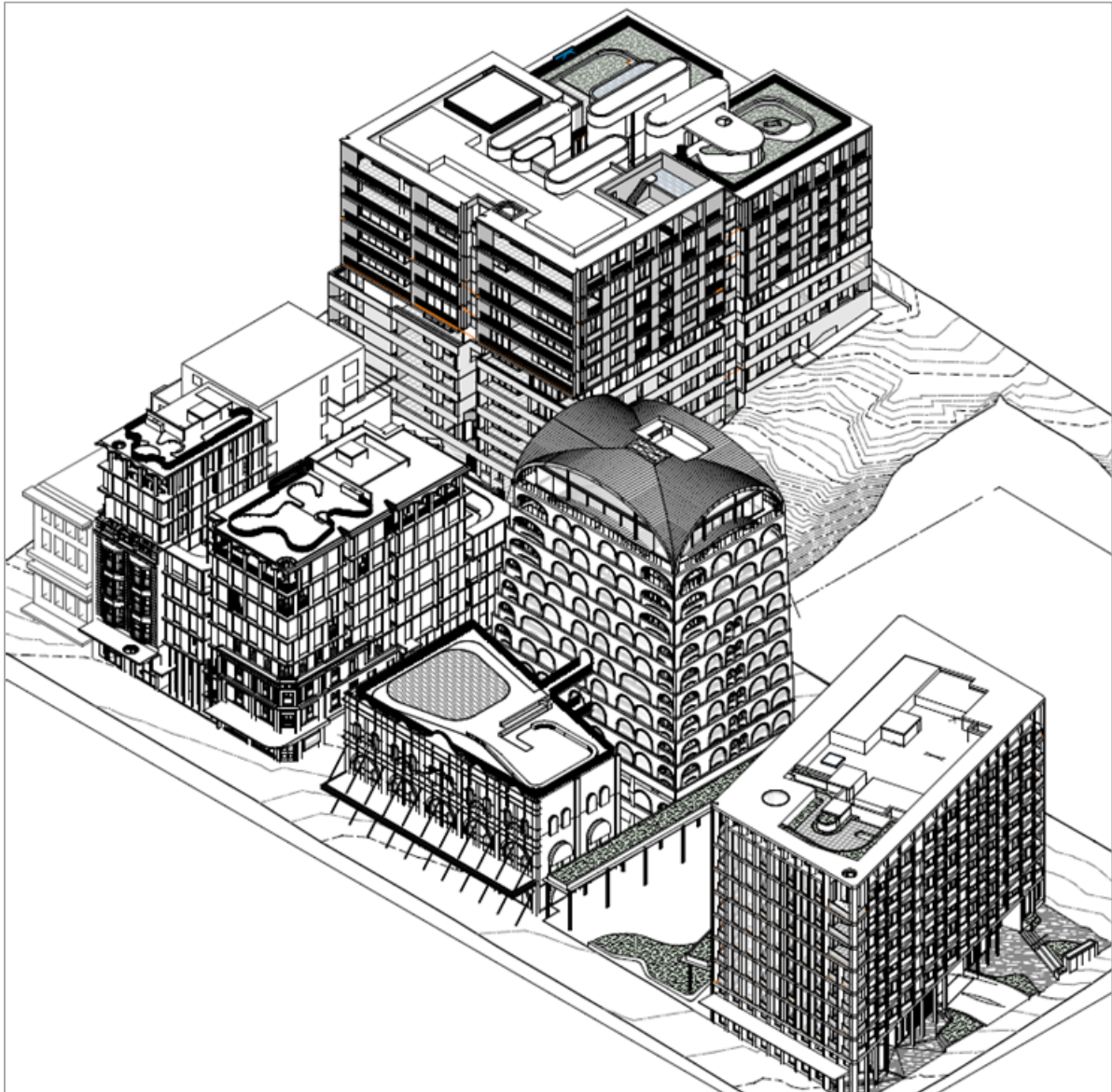
The proposal comprises 195 apartments (90 in Stage 3 and 105 in Stage 4), with an active ground level providing commercial floor space. A significant provision of public realm is to be delivered, primarily within 'Market Square' which forms part of Stage 3, as well as associated landscaping works.

Stratum subdivision is proposed as part of the application, consisting of two-stratums for Stage 3 and two-stratums for Stage 4. A 90-lot strata subdivision is also proposed for Stage 3, and a 105-lot strata subdivision is proposed for Stage 4.

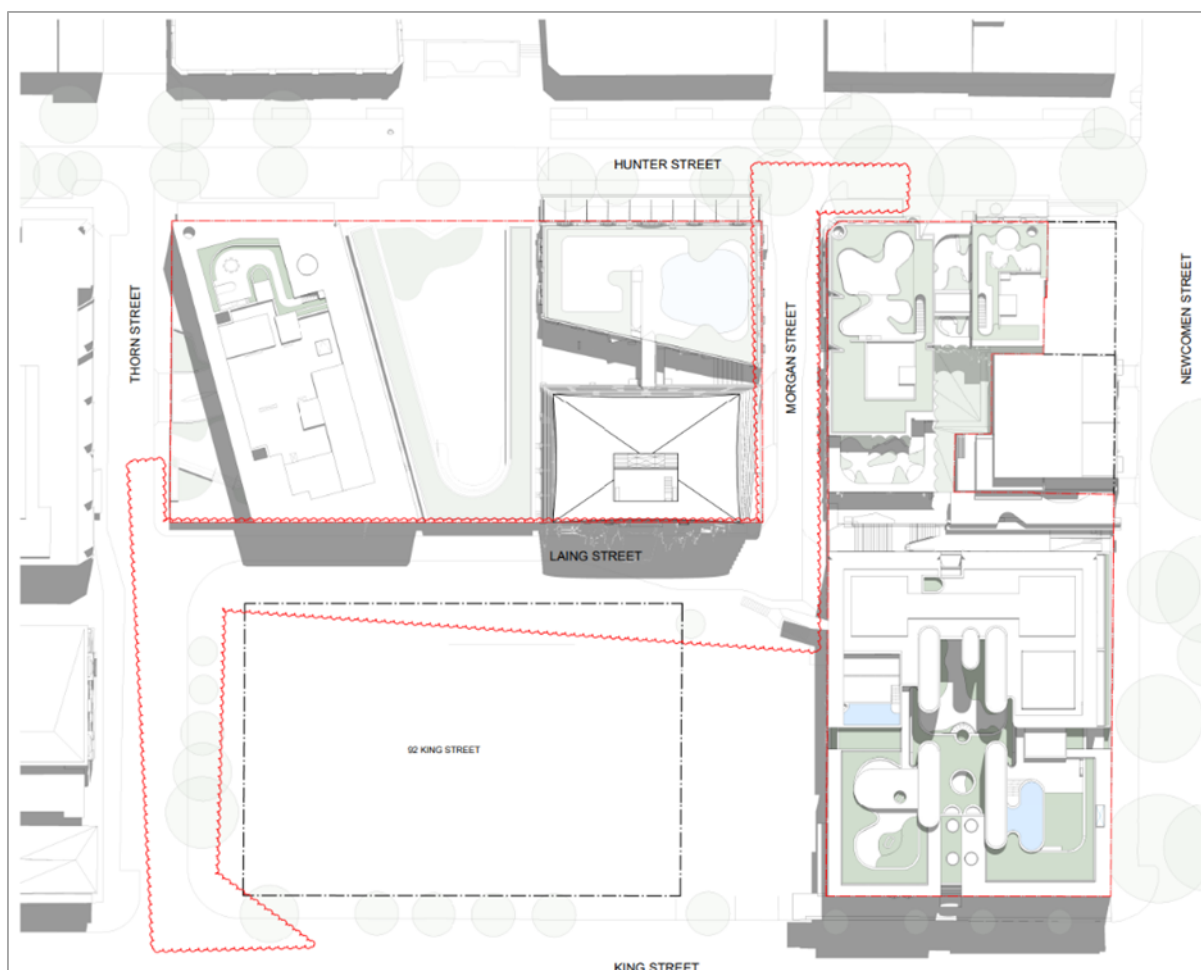
Two basement car parks are proposed and vehicular access to the site is to be obtained via Thorn and Laing Streets. No vehicular access is proposed off King, Newcomen, or Hunter Streets. The basement car parks are split across three levels and include provisions for residential, retail/commercial, and visitor car and bicycle parking. In total 304 carparking spaces are proposed to be provided, and 235 bicycle parking spaces (inclusive of both public and private spaces)

A café is proposed between the 4N and 4S buildings, fronting Newcomen Street, known as 'Laing Lane Café'.

A 3D render of the proposal is provided at **Figure 12** below, and **Figure 13** provides an extract of the proposed site plan.



**Figure 12:** Stages 3 and 4 render, oriented north (facing Hunter Street). Source: Urbis



**Figure 13:** Stages 3 and 4 Site Plan. Source: Urbis

### 3.2 Development Summary

The Applicant has provided a breakdown of the key numeric features of the development, as below. Additional details have been included where not itemised by the Applicant.

Table 3: Key overview of proposal	
Descriptor	Proposed
Land Use Activity	Shop top housing Residential flat building Commercial premises
Site Area	<ul style="list-style-type: none"> <li>Stage 3: 3,365m<sup>2</sup></li> <li>Stage 4: 3,085m<sup>2</sup></li> <li>Total: 6,450m<sup>2</sup></li> </ul>
Total GFA	<u>Building Breakdown</u> <ul style="list-style-type: none"> <li>Building 3W: 5,867m<sup>2</sup></li> <li>Building 3N: 1,314m<sup>2</sup></li> <li>Building 3S: 3,735m<sup>2</sup></li> <li>Building 4N: 3,609m<sup>2</sup></li> <li>Building 4S: 9,805m<sup>2</sup></li> <li>Total: 24,330m<sup>2</sup></li> </ul>

Table 3: Key overview of proposal	
Descriptor	Proposed
	<u>Stage Breakdown</u> <ul style="list-style-type: none"> <li>Stage 3: 10,916m<sup>2</sup></li> <li>Stage 4: 13,414m<sup>2</sup></li> <li>Total: 24,330m<sup>2</sup></li> </ul>
GFA by land use	<ul style="list-style-type: none"> <li>Residential floor space: 22,647m<sup>2</sup></li> <li>Commercial floor space: 1,683m<sup>2</sup></li> </ul>
Maximum Height of Buildings	<ul style="list-style-type: none"> <li>Building 3W: RL 34.30</li> <li>Building 3N: RL 20.43</li> <li>Building 3S: RL 45.65</li> <li>Building 4N: RL 36.92</li> <li>Building 4S: RL 51.70</li> </ul>
Floor Space Ratio	<ul style="list-style-type: none"> <li>Stage 3: 3.24:1</li> <li>Stage 4: 4.35:1</li> <li>Total site (all 4-stages): 3.90:1</li> </ul>
Parking Spaces (within the 3-level basements)	<ul style="list-style-type: none"> <li>Stage 3: 168</li> <li>Stage 4: 136</li> </ul> <p>Total parking provision across the site (all 4-stages) equates to 735 spaces. This is inclusive of the 21-space commercial/retail re-allocation (pursuant to condition 19c) of ref. <b>RE2024/00002</b>)</p>
Motorcycle Parking	9 spaces
Bicycle Parking	<p>235 bicycle parking spaces (split between public and private allocations)</p> <p><b>NB.</b> The 235 figure above is inclusive of the 26 visitor bicycle parking spaces required to be provided within stages 3 and 4 at grade near key access points to the development per condition 20A of ref. <b>RE2024/00002</b>.</p>
Open Space (public realm)	<ul style="list-style-type: none"> <li>Stage 3: 1,358m<sup>2</sup></li> <li>Stage 4: 510m<sup>2</sup></li> <li>Total: 1,868m<sup>2</sup> (28.6% of site area)</li> </ul>
Communal Open Space	<ul style="list-style-type: none"> <li>Stage 3: 473m<sup>2</sup></li> <li>Stage 4: 311m<sup>2</sup></li> <li>Total: 784m<sup>2</sup> (12% of site area)</li> </ul>
Loading and Servicing Bays	Loading dock and/or turntables for heavy rigid vehicles (HRVs) are located within both stages 3 and 4.
Dwellings	<u>Quantum</u> <ul style="list-style-type: none"> <li>Building 3W: 52 apartments</li> <li>Building 3N: 9 apartments</li> <li>Building 3S: 29 apartments</li> <li>Building 4N: 23 apartments</li> </ul>

Table 3: Key overview of proposal	
Descriptor	Proposed
	<ul style="list-style-type: none"> <li>Building 4S: 82 apartments</li> <li>Total: 195 apartments</li> </ul> <u>Apartment mix</u> <ul style="list-style-type: none"> <li>23 x 1 bedrooms</li> <li>145 x 2 bedrooms</li> <li>20 x 3 beds</li> <li>7 x 4 bedrooms</li> </ul>
Stratum subdivision	<ul style="list-style-type: none"> <li>Stage 3: two stratums</li> <li>Stage 4: two stratums</li> </ul>
Strata subdivision	<ul style="list-style-type: none"> <li>Stage 3: 90 strata lots</li> <li>Stage 4: 105 strata lots</li> </ul>
Signage	Signage zones are proposed across the Stage 3 and 4 buildings. Future signage detailing would be subject to separate approval.

### 3.3 Summary of Stage 3 Proposal

The proposal within Stage 3 includes demolition of the existing remaining structures on site, apart from the Municipal Building (3N), where only partial demolition is proposed. Three buildings (3W, 3N, and 3S) will be accommodated within Stage 3, noting that 3N is an adaptive re-use of the existing building rather than a new build.

90 apartments are proposed across Stage 3, with each building providing commercial floor space at ground level. A total provision of 1,074m<sup>2</sup> of commercial GFA is provided within Stage 3.

A 90-lot strata subdivision is proposed for Stage 3, as well as a two-lot stratum subdivision. A breakdown of the proposed subdivision arrangements is provided below.

#### Stratum subdivision

- 2 Lot Stratum subdivision is proposed for Stage 3 (currently Lots 31 and 32 in DP864001);
- Proposed Lot 34 (retail) comprising all retail related components within Building 3N, 3S, and 3W and the associated basement car parking areas; and the publicly accessible private land within Stage 3 (being 'Market Square and the through-site connection between 'Market Square and Morgan Street)
- Proposed Lot 35 (residential) comprising all residential related components within Building 3N, 3S, and 3W

#### Strata subdivision

- 90 Lot Strata subdivision of proposed Lot 35 (residential) comprising all apartments and associated spaces (common lobbies, carparking, communal open space etc) within buildings 3N, 3S, and 3W and the associated basement car parking areas.

Communal private open space for residents is provided atop of 3W and 3N, with public open space provided between 3W and 3E in Market Square.

A three-level basement carpark is provided beneath the mixed-use buildings, providing a total of 168 spaces to be allocated for residents, commercial premises, and residential visitors.

A signage strategy is also proposed for building and commercial tenancy identification.

A detailed breakdown of the individual buildings is provided below.

### **3.3.1 Building 3W**

Key features of the 3W building are summarised below, based off the Applicant's documentation:

- Excavation works to accommodate the proposed three level basement and earthworks to level the site in readiness for the proposed structure;
- Construction of a seven storey mixed use building, comprising:
  - Ground floor commercial premises (three x tenancies) and awning above along Hunter Street;
  - A three-level basement carpark beneath Stage 3 accommodating 102 residential parking spaces including car wash and car share EV spaces, 58 commercial, six visitor and nine motorbike parking spaces;
  - Vehicular access from Thorn Street to the basement car parking;
  - Total GFA 5,867m<sup>2</sup> comprising residential and commercial uses;
  - 52 apartments including 11 x one bedroom, 38 x two bedroom, two x three bedroom, and one x four bedroom;
  - Services including a new substation are consolidated within the basement car park;
  - Two residential lobbies accessed from Thorn Street;
  - Public lobby and lift are provided from the public space to access the retail parking below;
  - Public space between Thorn Street and the building;
  - Landscaped zone fronting Thorn and Laing Streets;
- An urban plaza fronting Hunter Street, located between Building 3W, 3N, and 3S. The plaza and landscape strategy enhance the site providing opportunities for activation.

Refer to **Figure 14** below for an excerpt of the proposed 3W building.





**Figure 14:** Building 3W, as viewed from Hunter Street. Source: Urbis

### 3.3.2 Building 3S

Key features of the 3S building are set out below, based off the applicant's documentation.

- Demolition of the existing structures;
- Excavation works to accommodate the proposed three level basement and earthworks to level the site in readiness for the proposed structure.
- Construction of a ten storey mixed use building, comprising:
  - Ground floor commercial premises (one x tenancy);
  - A ten level basement car park beneath Stage 3 accommodating 102 residential parking spaces including car wash and car share EV spaces, 58 commercial, six visitor and nine motorbike parking spaces;
  - Vehicular access from Thorn Street to the basement car parking;
  - Loading dock level;
  - Total GFA of 3,735m<sup>2</sup> comprising residential and commercial uses;
  - 29 apartments including, 22 x two bedroom, six x three bedroom and one x four bedroom;
  - Services located within the basement car park, and on the building rooftop;

- Two residential lobbies including one accessed from the proposed Laneway;
- Landscaped zone along the laneway;
- An urban plaza fronting Hunter Street, located between Building 3W, 3N, and 3S. The plaza and landscape strategy enhance the site providing opportunities for activation.

### **3.3.3 Building 3N (Municipal Building)**

Building 3N involves the adaptive reuse of the existing Municipal Building, a locally listed heritage item pursuant to NLEP 2012 (Listing no. I403). The building structure will remain largely as existing, with partial demolition and enhancements to the internal layout undertaken. Internal works include:

- Internal demolition works including floors, and retention of North and East facades;
- Ground floor commercial, (one x tenancy) end-of-trip facilities for Stage 3, a lift to access retail parking and upper level Morgan Street from the laneway and public space;
- A three level basement car park beneath Stage 3 accommodating 102 residential parking spaces including car wash and car share EV spaces, 58 commercial, six visitor and nine motorbike parking spaces;
- Public lobby is provided from the laneway to access the retail parking below;
- Vehicular access from Thorn Street to the basement car parking;
- Total GFA of 1,314m<sup>2</sup> comprising residential and commercial uses;
- Nine apartments including three x one bedroom, five x two bedroom, and one x three bedroom;
- 473m<sup>2</sup> of communal open space.

Refer to **Figure 15** and **Figure 16** below for excerpts of the proposed Building 3E (inclusive of both 3N and 3S).





**Figure 15:** Building 3E. Source: Urbis



**Figure 16:** Building 3N (Municipal Building) at the forefront of the render with 3S behind. Source: Urbis

### 3.4 Summary of Stage 4 Proposal

The proposal within Stage 4 includes demolition of existing remaining buildings on site, apart from the northern and western facades of 105 and 111 Hunter Street. Two buildings (4N and 4S) will be accommodated within Stage 4, and the Laing Lane Café sits between the two.

105 apartments are proposed across Stage 4, with commercial floor space provided at the ground and first floors of 4N, with the Laing Lane Café located at levels 3 and 4 of 4N. A total provision of 609m<sup>2</sup> of commercial GFA is provided within Stage 4.

A 105-lot strata subdivision is proposed for Stage 4, as well as a two-lot stratum subdivision. A breakdown of the proposed subdivision arrangements is provided below.

#### Stratum subdivision

- 2 Lot Stratum subdivision is proposed for Stage 4 (currently Lots A & B DP 388647, Lot 1 DP 77846, Lot 100 DP 1098095, Lot 1 DP 723967, Lots 1 & 2 DP 331535, Lot 98 DP 1098034, Lot 96 DP 1098068, and Lot 1 DP 819134)
- Proposed Lot 41 (retail) comprising all retail related components within Building 4N, the Laing Lane Café building, and the associated basement car parking areas; and the publicly accessible private land within Stage 4 (being the through-site connection between Newcomen and Laing Streets)
- Proposed Lot 42 (residential) comprising all residential related components within Building 4 North and Building 4 South

#### Strata subdivision

- 105 lot Strata subdivision of Proposed Lot 42 (residential) comprising all apartments and associated spaces (common lobbies and services, carparking, communal open and indoor space etc) within Building 4N and 4S, and the associated basement car parking areas

Communal private open space for residents is provided atop of 4N and 4S.

A three-level basement carpark is provided beneath the mixed-use buildings, providing a total of 136 spaces to be allocated for residents, commercial premises, and residential visitors.

A signage strategy is also proposed for building and commercial tenancy identification.

A detailed breakdown of the individual buildings is provided below.

### **3.4.1 Building 4N**

Key features of the 4N building are set out below, based off the applicant's documentation:

- Demolition of the existing buildings and structures onsite except for the façade retention of numbers 105 and 111 Hunter Street.
- Construction of eight storey mixed use building, comprising:
  - Ground floor and Level 1 commercial premises (three x tenancies);
  - Courtyard and landscaping;
  - 112m<sup>2</sup> communal open space;
  - Residential lobby accessible from Morgan Street and Hunter Street;
  - Vehicular access from Laing Street to the basement car parking;
  - Basement car parking comprising 121 residential spaces (including ten shared EV charging spaces), five x commercial spaces and seven x visitor car spaces, one x car wash bay and two x residential common property EV parking spaces;
  - Total GFA 3,601m<sup>2</sup> comprising residential and commercial uses;
  - 23 apartments including three x one bedroom, 15 x two bedroom, two x three bedroom and three x four bedroom;
  - Services and plant room located on level 1 or building rooftop;



- Ancillary landscaping works, including rooftop gardens for penthouse apartments.
- Construction of the Laing Lane Café

Refer to **Figure 17** below for an excerpt of 4N.



**Figure 17:** Building 4N, as viewed from Hunter Street (looking south). Source: Urbis

The design of 4N allows for the retention of the return walls at both the Hunter Street and Morgan Street elevations of Nos. 105 and 111 Hunter Street, noting that both are contributory buildings.

### 3.4.2 Building 4S

Key features of the 4S building are set out below, based off the applicant's documentation:

- Demolition of Blackall House (No. 22 Newcomen Street)
- Excavation works to accommodate the proposed three level basement and earthworks to level the site in readiness for the proposed structure.
- Construction of nine storey residential flat building, comprising:
  - Basement car parking comprising 121 residential spaces (including ten shared EV charging spaces), five x commercial spaces and seven x visitor car spaces, one x car wash bay and two x residential common property EV parking spaces;
  - Vehicular access from Laing Street to the basement car parking;
  - Turntable and loading dock located in Basement Level 1

- Services such as waste room, plant rooms etc. are consolidated within the basement Level 1 and lower ground floor;
- Total GFA of 9,805m<sup>2</sup> of residential floor space;
- 82 apartments including six x one bedroom, 65 x two bedroom, nine x three bedroom and two x four bedroom;
- Residential lobbies accessed from Laing Street Laneway and King Street;
- 199m<sup>2</sup> communal open space;
- Landscaped courtyard within centre of the building and ancillary landscaping throughout building.

Refer to **Figure 17** below for an excerpt of 4S.



**Figure 18:** Building 4S. Source: Urbis

### 3.4.3 Laing Lane Cafe

A two-storey café is proposed between the 4N and 4S buildings, along the through-site connection between Newcomen and Laing Streets, oriented towards Newcomen Street (east). The café is proposed to activate the 'laneway' (through-site connection) and act as a marker for the development.

Key characteristics of the café are summarised below:

- The café has a GFA of 119m<sup>2</sup>.
- Disabled access is provided via a public lift which will mitigate the steep change in level and softens the expanse of the blank wall created by the removal of Blackall House (No. 22 Newcomen Street).

- Approval is sought for use of the tenancy as part of the DA. Operating hours are between 7:00am and 10:00pm, 7-days a week.

Refer to **Figure 19** below for an excerpt of the cafe.



**Figure 19:** Laing Lane Café as viewed from Newcomen Street (left) and Morgan Street (right).  
Source: Urbis

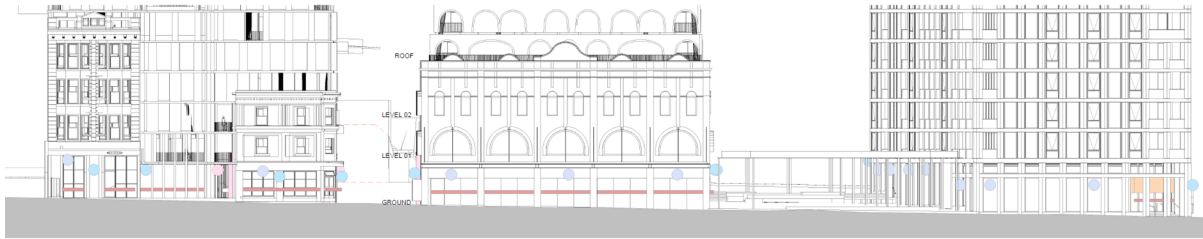
### 3.4.4 Signage

A signage strategy is proposed for building and commercial premises identification. Five types of signage are identified within the strategy, as follows:

- Type 1: Residential Lobby Signage
- Type 2: Retail Glazing Decal
- Type 3: Retail Transom Signage
- Type 4: Retail Under Awning Signage
- Type 5: Retail Wall Mounted Signage

The business identification signage locations are interspersed along the ground level of buildings 3W, 3N, 3S, and 4N (refer to **Figures 20-23**). Building identification signage is also proposed for each building. The excerpts below demonstrate the general locations and sizing of signage, as identified by the pastel shading.

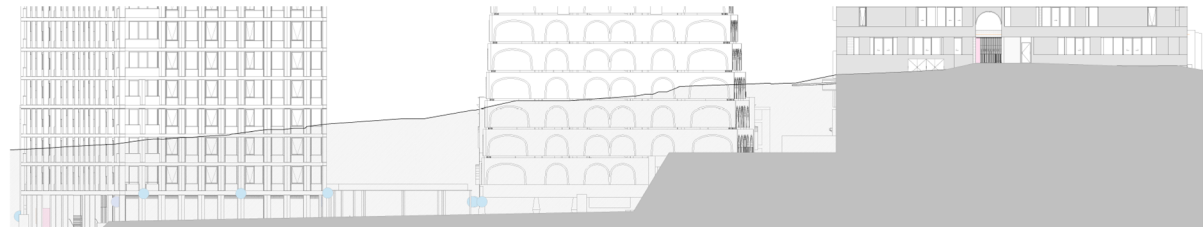




**Figure 20:** Proposed signage locations - northern elevation, as viewed from Hunter Street (4N, 3N, 3W left to right). Source: Urbis



**Figure 21:** Proposed signage locations - western elevation, as viewed from Morgan Street. 3W in centre and 3S behind. Source: Urbis



**Figure 22:** Proposed signage locations - southern elevation, as viewed from King Street (3W, 3S, 4S left to right). Source: Urbis



**Figure 23:** Proposed signage locations - eastern elevation, as viewed from Newcomen Street (4S, 4N left to right). Source: Urbis

### 3.5 Site preparation, civil, and ancillary works

In addition to the construction of the mixed-use buildings, the following is also proposed:

- Excavation works to accommodate the basement car park;
- Earthworks to level the site;
- Site remediation;
- Sewer diversion works;
- Construction of two chamber substations (within the ground floor of Stage 3 and basement Level 1 of Stage 4);
- Ground distributing works;
- Communication rooms;

- New storm drainage infrastructure on Hunter and Morgan Streets.

## 4. STATUTORY CONSIDERATIONS

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### 4.1 Section 4.24 of the Environmental Planning and Assessment Act 1979

Section 4.24(2) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') prescribes that "*while any consent granted on the determination of a concept development application for a site remains in force, the determination of any further development application in respect of the site cannot be inconsistent with the consent for the concept proposals for the development of the site*".

The detailed Stage 3 and 4 design is consistent with the Concept DA (as modified). The proposal complies with the approved concept envelopes, building heights, FSR, and parking provisions. Furthermore, the proposal is compliant with the relevant conditions of consent imposed under the Concept DA (as modified), as set out within the accompanying condition compliance table provided at **Attachment 15**.

### 4.2 Section 4.15(1) of the Environmental Planning and Assessment Act 1979

When determining a DA, a consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters, as are of relevance to the development application, include the following:

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

The relevant matters for consideration in relation to the proposal are discussed further in the following sections of this report.

#### 4.3 Section 4.15(1)(a) – Provisions of Environmental Planning Instruments, Proposed Instruments, DCPs, Planning Agreements, and the Regulations

##### (a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments (EPIs) are relevant to this application:

- *State Environmental Planning Policy (Planning Systems) 2021* ('Planning Systems SEPP')
- *State Environmental Planning Policy (Transport and Infrastructure) 2021* ('Transport and Infrastructure SEPP')
- *State Environmental Planning Policy (Resilience and Hazards) 2021* ('Resilience and Hazards SEPP')
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* ('BASIX SEPP')
- *State Environmental Planning Policy (Industry and Employment) 2021* ('Industry and Employment SEPP')
- *State Environmental Planning Policy (Housing) 2021* ('Housing SEPP')
- *Newcastle Local Environmental Plan 2012* ('NLEP 2012')

A summary of the key matters for consideration arising from these State Environmental Planning Policies is outlined in **Table 4**.

<b>Table 4: Summary of Applicable Environmental Planning Instruments (Preconditions in bold)</b>		
<b>EPI</b>	<b>Matters for Consideration</b>	<b>Compliance</b>
Planning Systems SEPP	<ul style="list-style-type: none"> <li>• Clause 2.19(1) and Clause 2 of Schedule 6 declares the proposal regionally significant development, as it has an estimated development cost of more than \$30 million.</li> </ul>	Yes
Transport and Infrastructure SEPP	<ul style="list-style-type: none"> <li>• Clause 2.48 – Written notice to the electricity supply authority (Ausgrid) was issued, and support has been provided.</li> <li>• Clause 2.122 – The proposal requires referral to Transport for NSW ('TfNSW') pursuant to Clause 2.122 and Schedule 3, considering the proposal includes 200 or more car parking spaces. The development therefore triggers the traffic generating development thresholds. TfNSW are supportive of the proposed development, as outlined in <b>Section 5.1</b>.</li> </ul>	Yes
Resilience and Hazards SEPP	<ul style="list-style-type: none"> <li>• Clause 2.10 – Development on land within the coastal environment area. The assessment finds the proposal is not likely to cause an adverse impact in relation to the considerations prescribed under this Clause.</li> <li>• Clause 2.11 – Development on land within the coastal use area. The assessment finds the proposal is not likely to cause an adverse impact in relation to the considerations prescribed under this Clause.</li> </ul>	Yes



**Table 4: Summary of Applicable Environmental Planning Instruments (Preconditions in bold)**

EPI	Matters for Consideration	Compliance
	<ul style="list-style-type: none"> <li>Clause 2.12 and Clause 2.13 – The proposal is not considered likely to increase risk of coastal hazards and there are no coastal management programs relevant to the site to consider.</li> <li>Clause 4.6 – Matters of contamination and remediation have been considered and are satisfactory, subject to the imposition of conditions.</li> </ul>	
BASIX SEPP	<ul style="list-style-type: none"> <li>Clause 6 – The application was lodged prior to the commencement of the Sustainable Buildings SEPP, therefore pursuant to the Clause 4.2 Savings Provisions of the Sustainable Buildings SEPP, the BASIX SEPP continues to apply. The proposal passes the BASIX requirements, per the provided BASIX Certificates.</li> </ul>	Yes
Industry and Employment SEPP	<ul style="list-style-type: none"> <li>Clause 3.6 &amp; Schedule 5 – The proposed signage strategy is considered to achieve the objectives of Chapter 3 and the criteria specified in Schedule 5.</li> </ul>	Yes
Housing SEPP	<ul style="list-style-type: none"> <li>Clause 145 – The consent authority has referred the application to the UDRP for advice on the quality of the design of the proposal, notwithstanding the design competition that was undertaken. The UDRP provide their unwavering support and commend its design excellence.</li> <li>Clause 147 - Design Quality Principles - The proposed development achieves a high level of compliance with the relevant provisions of the Apartment Design Guide ('ADG'). The proposal has been subject to rigorous design competition and development, concluding that the development exhibits design excellence.</li> </ul> <p>A detailed assessment of the proposal against the relevant ADG provisions is provided at <b>Attachment 12</b> and a merit assessment of the minor non-compliances is provided below under subheading '<i>State Environmental Planning Policy (Housing) 2021 ('Housing SEPP')</i>' of this report.</p>	Yes
NLEP 2012	<ul style="list-style-type: none"> <li>Clause 2.3 – Permissibility and zone objectives</li> <li>Clause 4.3 – Height of buildings</li> <li>Clause 4.4 – Floor space ratio</li> <li>Clause 4.6 – Exceptions to development standards</li> <li>Clause 5.10 – Heritage consideration</li> <li>Clause 7.1 – Objectives Newcastle City Centre</li> <li>Clause 7.5 – Design Excellence</li> </ul>	Partial

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

### **Chapter 2: State and Regional Development**

The proposal is regionally significant development, pursuant to Clause 2.19(1) and Clause 2 of Schedule 6 of the Planning Systems SEPP, as it has an estimated development cost of more than \$30 million. Accordingly, the HCCRPP is the consent authority for the application in accordance with relevant instructions issued under the *Environmental Planning and Assessment Regulation 2021* ('EP&A Reg 2021').

## **State Environmental Planning Policy (Transport and Infrastructure) 2021 ('Transport and Infrastructure SEPP')**

Pursuant to Clause 2.122(1) and Schedule 3 of the Transport and Infrastructure SEPP, the proposal meets the threshold for traffic generating development considering more than 200 car parking spaces are proposed.

Therefore, in accordance with Clause 2.122(4), before determining a development application for development to which this section applies the consent authority must give written notice of the application to TfNSW and take into consideration any submission received in response.

TfNSW have reviewed the information provided as part of the DA and raise no objection to or require any imposition of conditions for the proposal. Refer to **Section 5.1** for further details.

## **State Environmental Planning Policy (Resilience and Hazards) 2021 ('Resilience and Hazards SEPP')**

### **Chapter 2 Coastal Management**

The subject site is mapped within two coastal management areas, being the Coastal Environment Area and the Coastal Use Area.

Clause 2.10(1) prescribes that development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact the integrity and resilience of the biophysical, hydrological, and ecological environments.

The site is located within a well-established urban setting, being Newcastle's City Centre. The site has accommodated development for many years, and therefore, there are no likely impacts to the surrounding biophysical, hydrological, or ecological environments.

In accordance with Clause 2.10 (2), the proposal has been suitably designed, sited, and able to be managed to avoid causing an adverse impact referred to in Clause 2.10(1) of the Resilience and Hazards SEPP.

Clause 2.11(1) prescribes that development consent must not be granted to development that is within the coastal use area unless the consent authority has considered whether the proposal is likely to adversely affect existing and safe access to the foreshore, beach, or headland, or the visual and scenic qualities of the coast and cultural and built heritage.

The site is located between 170m and 290m from Newcastle Harbour, and separated at a minimum by Hunter Street, Hunter Street Mall, Scott Street, and Wharf Road. The proposal will therefore not have a material impact upon public access to the foreshore, in this case being Newcastle Harbour.

The proposal is accompanied by a Historical Archaeological Assessment (**Attachment 2UU**). The report finds that the site has been assessed as having a potential archaeological resource of local significance, with low potential for remains of possible state significance. The report recommends that an excavation permit for archaeological monitoring of bulk excavation and

detailed archaeological excavation is applied for under Section 140 of the *Heritage Act 1977*. Heritage NSW ('HNSW') have provided relevant conditions of consent.

In accordance with Clause 2.11 (2), the proposal is therefore considered to be suitably designed, sited, and able to be managed, to avoid causing an adverse impact referred to in clause 2.11(1) of the Resilience and Hazards SEPP.

Clause 2.12 prescribes that the consent authority must not grant development consent on land within the coastal zone unless it is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. The proposal is located within the city centre, and as a result of its siting, is not considered likely to cause increased risk of coastal hazards on the subject or other land.

Clause 2.13 prescribes that the consent authority must not grant development consent on land within the coastal zone unless it has taken into consideration the relevant provisions of any certified coastal management program that applies to the land. There are no applicable coastal management programs which apply to the site.

#### Chapter 4 Remediation of Land

Clause 4.6 (1) prescribes that a consent authority must not consent to the carrying out of development on land unless –

- “(a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.”*

A Detailed Site Investigation ('DSI') has been prepared by Foundation Earth Science Pty Ltd which accompanies the DA (refer Attachment 2KK). The DSI concludes that the site can be appropriately remediated, subject to the preparation of Remediation Action Plan ('RAP'), and in turn rendered suitable for the proposed use. A RAP has also been prepared as part of the application (refer Attachment 2WW).

Section 8.2 of the RAP details the proposed remediation program which comprises 7 stages. It is noted that following remediation works, the site will be validated and the report submitted to Council and the Principal Certifying Authority.

The DSI confirms an absence of gross contamination, however, asbestos was detected in two borehole locations. The adopted remediation strategy, per the accompanying RAP, is to excavate the contaminated materials and dispose of such off-site at a landfill licensed by the NSW Environmental Protection Agency.

The submitted documentation regarding land contamination and remediation has been reviewed as part of this detailed assessment and is acceptable subject to conditions.

Subsequently, the land is considered able to be made suitable for the proposed use, subject to the imposition of conditions and compliance with the supporting RAP, satisfying Clause 4.6 of the Resilience and Hazards SEPP.

### **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ('BASIX SEPP')**

The application was lodged prior to the commencement of the Sustainable Buildings SEPP, therefore pursuant to the Clause 4.2 Savings Provisions of the Sustainable Buildings SEPP, the BASIX SEPP continues to apply.

The proposal passes the BASIX requirements stipulated under Clause 6(a), per the provided BASIX Certificates at **Attachments 2DD – 2GG**.

### **State Environmental Planning Policy (Industry and Employment) 2021 ('Industry and Employment SEPP')**

Clause 3.6 of the Industry and Employment SEPP requires that, prior to granting consent for signage, a consent authority must be satisfied that signage is consistent with the objectives of the Chapter outlined in clause 3.1(1)(a); and that the signage satisfies the assessment criteria specified in Schedule 5.

The proposed signage strategy is consistent with the objectives, as the signage would effectively communicate the use of the commercial premises and identify the respective buildings, it would be of a high-quality design, and it would use quality finishes to accord with the prevailing character of the East End Development and the surrounding heritage setting.

An assessment of the proposal against the criteria listed in Schedule 5 of the Industry and Employment SEPP is provided below. This demonstrates that the proposal is consistent with the applicable criteria and there are no major items of non-compliance.

Table 5: Schedule 5 – Assessment Criteria	
Criteria	Assessment
1. Character of the area	
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	<b>Complies.</b> The signage strategy is for building and commercial premises identification. The strategy proposes an appropriate quantum of signage, such that it does not dominant or overcrowd the building facades. This ensures the signage outcome is considerate of the surrounding heritage setting and prevailing character of the area.
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	
2. Special Areas	
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	<b>Complies.</b> The signage is appropriate for the context of this City Centre development. The locations and dimensions of the signs are reasonable and will not detract from the heritage setting of the area.
3. Views and Vistas	
Does the proposal obscure or compromise important views?	<b>Complies.</b> The proposed signage is appropriately located on the building facades, such that it would not obscure or compromise views or vistas.
Does the proposal dominate the skyline and reduce the quality of vistas?	
Does the proposal respect the viewing rights of other advertisers?	

**Table 5: Schedule 5 – Assessment Criteria**

Criteria	Assessment
<b>4. Streetscape, setting or landscape</b>	
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	<b>Complies.</b>  The strategy ensures the building facades are not dominated with signage. The sizing and location of proposed signs are appropriate, considering the ground level activation.  The signage strategy is consistent with that approved within the earlier stages of the East End Development. Furthermore, the signage will be consistent and comparable with that seen throughout the City Centre.  The signage will not screen unsightliness and will not protrude above buildings, structures or tree canopies considering the signs will be affixed to the ground level of the buildings.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	
Does the proposal screen unsightliness?	
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	
Does the proposal require ongoing vegetation management?	
<b>5. Site and building</b>	
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	<b>Complies.</b>  The location and design of the signage zones have been integrated with the architectural features of the building and will not be of a scale which is overbearing or dominant.
Does the proposal respect important features of the site or building, or both?	
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	
<b>6. Associated devices and logos with advertisements and advertising structures</b>	
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	<b>Not applicable.</b>  The content of the signage zones would be subject to future separate approval.
<b>7. Illumination</b>	
Would illumination result in unacceptable glare?	<b>Not applicable.</b>  The illumination of the signage zones would be subject to future separate approval.
Would illumination affect safety for pedestrians, vehicles or aircraft?	
Would illumination detract from the amenity of any residence or other form of accommodation?	
Can the intensity of the illumination be adjusted, if necessary?	



**Table 5: Schedule 5 – Assessment Criteria**

Criteria	Assessment
Is the illumination subject to a curfew?	
<b>8. Safety</b>	
Would the proposal reduce the safety for any public road?	<b>Not applicable.</b> The content and any illumination of the signage zones would be subject to future separate approval. Considering the location and sizing of the signage zones, it is not envisaged that any adverse safety implications would arise.
Would the proposal reduce the safety for pedestrians or bicyclists?	
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	

### **State Environmental Planning Policy (Housing) 2021 ('Housing SEPP')**

On 14 December 2023, the NSW Government consolidated the provisions of *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* ('SEPP 65') into the *State Environmental Planning Policy (Housing) 2021* ('Housing SEPP') and the EP&A Reg 2021.

Chapter 4 of the Housing SEPP aims to improve the quality of residential apartment development by establishing a consistent approach to their design and assessment. The nine design principles and the provisions of the Apartment Design Guide ('ADG') established under SEPP 65 continue to operate under Chapter 4 of the Housing SEPP.

#### **Section 144 - Application of chapter**

Section 144(2) of the Housing SEPP sets out development for which Chapter 4 applies. The proposal comprises development for the purposes of shop top housing (113 apartments within proposed buildings 3 North, 3 South, 3 West, and 4 North) and a residential flat building (82 apartments within proposed '4 South'); this consists of the erection of a new building at least 3 or more storeys; and contains at least 4 or more dwellings. Therefore, the provisions of Chapter 4 are applicable in accordance with Section 144 of this policy.

Section 144(4) clarifies that if a particular development comprises development which Section 144(2) identifies and other development, Chapter 4 applies only to the part of the development identified under Section 144(2) and does not apply to the other part. As such, the commercial premises component of the proposal is not subject to the provisions of Chapter 4.

#### **Section 145 - Referral to design review panel for development applications**

Section 145 of the Housing SEPP only requires the consent authority to refer a development application to which Chapter 4 applies to the relevant design review panel for advice on the quality of the design of the development prior to determination, if a competitive design process has not been held. As detailed in **Section 2.2** of this report, the proposal has been subject to a competitive design process ('design competition') to satisfy the requirements of Clause 7.5(4) (design excellence) of the NLEP 2012. The design competition identified a winning scheme that successfully informed design development and lead to the subject development application. Accordingly, referral to a design review panel is not required for the purposes of Section 145 of the Housing SEPP.

Notwithstanding, it is noted the DA required design review by CN's UDRP for the purposes of Clause 7.5(6) (design excellence) of the NLEP 2012. The UDRP operate under a charter stating that they undertake the functions of a design review panel for the purposes of both Clause 7.5 of the NLEP 2012, and Chapter 4 of the Housing SEPP.

To ensure the detailed design remains consistent with the design quality endorsed by the UDRP, design excellence conditions have been included in the recommended Draft Schedule of Conditions (refer to **Attachment 1**). These conditions establish a program of ongoing design reviews post consent. Additionally, a condition has been included requiring the nominated architects of the competition winning scheme, being SJB Architects, Durbach Block Jagers, and Curious Practice, be retained until the completion of the development (issue of Occupation Certificate). In the event the competition winning scheme architect(s) need to be replaced, appointment of alternative architectural firm(s) is to be endorsed by CN's UDRP.

*Section 147 - Determination of development applications and modification applications for residential apartment development*

Section 147 of the Housing SEPP requires the consent authority take into consideration; (a) the quality of the design of the development, evaluated in accordance with the design principles set out in Schedule 9 of the Housing SEPP; (b) the ADG; and (c) any advice received from a design review panel, when determining a development application to which Chapter 4 of the Housing SEPP applies. CN's UDRP have reviewed the proposal on several occasions. At the meeting held 5 July 2023 the UDRP provided written advice relating to the design quality of the proposal and considering the design principles set out in Schedule 9 of the Housing SEPP (provided as **Attachment 4**). The UDRP supported the proposal subject to the provision of additional information on view impacts and heritage matters for CN's assessment, as noted in their written advice. It is noted this information was provided as part of the review application (ref. **RE2024/00002**).

The proposal was subsequently electronically referred to the UDRP for comment in November 2024, following receipt of the final documentation pack from the Applicant. The final advice of the UDRP, provided via email dated 08 November 2024 (refer to **Attachment 5**) confirmed the following:

- i) The current amended architectural drawings, and additional expert documentations, are satisfactory, and
- ii) That the UDRP had no further recommendations.

The proposal has sufficiently incorporated the recommendations of the UDRP through the assessment process. As such, the proposal has now satisfied the UDRP advice and is considered an appropriate design response consistent with the design quality principles set out in Schedule 9 of the Housing SEPP.

A Housing SEPP Design Statement is provided in support of the proposal, prepared by the project architects (**Attachment 2F**), in accordance with section 29(2) of the EP&A Reg 2021.

The provisions of section 149(1) of the Housing SEPP establishes that a requirement, standard or control set out in the ADG will prevail over any inconsistent development control plan requirement, standard or control for specific topic areas; (a) visual privacy, (b) solar and daylight access; (c) common circulation and spaces; (d) apartment size and layout; (e) ceiling heights; (f) private open space and balconies, (g) natural ventilation; and (h) storage.

An assessment of the proposal has been undertaken against the relevant provisions of the ADG. Detailed assessment is provided at **Attachment 12** and an overview is provided below which addresses the objectives with numerical based requirements for the key topic areas, in accordance with section 149(1) of the Housing SEPP.

**Table 6: Compliance with required topic areas of ADG****3D Communal and public open space****Objective 3D-1**

An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping

**Complies on merit.**

The design criteria requires that communal open space has a minimum area equal to **25%** of the site, and 50% of the principal usable part of that communal open space should receive 2 hours of sunlight between 9am and 3pm on June 21.

The total development site (Stage 3 + Stage 4) is 6,450m<sup>2</sup>, 25% of which equals 1612.5m<sup>2</sup>.

The proposal includes three areas of communal open space;

- Building 3N Level 04 (rooftop) = 473 m<sup>2</sup>
- Building 4N Level 04 terrace = 112 m<sup>2</sup>
- Building 4S Level 09 terrace = 199 m<sup>2</sup>

The total communal open space provided is 784m<sup>2</sup>, or **12%** of the total site area.

A variation is therefore proposed to the 25% requirement. This is however considered acceptable, given the high amenity of the communal open spaces provided; the additional communal indoor spaces provided; the location of the site in the city centre; and the large portion of site to be dedicated 'public space' which is of benefit to both future residents and the public.

As requested by CN, further details of the proposed subdivision was provided which confirmed the access intended across the multiple buildings and properties. Of relevance, a single strata scheme is shown encompassing the residential components of Building 3N, Building 3S, and Building 3W. Similarly, the residential components of Building 4N and Building 4S are shown subject to a single strata scheme. Forming residential strata schemes by stage, rather than creating separate strata schemes for each building, ensures that future residents within a stage can access all residential communal spaces (indoor and outdoor) provided for that stage, regardless of which building their lot is in for that stage. The principle useable part of the communal open space for Stage 3, located on Level 04 (rooftop) of Building 3N, is orientated north and achieves direct sunlight from 9am until 3pm in mid-winter to **100%** of the area. For Stage 4, the principle useable part of the communal open space, located on Level 09 of Building 4S achieves direct sunlight from 9am until 3pm in mid-winter to over **50%** of the area. Both spaces exceed the minimum solar access requirements described in this part of the ADG. It is considered the communal open space is adequately distributed throughout the site to meet the passive recreational requirements of residents of both stages, with approximately 5m<sup>2</sup> and 3m<sup>2</sup> of communal open space provided per apartment in Stage 3 and Stage 4 respectively. To ensure the above outcome, a condition has been included in the recommended Draft Schedule of Conditions (refer to **Attachment 1**) requiring the communal space within each stage to be freely available for the use and enjoyment of all residents within that stage.

**3E Deep soil zones****Objective 3E-1**

Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.

**Complies on merit.**

The design criteria specifies that for sites in excess of 1500m<sup>2</sup> in area, a minimum of **7%** of the site should be provided as a deep soil zone, with this area to have a minimum width of **6m**.

The total development site (Stage 3 + Stage 4) is 6450m<sup>2</sup>, 7% of which equates to 451.5m<sup>2</sup>

The proposal includes one deep soil zone across the Precinct;

- Building 4N Ground = **98m<sup>2</sup>** (or **1.5%** of the total site area)



**Table 6: Compliance with required topic areas of ADG**

A variation is therefore proposed.

The design guidance provided for this objective acknowledges that achieving the design criteria is not possible on some sites including those within CBDs or where non-residential uses are at ground floor.

Achieving the design criteria is not possible due to the location and constraints of the subject site, being in the CBD and having commercial premises at ground level. The proposal instead complies with the design guidance for this objective by integrating acceptable stormwater management and alternative forms of landscaping such as planting on structures. This is considered acceptable.

### **3F Visual privacy**

#### **Objective 3F-1**

Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.

#### **Complies on merit.**

The design criteria requires for buildings of up to 12m (4 storeys) a minimum of **6m separation** is required between habitable rooms/ balconies; **9m** for buildings of up to 25m (5-8 storeys); and **12m** for buildings of over 25m (9+ storeys). Furthermore, separation distances between buildings on the same site should combine the required building separations depending on the type of room.

#### Separation distances between Buildings 3S and 3W

At a height of up to **12m**, a minimum separation distance ranging from **16.9m to 17.4m** is provided, with a maximum separation distance of **21.8m to 22.0m**. This **complies** with the 12m minimum separation distance required for this element.

However, a variation is proposed from the 18m and 24m minimum separation distance required between buildings on the same site at a height up to 25m and above 25m, respectively.

At a height of up to **25m**, a minimum separation distance ranging from **17.6m to 18.1m** is provided between Buildings 3S and 3W, with a maximum separation distance ranging from **22.1m to 22.7m**.

At a height of **25m and over**, a minimum separation distance ranging from **18.2m to 18.4m** is provided between Buildings 3S and 3W, with a maximum separation distance of **22.9m to 23.0m**

Where the variations occur, the apartments and their balconies have been configured to avoid direct overlooking between buildings. Specifically, the east and west facades of Building 3W have been angled or rotated off the standard grid alignment, so they are not perpendicular to the north and south facades, resulting in a parallelogram-shaped layout in plan view. The windows are further angled within the depth of the Building 3W façade to further direct apartment views northeast towards the harbour rather than directly east to Buildings 3N and 3S.

The spatial relationship between the buildings of Stage 3, including the minor non-compliances, was supported by both the DIP and UDRP, with no objections or concerns raised in this regard.

The non-compliance can be supported on balance, having regard to the reasonable amenity that will be provided in terms of visual privacy, and access to light and air and appropriate bulk and scale.

#### Separation distances between Buildings 3N and 3S

At a height of up to **12m**, a minimum separation distance ranging from **2.4m to 2.6m** is provided between Buildings 3N and 3S, with a maximum separation distance of **9.2m to 9.3m**. **This does not comply with the 6m** (6m for habitable rooms + 0m for blank wall) **to 12m** (6m for habitable rooms + 6m for habitable rooms) separation distances required between buildings on the same site at this height.

To address privacy concerns arising from the reduced separation, alternative design measures have been incorporated into the façade design. Notably, 'ear-type' windows have been used for most habitable room windows on the south façade of Building 3N, redirecting views away from the adjacent north façade of Building 3S. These measures are considered to effectively manage privacy impacts, and the technical non-compliances can be accepted on a balanced view.

**Table 6: Compliance with required topic areas of ADG**

However, four south-facing windows in apartments 3N-01.01 and 3N-02.01 of Building 3N lack the 'ear-type' window design despite not meeting the minimum separation distances. These windows have a direct line of sight to the north-facing habitable room windows of Building 3S

The assessment identifies an opportunity to apply the 'ear-type' window design to these four windows, consistent with the rest of the habitable room windows of the south façade, to mitigate visual privacy impacts and maintain a consistent design approach. Accordingly, a condition has been included in the recommended Draft Schedule of Conditions (refer to **Attachment 1**), requiring the installation of 'ear-type' windows along the southern facade of apartments 3N-01.01 and 3N-02.01.

Overall, the non-compliance is able to be accepted, having regard to visual privacy, bulk and scale, and access to light and air, subject to recommended conditions of consent.

Separation distances between Building 4N and Building 4S

At a height of up to **12m**, a minimum **8.6m** separation distance is provided between the south façade of Building 4N and the north façade of Building 4S. At a height above **12m, up to 25m**, a minimum **16.4m** separation distance is provided between the south façade of Building 4N and the north façade of Building 4S.

**Generally, blank walls are used to the south facade of Building 4N, resulting in compliant separation distances** to the north facing apartment balconies of Building 4S.

However, 12 south-facing habitable room windows of apartments 4N-2.06, 4N-3.06, 4N-5.01, 4N-6.03, and 4N-7.01 in Building 4N do result in instances of technical non-compliance. The significant slope of the Stage 4 site, which raises from north to south, has resulted in a design response that steps up the hill. In turn, the floor levels of Buildings 4N and 4S are offset, which does go some way to reducing visual privacy impacts. Despite this, direct lines of sight from these windows to the north-facing apartment balconies of Building 4S remain possible.

The assessment identifies opportunity for the provision of translucent glazing to the south facing windows of apartment 4N-2.06, 4N-3.06, 4N-5.01, 4N-6.03, and 4N-7.01. The operable portion of these windows are shown with an 'awning' operation which is sufficient to maintain visual privacy even when the window is open. Accordingly, a condition has been included in the recommended Draft Schedule of Conditions (refer to **Attachment 1**) to require translucent glazing and awning operated mechanisms to the south facing windows of these apartments.

Given the level changes at this interface, and the addition of translucent glazing to the south facing windows of Building 4N (via condition of consent), suitable visual privacy can be achieved and as such the separations provided at this height are considered acceptable.

Separation distances between Laing Lane Cafe and Building 4S

The 'Lower' level of the Laing Lane Café building and the Lower Ground level of Building 4S do not include residential apartments. Therefore, the provisions of the Apartment Design Guide (ADG) do not apply to these levels.

A minimum separation distance of approximately 3.7m (scaled from submitted floor plans) is provided from the 'Upper' level of the Laing Lane Café building to the north-facing apartment balconies of Building 4S (located on Upper Ground level). While the south façade of the Laing Lane Café building primarily features a blank wall, this separation distance falls short of the ADG's minimum requirement of **6m** between blank walls and habitable balconies (0m for blank wall + 6m for habitable).

When considering this technical non-compliance, it is important to acknowledge the presence of the existing apartment building at No.16-18 Newcomen Street, directly north of the Laing Lane Café building. This building's exposed southern wall is largely built to the boundary without articulation or fenestration. Where setbacks do occur, its windows are located just 1.85m from the shared boundary with the subject site.

The insertion of the Laing Lane Café building not only softens the five storey expanse of blank wall at the 16-18 Newcomen Street boundary interface, it also acts as a privacy device to reduce impacts of the neighbours' non-compliant south-facing windows on the north facing apartment balconies of Building 4S.

**Table 6: Compliance with required topic areas of ADG**

The limited height of the Laing Lane Café building, combined with its pitched roof design, allows acceptable daylight access and outlook for the lower-level apartments of Building 4S directly adjacent.

The design measures at this interface are considered to effectively achieve suitable visual privacy. As such, the proposed separation at this height is considered acceptable despite the separation distance being numerically less than the that prescribed in this part of the ADG.

Separation distances from Building 4N to east boundary shared with No.103 Hunter Street

Blank walls are proposed for Building 4N to the east boundary shared with No. 103 Hunter Street. No separation is required from blank walls, and as such **complies**.

Separation distances from Building 4N to east boundary shared with No.16-18 Newcomen Street

At a height of up to **12m**, generally an **8.3m to 9.1m** separation distance is provided between Building 4N and the east boundary shared with No.16-18 Newcomen Street. This **complies** with the prescribed controls.

However, the stepped alignment of the east boundary shared with No.16-18 Newcomen Street results in four east-facing habitable room windows of apartments 4N-2.06, and 4N-3.06 in Building 4N having a reduced separation distance of approximately **4m**. This does not comply with the 6m minimum separation distance required for building from side and rear boundaries at the height.

The existing apartment building at No.16-18 Newcomen Street is primarily built to all boundaries, including balconies and windows to its boundaries shared with Building 4N. It is acknowledged that this existing condition does not allow equitable shared separation distances between neighbouring sites and thus, the constraints of the site limit the ability to achieve compliant building separation to Building 4Ns non-compliant neighbour.

Generally, this portion of the east façade of Building 4N presents as a defensive façade and where a limited number of windows have been incorporated, these are strategically located towards the neighbours' blank walls. Additionally, wider façade columns, with strategic placement, have been integrated into the façade treatment to achieve visual privacy.

The boundary setbacks for Building 4N are consistent with that approved under the Concept DA (as modified) and the proposal does not alter the circumstances. The design documentation demonstrates sufficient measures have been incorporated to resolve any privacy interface issues arising where separation distances between Building 4N and side and/or rear boundaries are numerically less than the separation distances described in this part of the ADG.

Overall, the non-compliance is able to be accepted on a balanced view having regard for both visual privacy, bulk and scale, and access to light and air.

Separation distances from Building 4S to north boundary shared with No.16-18 Newcome Street

At all levels, a minimum **8m** separation distance is provided between the north façade of Building 4S and the northern boundary shared with No.16-18 Newcomen Street.

Whilst this **complies** with the minimum separation distance of **6m** required from habitable room windows and apartment balconies to side and/or rear boundaries at a height of up to **12m**, the 9m and 12m minimum separation distances required for heights up to 25m and above 25m respectively, are not achieved.

The technical non-compliance is limited to the eastern section of the northern façade of Building 4S. This non-compliance arises due to the irregular lot boundaries, as No.16-18 Newcomen Street (and No.105 Hunter Street further north) do not part of the broader redevelopment of the city block.

The singular alignment of the northern edge of Building 4S is considered desirable as it maintains a consistent architectural order and vertical expression of the façade massing. This northern edge capitalises on solar access and outlook, with continuous, generously sized balconies that provide amenity and activate the Newcomen to Laing Streets through-site connection at the ground level below. Deep balconies and blades create a shadowed expression that addresses aspects of inter-lot privacy and spatial separation to No.16-18 Newcomen Street without limiting desirable outlook, amenity or solar access.



**Table 6: Compliance with required topic areas of ADG**

Overall, the non-compliance is considered acceptable when assessed in the context of the adjacent properties, irregular site configuration, sloped topography, development scale, and the apartment layouts.

**A4 Solar and daylight access**

**Objective 4A-1**

To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space

**Complies on merit.**

The design criteria requires living rooms and private open spaces of at least **70%** of apartments receive a minimum **2 hours direct sunlight between 9am and 3pm** at mid-winter for development in the Newcastle LGA. Additionally, the design criteria limits the number of apartments in a building which receive no direct sunlight between 9am and 3pm at mid-winter to **15%**.

Analysis of the submitted architectural drawings found **136 out of the total 195 apartments** proposed in the Precinct, or **70%**, will achieve a minimum of 2hrs solar access between 9am and 3pm at mid-winter to BOTH the living room and private open space. The following level of compliance is achieved for each proposed building:

- Building 3N: 7 out of the 9 apartments, being 78%
- Building 3S: 21 out of the 29 apartments, being 72%
- Building 3W: 37 out of the 52 apartments, being 71%
- Building 4N: 20 out of the 23 apartments, being 87%
- Building 4S: 51 out of the 82 apartments, being 62%

Analysis of the submitted architectural drawings found **22 out of the total 195 apartments** proposed in the Precinct, or **11%**, will receive less than 15mins solar access to both living room and private open space between 9am and 3pm at mid-winter. The following level of compliance is achieved for each proposed building:

- Building 3N: 2 out of the 9 apartments, being 22%
- Building 3S: 2 out of the 29 apartments, being 7%
- Building 3W: 0 out of the 52 apartments, being 0%
- Building 4N: 0 out of the 23 apartments, being 0%
- Building 4S: 18 out of the 82 apartments, being 18%

When considered in isolation, Building 3N exceeds the 15% limit on number of apartments which receive no direct sunlight at mid-winter.

Building 3N instead complies with the design guidance for this objective which acknowledges that achieving technical compliance with the design criteria may not be possible on some sites. The drawings have suitably demonstrated how; (1) the site constraints and orientation (adaptive re-use of heritage listed building) create challenges for solar access in mid-winter; and (2) the proposal has been designed having regard to optimizing the number of apartments receiving sunlight to habitable rooms, primary windows, and private open space (i.e. greater than 3m ceiling heights; generously sized apartments with the ADG minimum internal areas exceeded; 'winter gardens' providing flexible indoor/outdoor living area; and dual aspect). Additionally, all apartments have access to the communal open space at Level 04 (rooftop) of Building 3N, providing them alternative access to northern sun.

When considered in isolation, Building 4S does not achieve the requirement for 70% of apartments to receive 2hrs of solar access at mid-winter, and exceeds the 15% limit on number of apartments which receive no direct sunlight at mid-winter.

Building 4S instead complies with the design guidance for this objective which acknowledges that achieving technical compliance with the design criteria may not be possible on some sites. The drawings have suitably demonstrated how; (1) the site constraints and orientation (i.e. three street

**Table 6: Compliance with required topic areas of ADG**

frontages to address, and desirable views to the south to Christ Church Cathedral and Cathedral Park) create challenges for solar access in mid-winter during the specified hours; and (2) the proposal has been designed having regard to optimizing the number of apartments receiving sunlight to habitable rooms, primary windows, and private open space. Additionally, all apartments have access to the communal open space at Level 09 (rooftop) of Building 4S, providing them alternative access to northern sun.

Whilst the shortfall is not ideal, it is considered that having regard to the rigorous design process which has been undertaken, the overall positive streetscape outcomes and the support of CN's UDRP, these variations are acceptable.

#### **4B Natural ventilation**

##### **Objective 4B-3**

The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.

##### **Complies.**

The design criteria requires at least **60%** of apartments to be naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.

Analysis of the submitted architectural drawings found **166 out of the total 195 apartments** proposed in the Precinct, or **85%**, are naturally cross ventilated. The following level of compliance is achieved for each proposed building:

- Building 3N: 7 out of the 9 apartments, being 78%
- Building 3S: 29 out of the 29 apartments, being 100%
- Building 3W: 41 out of the 52 apartments, being 79%
- Building 4N: 18 out of the 23 apartments, being 78%
- Building 4S: 71 out of the 82 apartments, being 86%

#### **4C Ceiling heights**

##### **Objective 4C-1**

Ceiling height achieves sufficient natural ventilation and daylight access.

##### **Complies on merit.**

The design criteria prescribes a minimum ceiling height for apartments of **2.7m to habitable rooms**, and **2.4m to non-habitable rooms**.

Analysis of the submitted plans show that all apartments have a floor to floor height of **3.15m, or greater**. As such, a minimum ceiling height measured from finished floor level to finished ceiling level of **2.7m to habitable rooms, and 2.4m to non-habitable rooms, can be achieved for all apartments** as required.

Additionally, the site is located within the MU1 Mix Use zone and therefore increased ceiling heights of **3.3m** for ground and first floor levels are also required.

All buildings should be capable of facilitating the **3.3m floor to ceiling height at ground level, except for parts of the ground floors within Buildings 3W, and 4S**.

The **floor-to-floor height provided for the first floor of all buildings will not be able to facilitate an increased ceiling of 3.3m as required, except for Building 3N**.

The variation to the 3.3m ceiling height requirements at ground and first floor levels can be accepted on balance, having regard for the wide-ranging and often conflicting factors which impact the floor-to-floor heights. This includes matters of site topography, building orientation, heritage conservation, street

**Table 6: Compliance with required topic areas of ADG**

activation, and overall building height. It is accepted that the ceiling heights as proposed will facilitate sufficient natural ventilation and daylight access.

**4D Apartment size and layout****Objective 4D-1**

The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.

**Complies.**

The design criteria nominate the minimum internal floor areas for apartments as follows:

- 35m<sup>2</sup> for studio apartments,
- 50m<sup>2</sup> for one-bedroom apartments,
- 70m<sup>2</sup> for two-bedroom apartments, and
- 90m<sup>2</sup> for three-bedroom apartments.

Additionally, a second bathroom requires an increase of 5sqm, and a fourth bedroom requires an increase of 12sqm to the minimum internal floor area.

**All apartments meet or exceed the minimum prescribed internal floor areas.**

**Objective 4D-3**

Apartment layouts are designed to accommodate a variety of household activities and needs.

**Complies on merit.**

The design criteria describe minimum room areas and dimensions to inform key aspects of an apartments size and layout. Specifically:

- All **bedrooms** require a **minimum dimension of 3m** and a **minimum area of 9sqm**, except for master bedrooms which require an increased area of 10sqm (all area measurements exclude wardrobe space).
- **Living rooms** or combined living and dining areas should have:
  - a **minimum width of 3.6m** for studio and one-bedroom apartments, and
  - **4 meters** for apartments with two-bedrooms or more.
- Additionally, any crossover or cross-through apartment layouts must have **an internal width of at least 4 meters** to avoid creating deep narrow apartments.

**All apartments generally achieve the minimum room areas and dimensions set out above.**

As detailed in **Attachment 12**, where the minimum room areas and dimensions have not been achieved, the apartments achieve the design guidance for this objective which allows for a merit-based assessment in situations where minimum room dimensions or areas are not met.

The drawings have suitably demonstrated the apartments are well designed by showing the useability and functionality of the space with realistically scaled furniture layouts and circulation spaces, despite the minor non-compliance.

**4E Private open space and balconies****Objective 4E-1**

Apartments provide appropriately sized private open space and balconies to enhance residential amenity.

**Complies on merit.**

The design criteria describe the minimum area and minimum depth required for primary balconies based on the number of bedrooms provided for the apartment. Specifically:

- **8m<sup>2</sup>** with a minimum depth of **2m** for **one-bedroom apartment**,
- **10m<sup>2</sup>** with a minimum depth of **2m** for **two-bedroom apartment**, and
- **12m<sup>2</sup>** with a minimum depth of **2.4m** for apartments with **three bedrooms or more**.



**Table 6: Compliance with required topic areas of ADG**

**All apartments have primary balconies that achieve the minimum area. Majority of apartments also achieve the minimum width required, including all within Building 3N, 3W, and 4S.**

As detailed in **Attachment 12**, 1 apartment in building 3S and 17 apartments in 4N vary the minimum depth requirement. In these limited instances, the numeric variation proposed is minor and notwithstanding, the apartments achieve the design guidance for this objective.

The design has suitably demonstrated how; (1) the site constraints (i.e. either high wind conditions presented at higher levels in the locality, or adaptive reuse of heritage contributory buildings) may limit balcony use; and (2) the proposal has been designed having regard to optimizing residential amenity for occupants (i.e. greater than minimum internal areas for apartments, and high-quality public and communal open space).

Furthermore, the design has suitably demonstrated the apartment balconies are well designed by showing the useability and functionality of the space with realistically scaled furniture layouts and circulation spaces, despite the non-compliance.

**The non-compliant balcony depths proposed are minor both in terms of numeric variation and the number of affected apartments (18 out of 195).** This is accepted on balance considering the site constraints and provision of internal amenity areas and high-quality public and communal open space areas for residents to enjoy.

#### **4F Common circulation and spaces**

##### **Objective 4F-1**

Common circulation spaces achieve good amenity and properly service the number of apartments.

##### **Complies.**

The design criteria limits the **maximum number of apartments off a circulation core on a single level to eight. All buildings comply** as follows:

- Building 3N: Features a single circulation core containing one lift which services a maximum five apartments on a single level.
- Building 3S: Features a single circulation core (containing two lifts) which services a maximum of four apartments on a single level.
- Building 3W: Divided into two segments, each with a circulation core containing one lift which services a maximum four apartments on a single level.
- Building 4N: Divided into two segments, each with a circulation core containing one lift, labelled: 'LOBBY.1' (western core) services a maximum of five apartments on a single level. 'LOBBY.2' (eastern core) services a maximum of one apartment on a single level.
- Building 4S: Divided into four segments. Each quadrant has a circulation core containing one lift which services a maximum of three apartments on a single level.

For buildings **ten storeys and over**, the design criteria also limits the **maximum number of apartments sharing a single lift to 40. All buildings comply** as follows:

- Building 3N: N/A (Building 3N is 3 storeys + rooftop communal open space)
- Building 3S: Two lifts service the 29 apartments proposed within Building 3 South. Meaning, on average a single lift will service 14.5 apartments which complies.
- Building 3W: N/A (Building 3W is 8 storeys)
- Building 4N: N/A (Building 4N 9 storeys)
- Building 4S: Divided into four segments. Each quadrant is serviced by one lift: 22 apartments in the northeast, 18 in the southeast, 20 in the southwest, and 22 in the northwest.

#### **4G Storage**

##### **Objective 4G-1**

Adequate, well designed storage is provided in each apartment.

**Table 6: Compliance with required topic areas of ADG**

**Complies on merit.**

The design criteria requires a minimum storage volume of:

- **6m<sup>3</sup>** for **one-bedroom** apartments,
- **8m<sup>3</sup>** for **two-bedroom** apartments, and
- **10m<sup>3</sup>** for apartments with **3 or more bedrooms**.

Additionally, at least **50% of the required storage** is to be located **within the apartment**.

At least 50% of the required provision of storage is located and accessed within each apartment. Where the total storage volume required for an apartment cannot be fully provided within the apartment itself, additional storage is located and accessed from common areas in the form of storage cages. This is detailed per stage below:

Stage 3

- Individual storage cages are provided in the car parking areas serving Building 3N, 3S, and 3W, on Basement Level 02 and Basement Level 03. Together, the three buildings within Stage 3 consist of 90 apartments. Of these, one apartment is provided the total required storage volume without needing additional storage external to the apartment (3W-7.01). The remaining 89 apartments require a designated storage cage to meet the minimum storage requirements. The drawings indicate that 73 numbered storage cages are provided: Numbers 1 to 38 located on Basement Level 02 and Numbers 39 to 73 located on Basement Level 03. 15 additional unnumbered cages are shown as below: 2 unnumbered storage cages in the southeast corner of Basement Level 02; and
- 13 unnumbered storage cages near the residential lobby for Building 3W on Basement Level 03.

This gives a total of 88 storage cages. However, two of the numbered storage cages are located within a secured 'penthouse garage' towards the northeast corner of Basement 02, reducing the available number of stage cages for allocation to separate apartments by one.

As a result, **87 storage cages are available for allocation**, which is **two short** of the required provision. However, there is sufficient space available within the car parking areas to provide the two additional storage cages. A condition has therefore been included in the recommended Draft Schedule of Conditions (refer to **Attachment 1**) requiring the proposal to be amended to include two additional storage cages located and accessed from within the basement car parking levels servicing Building 3N, 3S, and 3W.

Furthermore, a condition has been included to ensure the storage areas shown on the Draft Strata Plans align with submitted architectural floor plans, as amended by any conditions of consent. An additional condition to ensure that each apartment is allocated a storage cage of adequate size to meet the total minimum storage volume described under this part of the ADG is also recommended.

Stage 4

Individual storage cages for Building 4N apartments are in a storage room accessed from the car parking area serving Building 4N and 4S on level Basement Level 02. Similarly, individual 'storage cages' for Building 4S apartments are in a storage room accessed from the residential lobbies on the Upper Ground level.

There are **enough storage cages shown within each storage room for the number of apartments within Building 4N and 4S**. A condition has been included in the recommended Draft Schedule of Conditions (refer to **Attachment 1**) requiring each apartment to be allocated a storage cage of adequate size to meet the total minimum storage volume described under this part of the ADG. Furthermore, a condition has been included to ensure the storage areas shown on the Draft Strata Plans align with submitted architectural floor plans, as amended by any conditions of consent.

## Newcastle Local Environmental Plan 2012 ('NLEP 2012')

The relevant Local Environmental Plan applying to the site is NLEP 2012. The NLEP 2012 provides zoning, development standards and provisions in relation to development undertaken within the Newcastle LGA.

An assessment of the key NLEP 2012 provisions has been set out below.

### Zoning and Permissibility (Part 2)

The site is located within the MU1 - Mixed Use zone pursuant to Clause 2.3 of NLEP 2012. The MU1 zone objectives, prescribed within the Land Use Table are as follows:

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *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.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.*

The proposal will deliver a mixed-use development consisting of shop top housing, commercial premises, and a residential flat building. The proposed uses are permitted with consent in the MU1 zone. In addition, the proposal will result in a development outcome that is consistent with the zoning objectives listed above.

### Relevant Provisions and Development Standards (Part 2, 4, 5 and 6)

The NLEP 2012 contains development standards, miscellaneous provisions, and local provisions which relate to the proposal. These are considered in **Table 7** and under the relevant headings below.

Table 7: Consideration of the NLEP 2012 Controls		
Clause	Control	Assessment
Demolition requires development consent (Clause 2.7)	The demolition of a building or work may be carried out only with development consent	The proposal includes the demolition of Blackall House (No. 22 Newcomen Street) and partial demolition of the Municipal Building (Building 3N), in accordance with this Clause.
Height of buildings (Clause 4.3(2))	<p>Stages 3 and 4 are subject to maximum height of building (HOB) controls as depicted in the below mapping extract (<b>Figure 24</b>). The grey building envelopes are controlled by a maximum RL, as follows:</p> <ul style="list-style-type: none"><li>• Building 3W – RL 30</li><li>• Building 3N – RL 20</li><li>• Building 3S – RL 30</li><li>• Building 4N – RL 29</li><li>• Building 4S – RL 42</li></ul>	<p>The HOBs proposed are as follows:</p> <ul style="list-style-type: none"><li>• Building 3W – RL 34.3</li><li>• Building 3N – RL 20.43</li><li>• Building 3S – RL 45.65</li><li>• Building 4N – RL 36.92</li><li>• Building 4S – RL 51.70</li></ul> <p>Further discussion in relation to the height of buildings development standard is provided below, under the subheading 'Clause 4.3'.</p>

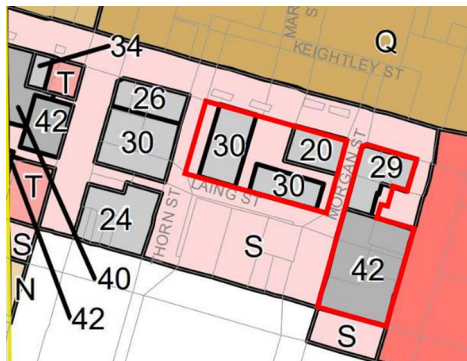

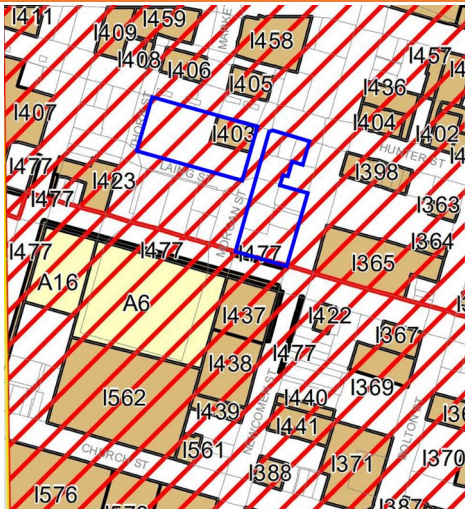
Table 7: Consideration of the NLEP 2012 Controls		
Clause	Control	Assessment
	<p>Certain elements of the 3W and 3S buildings fall outside of the grey envelopes shown below. In turn, these areas are subject to a 24m HOB control.</p>  <p>Figure 24: Height of Building Map with land subject to Stage 3 and Stage 4 outlined red. Source: NLEP 2012</p>	
Floor Space Ratio (Clause 4.4(2))	<p>The site is subject to a maximum FSR control of 4.0:1 (refer to <b>Figure 25</b>).</p>  <p><b>Figure 25:</b> Floor Space Ratio Map with land subject to Stage 3 and Stage 4 outlined red. Source: NLEP 2012</p>	<p>The proposal would result in an FSR of 3.90:1 across the 4 stages of development, which complies with the prescribed 4:1 development standard.</p> <p>Further discussion is provided under the subheading 'Clause 4.4.' below.</p>
Heritage (Clause 5.10)	<p><b>Figure 26</b> identifies:</p> <p>121 Hunter Street (Municipal Building) is a locally listed heritage item (Listing no. I403).</p> <p>The existing retaining wall along King Street, near the corner with Newcomen Street, is also a locally listed heritage item (Listing no. I477).</p> <p>The site falls within the Newcastle City Centre Heritage Conservation Area.</p> <p>The site is also within the vicinity of state and locally listed heritage items.</p>	<p>Heritage is considered further in <b>Section 6.5</b> of this report.</p>



Table 7: Consideration of the NLEP 2012 Controls		
Clause	Control	Assessment
	 <p><b>Figure 26:</b> Heritage Map with land subject to Stage 3 and Stage 4 outlined blue. Source: NLEP 2012</p>	
Newcastle City Centre objectives (Clause 7.1)	That development is considered to achieve the objectives prescribed for the Newcastle City Centre.	The proposal is consistent with the intended strategic planning outcomes for the Newcastle City Centre as outlined below, under the subheading 'Clause 7.1'.
Design Excellence (Clause 7.5)	The proposal represents the winning scheme from the associated Design Excellence Competition pursuant to Clause 7.5 (4).	The proposal represents the winning entry of the design competition, which is noted to have been subject to further refinement following the competition, through six rounds of review by the DIP as well as the URDP. Both panels have endorsed the proposal and celebrate its design excellence.

### **Clause 2.7 – Demolition requires development consent**

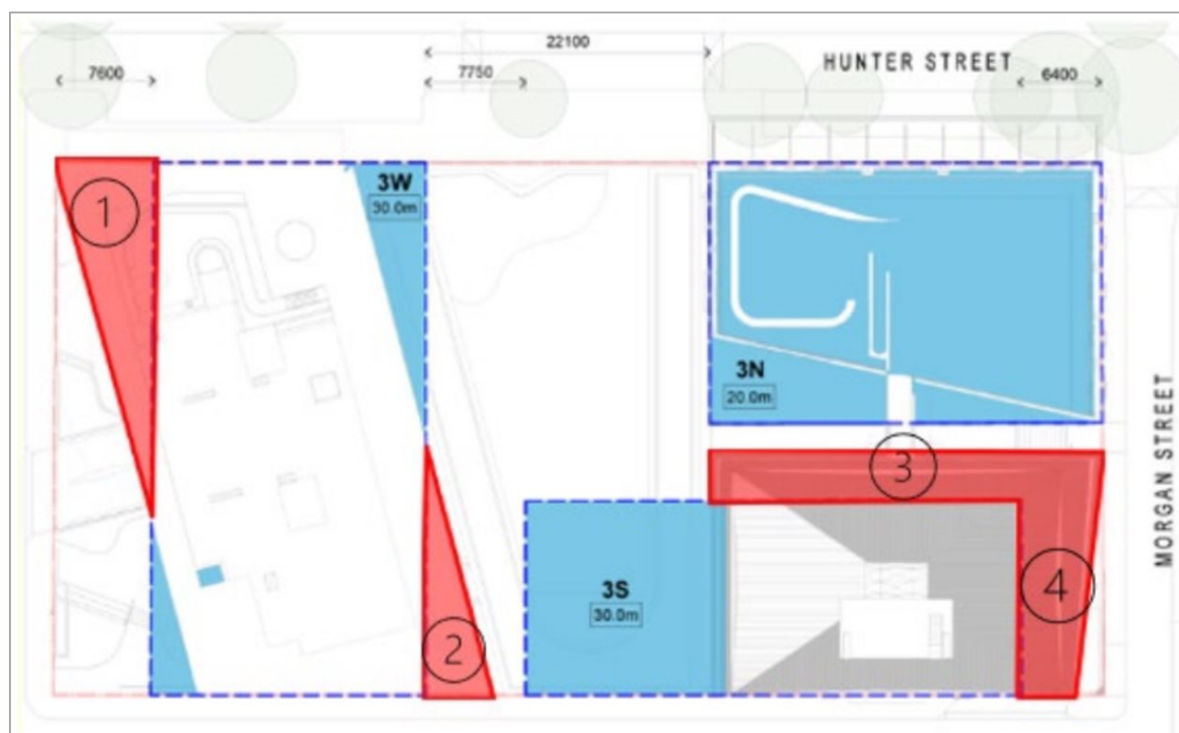
The proposal involves the demolition of Blackall House (No. 22 Newcomen Street) to facilitate the siting of the Laing Lane Café. This accords with the Concept DA (as modified) and can be supported. Partial demolition is also proposed of the Municipal Building to facilitate its adaptive re-use to a commercial and residential building. Any remaining structures on the sites are also to be demolished as part of the proposal which is supported.

### **Clause 4.3 – Height of Buildings**

The proposal is subject to two differing maximum building height controls. As depicted in the HOB mapping extract above, the building envelopes outlined in grey are subject to a maximum RL building height, rather than a maximum building height measured in metres.

For Stage 3, the grey RL envelopes do not follow the boundaries of the site, unlike Stage 4, and therefore, certain elements of building 3W and 3S are subject to the 24m HOB control. This is illustrated in **Figure 27** below. The portions numbered 1 – 4 are subject to the 24m

HOB control, and the blue-dotted outline indicates the envelopes that are subject to the maximum RL HOB control.



**Figure 27:** Proposed modified concept DA analysis of HOB controls - portions outlined dashed blue are subject to maximum RL HOB controls and portions shown red are subject to the 24m HOB control. Source: Urbis

The proposal comprises the following building heights, per **Table 8** and **Table 9**. A comparison to the Clause 4.3 development standards is also provided for reference.

Table 8: NLEP 2012 HOB maximums (RL) and proposed HOBs		
	NLEP 2012	Proposal
Building 3 West	RL 30	RL 34.30
Building 3 North (Municipal Building)	RL 20	RL 20.43
Building 3 South	RL 30	RL 45.64
Building 4 North	RL 29	RL 36.92
Building 4 South	RL 42	RL 51.70

Table 9: NLEP 2012 HOB maximum (m) and proposed HOBs		
	NLEP 2012	Proposal
Building 3 West – Point 1	24m	30.35m

Table 9: NLEP 2012 HOB maximum (m) and proposed HOBs		
	NLEP 2012	Proposal
Building 3 West – Point 2	24m	27.88m
Building 3 South – Point 3	24m	39.16m
Building 3 South – Point 4	24m	37.84m

Whilst the above tables detail the ‘base’ height controls in accordance with clause 4.3 of NLEP 2012, it is noted that Clause 7.5(6) of NLEP 2012 prescribes the following:

***“(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.”***

Subsequently, the maximum building heights applicable for the site may be exceeded by up to 10% pursuant to Clause 7.5(6), subject to CN support. On this basis, the revised maximum building heights with the bonus applied would be as detailed below. The proposed variations to the revised development standard are also set out in the below table. It is noted that the Concept DA (as modified) permits the building heights as detailed below (refer to **Table 12**).

Table 10: NLEP 2012 HOB maximum (RL) + 10% pursuant to Clause 7.5(6) and proposed variation				
	NLEP 2012 + 10%	Proposal	Variation %	Variation m
Building 3 West	RL 33	RL 34.30	3.94%	1.30m
Building 3 North (Municipal Building)	RL 22	RL 20.43	Complies.	Complies.
Building 3 South	RL 33	RL 45.65	38.33%	12.65m
Building 4 North	RL 31.9	RL 36.92	15.74%	5.02m
Building 4 South	RL 46.2	RL 51.70	11.90%	5.50m

Table 11: NLEP 2012 HOB maximum (m) + 10% pursuant to Clause 7.5(6) and proposed variation				
	NLEP 2012 + 10%	Proposal	Variation %	Variation m
Building 3 West – Point 1	26.4m	30.35m	15.34%	4.05m

Table 11: NLEP 2012 HOB maximum (m) + 10% pursuant to Clause 7.5(6) and proposed variation				
Building 3 West – Point 2	26.4m	27.88m	5.60%	1.48m
Building 3 South – Point 3	26.4m	39.16m	48.16%	12.76
Building 3 South – Point 4	26.4m	37.84m	43.35%	11.44m

Table 12: Approved building heights (pursuant to ref. RE2024/00002) and proposed building heights		
Building	Approved Heights	Proposal
3W	RL 34.30	RL 34.30
3N	RL 20.43	RL 20.43
3S	RL 45.65	RL 45.65
4N	RL 36.92	RL 36.92
4S	RL 51.70	RL 51.70

While compliance with the height limit is not achieved across the entire Stage 3 and Stage 4 sites, the proposal provides for an outcome consistent with the objectives of Clause 4.3 which are as follows:

- (a) *to ensure the scale of development makes a positive contribution towards the desired built form, consistent with the established centres hierarchy,*
- (b) *to allow reasonable daylight access to all developments and the public domain.*

As detailed in the Applicant's Design Report (**Attachment 2G**), the proposal has been designed to ensure that a 'flat top' building envelope does not characterise the Newcastle City skyline. This aspect of the design was commended by the DIP and UDRP during the design competition process, as the variety in heights reinforces the notion of a playful and varied skyline. Furthermore, the variance in height does not undermine the established centres hierarchy.

In relation to objective (b), as discussed in **Section 6.6** of this report, the proposal will not result in unreasonable amenity impacts in relation to solar access for future occupiers or neighbouring developments. A detailed analysis of the solar access to be obtained within the proposal is provided above under the subheading 'Apartment Design Guides' and within the detailed ADG assessment provided in **Attachment 12**. An assessment of the overshadowing impacts has been provided below in **Section 6.6**.

A Clause 4.6 request has been provided by the Applicant (**Attachment 2SS**), considering the contravention proposed to the Clause 4.3 development standard.

Whilst the Clause 4.6 request has been considered, findings of the LEC support that detailed development applications do not require a clause 4.6 request to be prepared upon the proper construction of the EP&A Act 1979. This was established in *Karimbla Properties (No. 59) Pty*



*Limited v City of Parramatta Council [2023] NSWLEC 1365*, where Commissioner O’Neil found [at 48-50], as summarised below:

***‘I accept the Applicant’s submission that upon the proper construction of the EPA Act, a written request to vary a development standard pursuant to cl 4.6 of the Standard Instrument Local Environmental Plan is not required for a subsequent development application following a concept approval under Div 4.4 of the EPA Act. The subsequent development application for the detailed proposal of a site, or part of the site, cannot be inconsistent with the consent for the concept proposal for the development of the site for consent to be granted, pursuant to s 4.24(2) of the EPA Act.***

***The height of the proposal is fixed by the concept approval. The height of the concept approval exceeded the height of buildings development standard for the site. The consent authority determined the application pursuant to cl 4.6 of LEP 2013 and granted consent to the concept development application.***

***Section 4.24(2) of the EPA Act provides that while the concept approval remains in force, the determination of any further development applications in respect of the site cannot be inconsistent with the concept approval for the development of the site.***

***Development consent may be granted to the Development Application by the operation of s 4.24(2) of the EPA Act, not subject to cl 4.6 of LEP 2013, because that consideration under cl 4.6(3) and (4) was undertaken when consent was granted to the concept approval pursuant to cl 4.6 of LEP 2013.’***

Notwithstanding the above, the Clause 4.6 request prepared by the Applicant has been considered and is discussed under the subheading ‘Clause 4.6’ below.

#### **Clause 4.4 – Floor Space Ratio**

The proposal will result in an FSR of 3.90:1 across total site (inclusive of all 4-stages). This is compliant with the prescribed 4.0:1 FSR development standard, pursuant to Clause 4.4 of NLEP 2012.

The GFA and FSR for the respective stages of the East End Development are set out below in **Table 13** for reference. It is noted that the Concept DA (as modified) permits the GFA and FSRs as detailed below.

Table 13: FSR and GFA comparison	
Stage of Development	Provision
<b>GFA</b>	
Stage 1	27,466 m <sup>2</sup>
Stage 2	12,954 m <sup>2</sup>
Stage 3	10,916 m <sup>2</sup>
Stage 4	13,414 m <sup>2</sup>
<b>Total</b>	<b>64,750 m<sup>2</sup></b>
<b>FSR</b>	
Stage 1	4.19:1
Stage 2	3.55:1
Stage 3	3.24:1

Table 13: FSR and GFA comparison	
Stage of Development	Provision
Stage 4	4.35:1
<b>Total</b>	<b>3.90:1</b>

#### **Clause 4.6 – Exceptions to Development Standards**

As outlined above, the proposal is consistent with the approved heights under the Concept DA (as modified). Whilst *Karimbla Properties* establishes that a Clause 4.6 variation request is not required in this instance, for completeness, the Applicant has submitted a Clause 4.6 variation and this has been assessed below.

#### **Clause 4.3 Height of buildings**

The proposal seeks consent for a mixed-use development, comprising the erection of five buildings with respective maximum HOBs as set out above in **Table 10** and **Table 11**. For ease of reference, these tables are provided again below at **Table 14** and **Table 15**.

Table 14: NLEP 2012 HOB maximum (RL) + 10% pursuant to Clause 7.5(6) and proposed variation				
	NLEP 2012 + 10%	Proposed Development	Variation %	Variation m
<b>Building 3 West</b>	RL 33	RL 34.30	3.94%	1.30m
<b>Building 3 North (Municipal Building)</b>	RL 22	RL 20.43	Complies.	Complies.
<b>Building 3 South</b>	RL 33	RL 45.65	38.33%	12.65m
<b>Building 4 North</b>	RL 31.9	RL 36.92	15.74%	5.02m
<b>Building 4 South</b>	RL 46.2	RL 51.70	11.90%	5.50m

Table 15: NLEP 2012 HOB maximum (m) + 10% pursuant to Clause 7.5(6) and proposed variation				
	NLEP 2012 + 10%	Proposed Development	Variation %	Variation m
<b>Building 3 West – Point 1</b>	26.4m	30.35m	15.34%	4.05m
<b>Building 3 West –</b>	26.4m	27.88m	5.60%	1.48m

Table 15: NLEP 2012 HOB maximum (m) + 10% pursuant to Clause 7.5(6) and proposed variation				
	NLEP 2012 + 10%	Proposed Development	Variation %	Variation m
Point 2				
Building 3 South – Point 3	26.4m	39.16m	48.16%	12.76
Building 3 South – Point 4	26.4m	37.84m	43.35%	11.44m

#### Maximum HOB (RL)

For Stage 3, the development standard (inclusive of the 10% bonus) prescribes a maximum height (RL) of RL 22 and RL 33. The maximum variation sought to the RL HOB control is 38.33% (or 12.65m) which is a result of building 3S.

For Stage 4, the development standard (inclusive of the 10% bonus) prescribes a maximum height (RL) of RL 31.9 and RL 46.2. The maximum variation sought to the RL HOB control is 15.74% (or 5.02m) which is a result of building 4N.

#### Maximum HOB (m)

For the buildings within Stage 3 that sit outside of the building envelopes subject to the HOB (RL) control, the development standard (inclusive of the 10% bonus) prescribes a maximum height (m) of 26.4m. The maximum variation sought to this HOB control is 48.16% (or 12.76m) which occurs at building 3S.

Overall, the maximum variation sought to the Clause 4.3 development standard is **48.16%** (or 12.76m).

It is noted that the DA was submitted in May 2023, ahead of the Clause 4.6 reforms. As such, the following assessment has been undertaken pursuant to the then in-force Clause 4.6.

Table 16: Clause 4.6 Assessment	
Clause 4.6 Subsections	Assessment
“(1) The objectives of this clause are as follows— (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”	It is reasonable in this instance to apply a degree of flexibility through the application of Clause 4.6, such that a better development outcome can be delivered. Enhanced amenity, by way of a new view corridor, enhanced public domain offering, and a significant supply of housing is achieved because of the additional building height and massing arrangement proposed.
“(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other	The DA seeks a variation to the Clause 4.3 Height of buildings development standard, a standard not excluded from the operation of this Clause.

**Table 16: Clause 4.6 Assessment**

Clause 4.6 Subsections	Assessment
<p><i>environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.”</i></p>	
<p><i>“(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—</i></p> <p><i>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</i></p> <p><i>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.”</i></p>	<p>The Applicant has addressed the objectives of Clause 4.3 within their supporting Clause 4.6 request, and concludes that these are achieved, notwithstanding the height variation proposed.</p> <p>In summary, the applicant argues the scale of the proposed development makes a positive contribution towards the desired built form, as the proposed playful skyline is characteristic of Newcastle’s silhouette.</p> <p>Furthermore, the proposal exhibits a very high standard of design excellence, as evidenced from the support provided by the architectural design competition Jury, and members of the DIP and UDRP. The proposal will not undermine the established centres hierarchy, considering the additional height is focused within the CBD and close to the Newcastle Interchange. Objective (1)(a) is therefore considered to be achieved.</p> <p>The DA is supported with detailed shadow analyses which demonstrate that the proposed residential apartments, the public domain, and nearby developments will be afforded reasonable sunlight and daylight access. Objective (1)(b) is therefore considered to be achieved.</p> <p>It is also noted at the time of lodgement, Clause 7.9 of NLEP 2012 did not specify that it only applied to Areas A, B, C, D, and E on the HOB mapping. However, considering the standard sought to be varied is Clause 4.3, no further consideration of Clause 7.9 is required despite the Applicant’s written request referencing Clause 7.9.</p> <p>Strict compliance with the development standard is therefore deemed to be unreasonable and unnecessary in this instance, considering the objectives of Clause 4.3 are achieved notwithstanding the contravention proposed.</p> <p>The proposed development will also deliver significant public benefits, including the Harbour to Cathedral view corridor, 1,125 m<sup>2</sup> of public realm via Market Square, a large provision of housing stock for Newcastle, and an activated ground floor plane and additional employment generating floorspace for the CBD. In addition, considering the rigorous design competition and development processes the scheme has undergone, the proposal is considered to promote good design and amenity of the built environment, in accordance with object (3) of the EP&amp;A Act 1979, pursuant to Clause 1.3.</p> <p>The proposed contravention to the development standard is, therefore, sufficiently justified in this instance.</p>
<p><i>“(4) Development consent must not be granted for development that contravenes a development standard unless—</i></p>	<p>The Applicant’s written request has adequately addressed the matters required to be demonstrated in subclause (3). The proposal is in the public interest because it is consistent with the objectives of the development standard and the MU1 zone</p>



**Table 16: Clause 4.6 Assessment**

Clause 4.6 Subsections	Assessment
<p><i>(a) the consent authority is satisfied that—</i></p> <p><i>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</i></p> <p><i>(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and</i></p> <p><i>(b) the concurrence of the Planning Secretary has been obtained."</i></p>	<p>objectives, as set out above within this table and <b>Section 4.1</b> of this report.</p>
<p><i>"(5) In deciding whether to grant concurrence, the Planning Secretary must consider—</i></p> <p><i>(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</i></p> <p><i>(b) the public benefit of maintaining the development standard, and</i></p> <p><i>(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence."</i></p>	<p>Not applicable.</p>
<p><i>"(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—</i></p> <p><i>(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or</i></p>	<p>Not applicable.</p>

**Table 16: Clause 4.6 Assessment**

Clause 4.6 Subsections	Assessment
<i>(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.</i>	
<i>“(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant’s written request referred to in subclause (3).”</i>	CN will duly keep a record of this assessment.
<i>“(8) This clause does not allow development consent to be granted for development that would contravene any of the following—</i> <i>(a) a development standard for complying development,</i> <i>(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,</i> <i>(c) clause 5.4,</i> <i>(caa) clause 5.5,</i> <i>(ca) clause 8.1 or 8.2.”</i>	Not applicable.

### **Clause 7.1 – Objectives of the Newcastle City Centre**

Clause 7.1 of the NLEP 2012 prescribes the objectives of this Clause as follows:

*“The objectives of this Part are as follows—*

- (a) to promote the economic revitalisation of Newcastle City Centre,*
- (b) ..the proposed modified development will enable a significant revitalisation of a large city centre block. The development will contribute to the vitality and viability of Newcastle City Centre through provision of commercial and retail premises.to strengthen the regional position of Newcastle City Centre as a multi-functional and innovative centre that encourages employment and economic growth,*
- (c) 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,*
- (d) to promote the employment, residential, recreational and tourism opportunities in Newcastle City Centre,*

*(e) to facilitate the development of building design excellence appropriate to a regional city,*

*(f) to encourage responsible management, development and conservation of natural and man-made resources and to ensure that Newcastle City Centre achieves sustainable social, economic and environmental outcomes,*

*(g) to protect and enhance the environmentally sensitive areas and natural and cultural heritage of Newcastle City Centre for the benefit of present and future generations,*

*(h) to help create a mixed use place, with activity during the day and throughout the evening, so Newcastle City Centre is safe, attractive, inclusive and efficient for its local population and visitors alike.”*

The proposal is consistent with the objectives of Clause 7.1 of the NLEP 2012 for the following reasons:

- The Stage 3 and 4 developments will enable a significant revitalisation of a large city centre block. The development will contribute to the vitality and viability of Newcastle City Centre through provision of commercial and retail premises.
- The Stage 3 and 4 developments will deliver additional retail and commercial premises to the City Centre, in turn contributing to employment and economic growth opportunities.
- The Stage 3 and 4 developments exhibit design excellence, as commended by the Architectural Design Competition jury, and the DIP and UDRP members. The development will revitalise and activate a significant city centre block and will deliver strong public benefits including new view corridors and public space provisions.
- New retail and commercial premises will be delivered as part of the residential-led development, in turn promoting employment and residential opportunities. Recreational opportunities will also be enhanced by way of the public realm offering to be delivered fronting Market Square.
- The Stage 3 and 4 development is the winning entry of the Architectural Design Competition held in 2022. The jury have commended the high-quality architectural design, which is noted to have undergone further refinement through six DIP meetings. The design has also been subject to two UDRP meetings. Each design panel has commended the design excellence of the proposal.
- The proposal will facilitate a residential-led mixed use development, in a central city centre location. The development will contribute to the revitalisation of the city centre and will activate the street frontages through provision of retail and commercial premises. This in turn will create a safe, attractive, and inclusive town centre for residents and visitors alike.

### **Clause 7.5 – Design Excellence**

The Stage 3 and Stage 4 development has undergone significant design testing and development via an Architectural Design Competition and six proceeding DIP meetings. Ref. **DA2023/00419** seeks consent for the winning architectural scheme.

The relevant design excellence provisions are detailed below:

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

*(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*

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

The proposal will facilitate an outcome which appropriately responds to the heritage context of the site and will deliver a development that provides buildings of an appropriate bulk and massing.

In addition, the proposal will provide a significant public benefit in keeping with the site's historic and originally intended use. Market Square will provide a welcoming and highly usable space for the community to enjoy, and this public realm will form part of the visual connection between the Harbour and the Christ Church Cathedral.

In relation to environmental impacts, these are acceptable, as discussed further in **Section 6** of the report.

It is therefore agreed that the proposal is consistent with the relevant design excellence provisions of NLEP 2012, and it is reasonable to afford the proposal the 10% bonus pursuant to Clause 7.5(6). It is also noted that this uplift was supported as part of the approved Concept DA (as modified).

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

There are no proposed instruments which have been the subject of public consultation under the EP&A Act 1979 and are relevant to the proposal.

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

The *Newcastle Development Control Plan 2023* ('NDCP 2023') was publicly exhibited from 28 September 2023 to 27 October 2023. The NDCP 2023 has since been adopted and became operational on 1 March 2024.

Section 11 of Part A - Introduction of the NDCP 2023 nominates savings and transitional arrangements as follows:

*"DCP 2023 does not apply to any development application lodged but not finally determined before its commencement. Any development application lodged before its*



commencement will be assessed in accordance with any previous development control Plan (DCP).

### **Exemptions**

The above Savings and transitional arrangements do not apply to the following sections:

- D4 Commercial
- E3 Tighes Hill local Character
- E4 Kotara Local Character.

Development applications to which these sections apply will be assessed in accordance with DCP 2023.”

Subsequently, the proposal is to be assessed against the provisions of the NDCP 2012 as it was lodged prior to the 1 March 2024, unless exempted.

The following sections of the NDCP 2012 are relevant to the assessment of this application:

- Section 5.04 Aboriginal Heritage
- Section 5.05 Heritage Items
- Section 5.06 Archaeological Management
- Section 6.01 Newcastle City Centre
- Section 6.02 Heritage Conservation Areas
- Section 7.03 Traffic, Parking and Access

The relevant sections of the NDCP 2012 are addressed below. It is noted that to avoid duplication, where a more detailed assessment of the NDCP 2012 is required, this has been considered conjunctively within the assessment of likely impacts contained in **Section 6** of this report.

In addition, the following has been considered under section D4 Commercial of the Newcastle Development Control Plan 2023 ('NDCP 2023'):

- Section 9 Streetscape and front setbacks
- Section 10 Side and rear setbacks
- Section 11 Street activation
- Section 13 Amenity – internal and neighbour
- Section 14 Views and visual privacy
- Section 16 Utilities, services and site facilities
- Section 17 Acoustic privacy

### **Newcastle Development Control Plan 2012 ('NDCP 2012')**

The key controls contained within NDCP 2012 of relevance to the proposal are addressed in the table below. **NB.** The acceptable solutions are included in the relevant sections below where the proposal complies on merit.

Table 17: NDCP 2012 Compliance Assessment		
Section	Controls	Assessment
5.04 Aboriginal Heritage		

**Table 17: NDCP 2012 Compliance Assessment**

Section	Controls	Assessment
5.04.01 Due diligence and development application	<p><u>Controls</u></p> <ol style="list-style-type: none"> <li>1. Where a development will disturb the ground surface, provide documentation to satisfy the consent authority that the due diligence process has been followed.</li> <li>2. Where required, prepare an Aboriginal cultural heritage assessment to assess the impact of the proposed development on Aboriginal cultural heritage consistent with the Office of Environment and Heritage Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW.</li> <li>3. Where required, prepare an Aboriginal cultural heritage assessment report consistent with the Office of Environment and Heritage Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW that includes strategies to avoid or minimise harm to Aboriginal objects and places of cultural significance.</li> <li>4. Where the investigation and assessment requires the preparation of an Aboriginal cultural heritage assessment report, provide documentation to satisfy the consent authority that the relevant Aboriginal community and stakeholders have been involved in the decision making process.</li> </ol>	<p><b>Complies.</b></p> <p>The site forms part of Registered Site 38-4-1084 which consists of a Potential Archaeological Deposit located in the city blocks bound by Newcomen, King, Hunter and Perkins Streets.</p> <p>The application is accompanied by an Aboriginal Cultural Heritage Assessment Report (<b>Attachment 2VV</b>). As the site includes a Registered Aboriginal Site, the application was referred to HNSW under the <i>National Parks and Wildlife Act 1974</i> ('NPW Act 1974'). HNSW have issued general terms of approval which include the requirement to obtain an Aboriginal Heritage Impact Permit (AHIP) (as outlined in <b>Section 5.1</b> of this report).</p>
<b>5.05 Heritage Items</b>		
5.05.01 General principles	<ol style="list-style-type: none"> <li>1. Any development application for works to a heritage item is accompanied by a Heritage Impact Statement, Conservation Management Plan, or Conservation Management Strategy, as required by the Newcastle Local Environmental Plan 2012.</li> <li>2. Development of a heritage item: <ol style="list-style-type: none"> <li>a) is consistent with the Heritage Impact Statement, Conservation Management Plan or Conservation Management Strategy</li> <li>b) is consistent with the Statement of Heritage significance for the item</li> <li>c) protects the setting of the heritage item</li> <li>d) retains the significant internal and external spaces and to recycle, re-purpose and reuse fabric and building elements</li> <li>e) avoids "facadism" by using all of the components of the building including, but not limited to, the structure, floor,</li> </ol> </li> </ol>	<p><b>Complies.</b></p> <p>The proposal involves the retention and conservation of the Municipal Building (Listing no. I403) as detailed within the accompanying Heritage Impact Statement and Conservation Management Plan. These documents provide details of the conservation and restoration works proposed to the retained elements on the site. The conservation of the Municipal Building facade and its adaptive reuse will ensure the preservation of the building and rectification of previous damage and vandalism, noting the building is currently unused and in poor condition.</p> <p>Although the traditional setting of the item will change due to the</p>

**Table 17: NDCP 2012 Compliance Assessment**

Section	Controls	Assessment
	<p>roof, floor and wall framing, fittings and finishes, fabric and materials</p> <p>f) removes alterations and additions that are unsympathetic to the heritage significance of the heritage item</p> <p>g) reinstates missing building elements and details</p> <p>h) uses materials, finishes, and colours that are appropriate to the architecture, style and age of the heritage item</p> <p>i) reinforces the dimensions, pattern and style of the original window and door openings of the heritage item</p> <p>j) maintains and repairs building elements in order to retain the heritage item in a serviceable condition commensurate with its heritage significance.</p>	<p>scale of surrounding development, the proposal has generally been designed to respect and conserve the significance of the heritage item, with benefits including the pedestrian laneway adjacent to the items and reactivation of the former Market Square.</p>
5.05.02 Integrating heritage items into new developments	<p>1. Where a conservation management plan or conservation management strategy, prepared for a heritage item, supports the incorporation of a development proposal with a heritage item, the design of the proposal includes appropriate measures to:</p> <p>a) ensure the heritage significance of the item is conserved. A written statement outlines how the proposal achieves the conservation of the item's heritage significance</p> <p>b) retain a suitable setting for the heritage item that enables the continued appreciation and integrity of the heritage item</p> <p>c) ensure that repair and stabilisation treatments to heritage items identified in the conservation and design process are carried out to promote the conservation of the item</p> <p>d) ensure that interventions do not affect the long term preservation of the fabric and construction of the heritage item.</p>	<p><b>Complies.</b></p> <p>The proposal involves the integration of the heritage listed Municipal Building into a new mixed-use development. The design has been guided by the policies in the accompanying Conservation Management Plan, and ensures the retention of the significance of the item within a new, but suitable setting, with conservation and repair works that ensure the long term preservation of the item.</p>
5.05.03 Changing the use of a heritage item	<p>1. Any proposal for a change of use, including the adaptive reuse of a heritage item, demonstrates the following:</p> <p>a) compliance with the Building Code of Australia addressing the performance-based design solutions if necessary the</p> <p>b) new use minimises alteration of significant fabric and detailing, and incorporates existing fabric into the development proposal</p>	<p><b>Complies.</b></p> <p>The proposal seeks an adaptive reuse for 3N to a mixed use building (commercial and residential). The proposal is consistent with the aims of this DCP requirement, allowing for the retention of heritage significance, maintaining the integrity of the building and</p>

**Table 17: NDCP 2012 Compliance Assessment**

Section	Controls	Assessment
	<ul style="list-style-type: none"> <li>c) alterations to the interior spaces minimise the effect on the exterior of the heritage item and promotes the integrity of the heritage item</li> <li>d) the significant original use of the heritage item is interpreted</li> <li>e) ensures that original crests, dates, logos, and building names are retained in situ</li> <li>f) minimises the impacts from the introduction of new services into the interior and the exterior of the heritage item.</li> </ul> <p>2. The history of uses of a building is interpreted on the site in the form of interpretation panels, artefact and photographic displays, in situ retention of machinery and signage, and or artistic interpretation.</p>	<p>allowing compliance with the BCA.</p> <p>It is noted that an Interpretation Plan was not submitted with the application. Accordingly, a condition of consent for an Interpretation Plan is recommended.</p>
5.05.04 Conserving significant elements of adjoining public domain	<ul style="list-style-type: none"> <li>1. Original paving treatments are retained and replicated in the repair and reinstatement of paved surfaces.</li> <li>4. Sandstone steps, and sandstone kerb and gutter, are maintained in good order and kept throughout the local government area.</li> <li>5. Masonry structures, including retaining walls are maintained in good order and kept throughout the local government area.</li> </ul>	<p><b>Complies.</b></p> <p>The locally listed sandstone retaining wall and steps (Listing no. 1477) along King Street (adjacent to building 4S) are to be retained and protected, as shown in the proposed plans. The existing adjacent footpath is proposed to be regraded, such that it sits lower than the height of the retaining wall.</p>
5.05.06 Development in the vicinity of a heritage item	<ul style="list-style-type: none"> <li>1. New development and alterations and additions in the vicinity of heritage items respects and enhances the setting and significance of the heritage item with regard to the following elements: <ul style="list-style-type: none"> <li>a) building envelope</li> <li>b) proportions</li> <li>c) setbacks</li> <li>d) material and colours.</li> </ul> </li> <li>2. Development in the vicinity of heritage items respect the heritage item by: <ul style="list-style-type: none"> <li>a) retaining adequate space around the heritage item to enable its interpretation</li> <li>b) conserving significant landscaping including horticultural features, trees, and outbuildings</li> <li>c) enabling archaeological sites to be conserved in accordance with relevant approvals</li> </ul> </li> </ul>	<p><b>Complies.</b></p> <p>The proposal generally respects and enhances the setting and significance of the heritage items in the vicinity of the site. Some views to and from those items will be impacted and others will remain, however these impacts have already been considered and deemed to be acceptable under ref. <b>RE2024/00002</b>. On balance, the proposal is consistent with the approved Concept DA (as modified) and can be supported from a heritage perspective.</p>



**Table 17: NDCP 2012 Compliance Assessment**

Section	Controls	Assessment
	d) retaining significant views and lines of sight to the heritage item.	
<b>5.06 Archaeological Management</b>		
5.06.01 Archaeological management	<p>B. Managing archaeological resources</p> <ol style="list-style-type: none"> <li>1. Adhere to the recommendations of any archaeological assessment or preliminary archaeological assessment.</li> <li>2. Manage archaeological sites in accordance with the requirements of the NSW Heritage Act 1977.</li> </ol>	<p><b>Complies.</b></p> <p>An Archaeological Assessment Report was submitted with the development application (<b>Attachment 2UU</b>), which concluded there is moderate potential for locally-significant archaeology.</p> <p>As such, an excavation permit for monitoring of bulk excavation and detailed archaeological excavation should be applied for under Section 140 of the <i>Heritage Act 1977</i>. This complies with the requirements of this section of the DCP and accords with conditions recommended by HNSW.</p>
<b>6.01 – Newcastle City Centre</b>		
6.01.02 Character Areas	<p>In accordance with NDCP 2012, the subject site falls within the 'East End' character area. NDCP 2012 summarises East End as being characterised by <i>'hilly topography... and containing a mix of heritage listed and historic buildings.. giving this part of Newcastle a unique character and offering interesting and eclectic streetscapes'</i>.</p> <p><u>Principles</u></p> <ol style="list-style-type: none"> <li>1. Hunter Street continues to be the main retail spine of the area, supported by a range of complimentary uses, including residential, commercial, entertainment and dining.</li> <li>2. Hunter Street is recognised and enhanced as a major pedestrian space and an informal meeting place.</li> <li>3. The historic fine grain character is maintained and enhanced.</li> <li>4. Significant views to and from Christ Church Cathedral are protected, including views from Market Street and Morgan Street. Views to Hunter River are protected and framed along Market Street, Watt Street and Newcomen Street.</li> <li>5. Vistas that terminate at significant heritage buildings are protected, such as Fort Scratchley.</li> </ol>	<p><b>Complies.</b></p> <p>The proposal complies with a number of development principles outlined for the East End character area, including Principles 4 and 8.</p> <p>Further consideration of these development principles is provided in <b>Section 6.3</b> and <b>Section 6.5</b> of this report, respectively.</p>

**Table 17: NDCP 2012 Compliance Assessment**

Section	Controls	Assessment
	<p>6. Distinctive early industrial, warehouse and retail buildings that contribute to the character of the area are retained and re-purposed, including prominent corner buildings.</p> <p>7. Existing laneways and pedestrian connections are enhanced.</p> <p>8. Heritage items and their setting are protected. New buildings respect the setting of heritage buildings.</p> <p>9. In-fill buildings, additions and alterations to respond to the height, massing and predominant horizontal and vertical proportions of existing buildings.</p> <p>10. Recreational opportunities are created by establishing public space and pedestrian connections from Scott Street to the Hunter River foreshore.</p>	
6.01.03 General Controls	<p>A1. Street wall heights</p> <p><u>Performance criteria</u></p> <p>A1.1. Street wall heights of new buildings define and enclose the street, are appropriately scaled and respond to adjacent development.</p> <p><u>Acceptable solutions</u></p> <ol style="list-style-type: none"> <li>1. New buildings have a street wall height of 16m unless indicated otherwise in Figure 6.01-12.</li> <li>2. Any development above the street wall height is set back a minimum of 6m, as shown in Figure 6.01-11.</li> <li>3. Corner sites may be emphasised by design elements that incorporate some additional height above the nominated street height.</li> </ol>	<p><b>Complies on merit.</b></p> <p>Figure 6.01-12 illustrates the recommended wall heights fronting Hunter, Thorn, and Morgan Streets is 18m.</p> <p>3W: Comprises a street wall height of 30m. Whilst this represents a variation to the control, it is acknowledged that the design competition Jury, and members of the DIP and UDRP are supportive of the proposal and have deemed this design to be the most suitable solution for the site. The variation is supported on merits.</p> <p>3N: No change to the existing Municipal Building height is proposed.</p> <p>3S: A wall height of 8.75m up to level 2 is proposed, which complies. Above level 2 is to be incrementally setback with each additional floor.</p> <p>4N: Comprises a street wall height of 29.4m. This has been supported by the Jury, DIP, and UDRP and deemed to be the most suitable solution for the site.</p> <p>4S: This building is subject to a 16m street wall height. 4S</p>

**Table 17: NDCP 2012 Compliance Assessment**

Section	Controls	Assessment
		comprises a street wall height of 24.5m to King Street, and 36m at its tallest point to Newcomen Street. This has been supported by the Jury, DIP, and UDRP and deemed to be the most suitable solution for the site.
	<p>A2. Building setbacks</p> <p><u>Performance criteria</u></p> <p>A2.1. Building setbacks define and address the street and public domain spaces and respond to adjacent buildings.</p> <p><u>Acceptable solutions</u></p> <ol style="list-style-type: none"> <li>1. Front setbacks are nil (zero) unless shown otherwise in Figure 6.01-13 and Table 6.01-1.</li> <li>2. Where it is not possible to meet the setbacks in Figure 6.01-13 and Table 6.01-1 new development aligns with the adjoining front setbacks.</li> <li>3. When a setback is used, footpaths, steps, ramps and the like may be provided within it.</li> <li>4. Minor projections beyond the setback are possible for Juliette balconies, sun shading devices, and awnings. Projections into the setbacks are complementary to the style and character of adjoining buildings.</li> </ol> <p><u>Performance criteria</u></p> <p>A2.2 Side and rear setbacks enhance amenity and allow for ventilation, daylight access, view sharing and privacy for adjoining buildings.</p> <p><u>Acceptable solutions</u></p> <ol style="list-style-type: none"> <li>1. Development may be built to the side and rear boundary (a nil setback) below the street wall height.</li> <li>2. Commercial development above street wall height is consistent with the side and rear setbacks outlined in Table 6.01-1 and Figure 6.01-13.</li> </ol>	<p><b>Complies on merit.</b></p> <p>The proposed buildings maintain nil front setbacks below the street wall height, which is consistent with prevailing development in the CBD. Minor non-compliances with the 6m setback required above street wall height can be supported, considering the rigorous design competition and refinement processes the scheme has undergone.</p>
	<p>A3. Building separation</p> <p><u>Performance criteria</u></p> <p>A3.1. Sites that accommodate more than one building achieve adequate daylight, ventilation, outlook, view sharing and privacy for each building.</p> <p><u>Acceptable solutions</u></p>	<p>Building separation distances prescribed within the ADG prevail over those within the DCP. Refer to the detailed assessment within <b>Attachment 12</b> for further discussion.</p>

**Table 17: NDCP 2012 Compliance Assessment**

Section	Controls	Assessment
	<ol style="list-style-type: none"> <li>Buildings achieve the minimum building separation for commercial buildings within the same site, as shown in Table 6.01-2 and Figure 6.01-14.</li> <li>Building separation distances may be longer for residential and mixed-use developments to satisfy SEPP 65 guidance.</li> <li>Sites with a road frontage 100m or greater include separation between buildings to maximise view corridors between the buildings and provide appropriate through-site links.</li> </ol>	
	<p>A4. Building depth and bulk</p> <p><u>Performance criteria</u></p> <p>A4.1. Building depth and floor plate sizes relates to the desired urban form and skyline of the city centre.</p> <p><u>Acceptable solutions</u></p> <ol style="list-style-type: none"> <li>Buildings achieve the maximum building depth and floor plate sizes as outlined in Table 6.01-3. 2. 3. 4.</li> <li>Buildings with large floor plates are expressed as separate building elements, as shown in Figure 6.0115.</li> <li>Buildings above street wall height have a maximum building length of 50m.</li> <li>Floor plates are flexible and allow adaption for multiple configurations or uses.</li> </ol> <p><u>Performance criteria</u></p> <p>A4.2. Buildings achieve good internal amenity with minimal artificial heating, cooling and lighting.</p> <p><u>Acceptable solutions</u></p> <ol style="list-style-type: none"> <li>Workspaces in office buildings achieve adequate natural light. Design solutions include windows, atria, courtyards or light wells and by locating workspaces within 10-12m from a window or daylight source.</li> <li>Consider opportunities to incorporate natural ventilation for commercial and mixed use development. Design solutions include the use of cross ventilation or stack effect ventilation via atria, light wells or courtyards to reduce reliance on artificial sources.</li> </ol>	<p>Building depth requirements prescribed within the ADG prevail over those in the DCP. Refer to the detailed assessment within <b>Attachment 12</b> for further discussion.</p>
	<p>A5. Building exteriors</p> <p><u>Performance criteria</u></p>	<p><b>Complies.</b></p> <p>The proposal is accompanied by a detailed Design Report prepared by the project</p>



**Table 17: NDCP 2012 Compliance Assessment**

Section	Controls	Assessment
	<p>A5.1. Building exteriors feature high quality design with robust materials and finishes.</p> <p>A5.2. Building exteriors make a positive contribution to the streetscape and public domain.</p> <p>A5.3. Building exteriors are designed to ensure a positive contribution to streets and public spaces.</p> <p>A5.4. Building exteriors respond to adjoining buildings.</p>	<p>architects (<b>Attachment 2G</b>) which describes in detail the buildings materiality and quality of finishes. The buildings materiality responds to the recommendations of the Connection with Country report prepared by COLA Studio and uses materials which reflect the surrounding coastal landscape and traditional First Nations culture.</p>
	<p>A6. Heritage buildings</p> <p><u>Performance criteria</u></p> <p>A6.1. Development conserves and enhances the cultural significance of heritage items.</p> <p>A6.2. Infill development conserves and enhances the cultural significance of heritage items and their settings.</p> <p>A6.3. Alteration and additions respond appropriately to heritage fabric and the items cultural significance.</p> <p>A6.4. New building elements support future evolution of the heritage item</p> <p>A6.5. Employ interpretation treatments when altering, adapting or adding to a heritage item</p> <p>A6.6. Encourage new uses for heritage buildings.</p>	<p><b>Complies.</b></p> <p>Heritage considerations have been discussed in detail within <b>Section 6.5</b> of this report.</p> <p>It is also noted that the proposal is consistent with the approved Concept DA (as modified) and therefore any impacts upon heritage conservation have already been considered and deemed to be acceptable.</p>
	<p>A8. Design of parking structures</p> <p><u>Performance criteria</u></p> <p>A8.1. At-grade or above-ground parking structures are well designed.</p> <p>A8.2. Minimise the visual impact of at grade or above-ground parking structures.</p> <p>A8.3. Basement car parks are designed to provide protection against flooding.</p>	<p><b>Complies.</b></p> <p>All car parking spaces will be provided within the two basement car parks. Access to the basement car parks will be afforded by at-grade entrances on Laing and Thorn Streets.</p> <p>Parking and access arrangements are supported subject to the imposition of conditions.</p>
	<p>A9. Landscaping</p> <p>A9.1 New development incorporates landscaping and communal open space that respects the desired character of the streetscape, adjoining land and public spaces.</p>	<p><b>Complies.</b></p> <p>The landscaping and public realm design has been developed by COLA Studio, alongside input from First Nations community members. The landscaping design respects the site setting and also incorporates appropriate native species to ensure</p>

**Table 17: NDCP 2012 Compliance Assessment**

Section	Controls	Assessment
		longevity and amenity through the provision of shading and visual interest.
	<p>B2. Views and vistas</p> <p><u>Performance criteria</u></p> <p>B2.1 Public views and sight lines to key public spaces, the waterfront, prominent heritage items and landmarks are protected.</p> <p>B2.2 New development achieves equitable view sharing from adjacent development.</p>	<p><b>Complies.</b></p> <p>View sharing considerations have been discussed in detail within <b>Section 6.3</b> of this report.</p> <p>It is also noted the proposal is consistent with the approved Concept DA (as modified) and therefore any impacts upon views have already been considered and deemed to be acceptable.</p>
	<p>B6. Sun access to public spaces</p> <p><u>Performance criteria</u></p> <p>B6.1 Reasonable sunlight access is provided to new and existing significant public spaces.</p>	<p><b>Complies.</b></p> <p>Whilst the site does not currently include any 'significant public space', considerations have been made for the solar access impacts on the future Market Square.</p> <p>Shadow analyses are provided in support of the application and show that Market Square will receive more than the minimum 2 hours of sunlight between 9am and 3pm in mid-winter. Significant sunlight will also be received during the summer.</p>
6.01.04 Key Precincts	<p>The NDCP 2012 identifies the site as being within the 'Hunter Street Mall' key precinct.</p> <p>The future character statement is as follows:</p> <p><i>"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."</i></p> <p><u>Performance criteria</u></p> <p>B1 Pedestrian permeability and amenity is improved.</p> <p>B2 Significant views and protected (refer to section B3).</p>	<p><b>Complies.</b></p> <p>The proposal will provide for a development outcome which is consistent with the Precinct's objectives and performance criteria, as it will strengthen the sense of place and urban character through the creation of an enhanced public domain, via Market Square. Market Square enables a visual connection between the Harbour and the Christ Church Cathedral, and this represents a return to what was first envisaged under early town planning for the Newcastle City Centre.</p> <p>Pedestrian amenity and permeability will also be</p>

**Table 17: NDCP 2012 Compliance Assessment**

Section	Controls	Assessment
	<p>B3 Building form integrates with existing heritage character and retains contributory buildings.</p> <p>B4 Hunter Street is a pedestrian and vehicular thoroughfare and a place of activity.</p> <p>B5 Servicing and access is designed to minimise conflicts with pedestrians.</p>	<p>enhanced as a result across the site, and Stages 3 and 4 will visually and logistically integrate with the earlier Stages 1 and 2 development.</p>
<b>6.02 Heritage Conservation Areas</b>		
6.02.01 Alterations and additions in heritage conservation areas	<p><u>Contributory buildings</u></p> <p>4. The appearance of a principal or significant frontage should generally be conserved and should not be significantly altered. Alterations and additions may be possible to the rear of contributory buildings where they do not significantly alter the appearance of principal and significant façades.</p>	<p><b>Complies on merit.</b></p> <p>The proposal has been amended to reduce its perceived impact on the retained contributory facades. The proposal complies on merit with the requirements to conserve the scale of the host building, regarding the proposed additions above 105 &amp; 111 Hunter Street.</p> <p>It is noted this section of the NDCP 2012 is more relevant to development in low scale residential areas and does not specifically relate to the particular constraints of this site. Rather than reflecting the architectural style of the contributory buildings, the development has been designed in a style that allows it to be clearly identified as an addition, in accordance with conservation principles. This is considered to be an appropriate design approach on this site. It is further noted that building mass has been redistributed away from the heritage listed item at 121 Hunter Street which is strongly supported.</p>
6.02.02 Materials and details in heritage conservation areas	<ol style="list-style-type: none"> <li>1. A high proportion of the construction material from the host building are recycled and incorporated in the new additions.</li> <li>2. The proposal builds on the materials, colours and detail seen throughout the area and which reflect the character of local precincts.</li> <li>3. The materials palette proposed in an alteration and addition reflects the original design and appearance of the host building.</li> </ol>	<p><b>Complies.</b></p> <p>The proposal includes the retention and restoration of original and significant features of the Municipal Building (3N) and contributory building facades at Nos. 105 &amp; 111 Hunter Street.</p> <p>The use of new materials will be complementary to the listed items, though will also clearly distinguish the new buildings works. The CMP has guided the</p>

**Table 17: NDCP 2012 Compliance Assessment**

Section	Controls	Assessment
	4. Traditional building elements including windows, doors, hardware, chimneys, verandahs, wall surfaces and other characteristic features of the building, are retained and repaired.	conservation works and design of new elements in accordance with conservation principles.
6.02.03 Accommodating vehicles in heritage conservation areas	1. Garages and carports are sited at the rear or behind the building line of the existing house. 7. Sandstone kerbing is not to be disturbed.	<b>Complies.</b> These controls generally relate to low scale residential development and are not relevant to this proposal. However, the proposal complies with the objectives of the control in that car spaces do not impact on the significant parts of the streetscape or heritage items and contributory buildings. The carparking proposed is provided in basements, with the basement entries located in Thorn and Laing Streets, where its impact is minimised. The sandstone retaining wall in the public domain is retained.
6.02.07 Infill development in heritage conservation areas	<u>Contributory buildings</u> 2. Contributory buildings are to be retained. <u>Character</u> 5. The character or style of new buildings relates to the overall character of the area. The design of new buildings should be influenced by the style of buildings within the street and the neighbouring buildings. 6. The character of an infill building harmonises with the style of its neighbours. In particular, the proposed building should avoid becoming a dominant element within the streetscape or being deliberately modern.	<b>Complies on merit.</b> The proposal includes new infill buildings surrounding the Municipal Building (3N) and the contributory buildings at Nos 105 and 111 Hunter Street. The infill buildings have generally been designed to reflect the character of surrounding development within the context of the approved Concept DA (as modified), which allows for larger development on the site and adjoining blocks. The buildings have generally been designed to interpret the character of the conservation area, although with an increase in scale. The varied heights and character of the buildings avoids a monolithic effect and allows for a better interpretation of the varied heights of traditional buildings in HCAs. It is acknowledged that Blackall House (No. 22 Newcomen Street) is a contributory building, however its removal was approved as part of the Concept DA (as modified). In place of this

Table 17: NDCP 2012 Compliance Assessment		
Section	Controls	Assessment
		building is the Laing Lane Café and new pedestrian through-site link which is supported.
<b>7.03 Traffic, Parking and Access</b>		
Section 7.03 Traffic, Parking and Access	<p>Parking rates are defined within Table 1 – Parking Rates.</p> <p>Control 8 reads as follows:</p> <p><i>Car parking is provided in accordance with the rates set out in Table 1 – Parking rates, except for car parking for development in the Newcastle City Centre, Renewal Corridors, The Junction and Hamilton B2 Local Centre zone and Darby Street Mixed Use zone. Council may vary the rates within these areas, subject to merit assessment of the proposal.</i></p>	<p><b>Complies on merit.</b></p> <p>Whilst 7.03 of the NDCP 2012 applies to the proposal, condition 19 of the Concept DA (as modified) requires parking for each stage of the development to be provided in accordance with either the NDCP 2012 or the applicable standard at the date of lodgement. As this DA was lodged prior to the NDCP 2023 being adopted, technically it does not have application.</p> <p>Notwithstanding, regard is had to NDCP 2023 considering the general strategic shift CN have made toward reducing car dependency, and acknowledging the updated Traffic and Parking Report (<b>Attachment 2R</b>) provided by the Applicant, the justification for the deficient residential visitor parking supply, per the NDCP 2012 rates, is considered supportable on merits (as discussed further in <b>Section 6.4.1</b> of this report).</p>

### Newcastle Development Control Plan 2023 ('NDCP 2023')

The key controls contained within Chapter D4 Commercial of the NDCP 2023 of relevance to the proposal are addressed in the table below.

Table 18: NDCP 2023 Controls summary table – Section D4 – Commercial Development		
Section	Controls	Assessment
9. Streetscape and front setbacks	C-1. Within established areas the front setback is consistent with those of adjoining development. Some variations to the prevailing setbacks can be considered particularly where such variations are used to create streetscape variety and interest.	<p><b>Complies on merit.</b></p> <p>The proposed buildings maintain nil front setbacks below the street wall height, which is consistent with prevailing development in the CBD. This is supported, considering the rigorous design competition and refinement processes the scheme has undergone.</p>



**Table 18: NDCP 2023 Controls summary table – Section D4 – Commercial Development**

Section	Controls	Assessment
10. Side and rear setbacks	<p>C-1.Design is to:</p> <ul style="list-style-type: none"> <li>a. ensure adequate natural light, ventilation and privacy between buildings</li> <li>b. protect public tree assets</li> <li>c. consider the impact on solar access and private open space of adjoining dwellings.</li> </ul>	<p><b>Complies.</b></p> <p>Solar access and overshadowing requirements are prescribed within the ADG, and these prevail over those within the DCP. Refer to the detailed assessment within Attachment 12 for further discussion.</p> <p>The proposal is acceptable subject to the retention and protection of the existing mature trees along Newcomen Street. It is noted the street trees within the East End mall development area have approval to be removed.</p>
11. Street activation	<p>C-1. Activated street edges are to be provided at the interface to the public domain at ground level.</p> <p>C-2.Ground floor retail and business uses provide multiple pedestrian accesses along the street frontage.</p> <p>C-4. A minimum of 50% of a building's primary frontage is an 'active frontage', except in the Newcastle city centre where this is to be a minimum of 70% of a building's primary frontage.</p> <p>C-6. Outdoor dining considers potential impacts on the amenity of surrounding residences and businesses.</p>	<p><b>Complies.</b></p> <p>The proposal will deliver a significant improvement in terms of ground plane activation and vitality for the CBD because of the retail/commercial premises proposed. The Laing Lane café would further enhance activation of the site.</p> <p>The retail/commercial premises open up onto the Market Square public domain offering, which assists in creating a welcoming and usable public area.</p> <p>The ground floor levels for 3W, 3N, 3S, and 4N comprise retail/commercial premises with frontages as follows:</p> <p>3W: The entire Hunter and Laing Street frontages are active. The buildings eastern frontage (opening onto Market Square) is also entirely active.</p> <p>3N: The entire Hunter Street frontage and western frontage (opening on Market Square) are active.</p> <p>3S: The northern and western frontages (opening onto Market Square) are active.</p> <p>4N: the entire Hunter Street frontage is active, as well as the frontage at the Morgan Street junction.</p>

**Table 18: NDCP 2023 Controls summary table – Section D4 – Commercial Development**

Section	Controls	Assessment
		The Acoustic Report ( <b>Attachment 2AA</b> ) provided in support of the application takes into consideration potential acoustic impacts upon nearby receivers. The report concludes the retail/commercial premises can operate within an acceptable noise criteria subject to recommended conditions. Further conditions have been recommended having regard to necessary mitigation measures.
13. Amenity – internal and neighbour	<p>C-2. Maximise natural daylight access by limiting enclosed spaces and rooms along the building perimeter.</p> <p>C-3. Promote natural cross ventilation with building design using narrow floor plates and operable windows on opposing facades.</p> <p>C-4. Opening windows should be located away from site conditions that would lead to them not being opened or used, examples being busy roads, noisy equipment, and sources of odour.</p> <p>C-5. Locate and design communal open space to benefit from daylight and natural ventilation.</p> <p>C-7. For an adjoining dwelling, the living room window and principal private open space receives at least two hours of direct sunlight between 9am and 3pm on winter solstice. Where the window or principal area of private open space is already overshadowed, solar access is not further reduced.</p>	<p><b>Complies.</b></p> <p>Amenity requirements in relation to cross ventilation and solar access for the proposed and adjoining residential uses are prescribed within the ADG, and these prevail over those within the DCP. Refer to the detailed assessment within Attachment 12 for further discussion.</p> <p>The commercial premises will be provided with sufficient solar access and cross ventilation, as demonstrated in the accompanying architectural plans (<b>Attachments 2A – 2E</b>). Furthermore, the commercial premises open onto the public domain space within Market Square, which sits between buildings 3W and 3E. This increases solar access, cross ventilation, and outlook for the commercial premises.</p>
13. Views and privacy	<p>C-1.Existing views from dwellings are not substantially affected where it is reasonable to design for the sharing of views.</p> <p>C-2.Grand vistas and views from dwellings which are recognised and valued by the community are not unreasonably obscured by development.</p> <p>C-3.Views to heritage or familiar dominant landmarks from dwellings are not unreasonably obscured.</p>	<p><b>Complies.</b></p> <p>In accordance with the explanatory note, where views are potentially compromised, an assessment of the view loss must be undertaken having regard to 'Views – General Principles' of the NSW Land and Environment Court (<i>Tenacity Consulting v Warringah Council</i> [2004] NSWLEC 140) (Tenacity).</p> <p>The Applicant provided a view loss assessment undertaken in</p>

**Table 18: NDCP 2023 Controls summary table – Section D4 – Commercial Development**

Section	Controls	Assessment
		<p>accordance with the 4 steps outlined in Tenacity. In addition, an independent consultant specialising in visual assessment and view loss was engaged to review the Applicant's reporting as part of the review application (ref. RE2024/00002). The Applicant's documentation relied upon for ref. RE2024/00002 remains unchanged and is submitted as part of the subject DA. The independent assessment therefore remains relevant.</p> <p>Refer to <b>Section 6.3</b> of this report for a detailed analysis in relation to public and private view impacts. It is noted the proposal is consistent with the approved Concept DA (as modified). Therefore, any associated impacts upon view sharing have already been considered and deemed to be acceptable.</p>
16. Utilities, services and site facilities	<p>C-1. Services, plant equipment and air conditioning units, at ground level and on structures, are screened from the street, public domain and neighbouring buildings by elements such as landscaping, fencing or walls, in a manner that reduces its visual dominance and reflects the desired character of the area.</p> <p>C-2. Substations are integrated into the overall building design, are complementary to the building fabric and wherever possible, not be located in public areas or be visible from the public domain.</p> <p>C-3. Ventilation stacks servicing basement garages are not located in the street setback or any common open space and should be concealed within the building.</p>	<p><b>Complies.</b></p> <p>Services including the proposed chamber substations are consolidated within the basement car parking areas. This siting ensures the substations will remain unseen from the public domain.</p>
17. Acoustic privacy	<p>C-1. Adequately address noise sources impacting residential habitable areas to ensure appropriate internal noise levels are achieved, including by reference to appropriate legislation, guidelines and standards. This may require applicants to obtain an acoustic report or a noise impact assessment from an appropriately qualified and experienced acoustic engineer to support their application.</p> <p>C-2. Exterior facades are designed to minimise the opportunity for sound transmission.</p>	<p><b>Complies.</b></p> <p>The Applicant has provided an Acoustic Report which addresses potential sources of acoustic emissions from the adjoining roadways, plant and associated equipment, as well as likely operational noise from the commercial premises (<b>Attachment 2AA</b>). The proposal</p>

**Table 18: NDCP 2023 Controls summary table – Section D4 – Commercial Development**

Section	Controls	Assessment
	<p>C-4. Mechanical plant and equipment are designed and located to minimise noise nuisance.</p> <p>C-5. For development that is proposed to operate during any part of the period 9pm to 6am, the acoustic impacts from the movement of persons to and from the development upon residential and other sensitive land uses are to be specifically assessed. The application must demonstrate that the acoustic impacts from the development and the movement of people associated with the development, does not result in new or increased adverse amenity impacts to such uses.</p>	<p>is acceptable subject to the imposition of conditions.</p> <p>Acoustic amenity considerations have been addressed in further detail within <b>Section 6.7</b> of this report.</p>

**(d) Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act**

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

**(e) Section 4.15(1)(a)(iv) - Provisions of Regulations**

Clause 61(1) stipulates that a consent authority must consider the Australian Standard AS 2601—2001: *The Demolition of Structures* when assessing a proposal that involves demolition of a building. As the proposal includes demolition of Blackall House and minor structures, compliance with this Australian Standard will be enforced via a condition of consent, per **Attachment 1** of this report.

There are no provisions of the EP&A Reg 2021 which are relevant to the consideration of the subject DA.

**4.4 Section 4.15(1)(b) - Likely Impacts of Development**

The likely impacts of the proposed development are considered in **Section 6** of this report.

**4.5 Section 4.15(1)(c) - Suitability of the site**

The suitability of the site for the proposed development is considered in **Section 6** of this report.

**4.6 Section 4.15(1)(d) - Public Submissions**

Submissions received are considered in detailed in **Section 5** of this report below.

**4.7 Section 4.15(1)(e) the public interest**

The suitability of the site for the proposed development is considered in **Section 6** of this report.

## **5. REFERRALS AND SUBMISSIONS**

### **5.1 Agency Referrals and Concurrence**

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act 1979 and this is outlined below in **Table 19**. There are no outstanding issues arising from these concurrence and referral requirements, subject to the imposition of the recommended conditions of consent.

Table 19: Concurrence and Referrals to agencies			
Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
<b>Referral/Consultation Agencies</b>			
TfNSW	Section 2.122(4) of the Transport and Infrastructure SEPP - Traffic-generating development.	No objection and no recommended conditions.	Yes
Ausgrid	Section 2.48 of the Transport and Infrastructure SEPP	No objection is raised, and conditions are recommended. Information is provided in relation to the construction of the development only.	Yes
<b>Integrated Development (Section 4.46 of the EP&amp;A Act 1979)</b>			
Subsidence Advisory NSW	Section 22 <i>Coal Mine Subsidence Compensation Act 2017</i>	<p>The application was referred to Subsidence Advisory NSW for comment. Conditional approval has been provided by the authority, in accordance with Section 4.47 of the EP&amp;A Act 1979.</p> <p>An additional condition has been included in the recommended Schedule of Conditions (refer to <b>Attachment 1</b>) requiring the development to comply with the Subsidence Advisory NSW GTA's.</p>	Yes
HNSW	No trigger.	<p>The Christ Church Cathedral is a state listed heritage item (Listing no. 01858) and is within proximity of the subject site.</p> <p>HNSW provided its advice in relation to the proposal and matters for CN's consideration.</p> <p>The referral references the comments provided to CN in 2016 in relation to the Concept DA, and that the building envelopes have been increased <i>"such that views from the Market Place and Queens Wharf Promenade to the Cathedral will be diminished."</i> The referral goes on to state that <i>"In addition, increment in the building envelopes further encroaches on the views from the Cathedral Park towards north and northeast, such that the views to the water are significantly lost."</i></p>	No



**Table 19: Concurrence and Referrals to agencies**

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
		<p>As discussed in <b>Section 6.4.2</b> of this report, HNSW has not commented on the aspects of the view opportunities that are able to be delivered, following approval of ref. <b>RE2024/00002</b>, or the removal of approved built form from atop of the Municipal Building (3N) and the enhanced development outcome these two factors will deliver.</p> <p>Notwithstanding, this matter was considered as part of the assessment of ref. <b>RE2024/00002</b> where it was concluded that the proposed heights and building envelopes were acceptable.</p> <p>Conditions are recommended in relation to archaeological management and these have been included in the Draft Schedule of Conditions at <b>Attachment 1</b>.</p> <p>The full referral response received by HNSW is provided as <b>Attachment 8</b> to this report.</p>	
HNSW	Section 90 National Park & Wildlife Act 1974	<p>The application was referred to HNSW for comment in relation to Aboriginal cultural heritage matters, pursuant to Section 90 of the <i>National Parks and Wildlife Act 1974</i> ('NPW Act 1974') (refer to complete referral comments at <b>Attachment 9</b>).</p> <p>GTAs have been provided for those known Aboriginal sites which would require an AHIP pursuant to Section 90 of the NPW Act 1974.</p> <p>Additional conditions have been included in the recommended Draft Schedule of Conditions (refer to <b>Attachment 1</b>) to satisfy the recommendations raised within the HNSW referral response.</p>	Yes
WaterNSW	Section 90(2) Water Management Work Approval under <i>Water Management Act 2000</i>	<p>The application was referred to WaterNSW and GTAs have been provided.</p> <p>Additional conditions have been included in the Draft Schedule of</p>	Yes

Table 19: Concurrence and Referrals to agencies			
Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
		Conditions (refer to <b>Attachment 1</b> ) to satisfy the recommendations raised within the WaterNSW referral response.	
Department of Planning and Environment - Water ('DPE – Water')	Section 91 Controlled Activity Approval under <i>Water Management Act 2000</i>	The application was referred to DPE – Water who confirmed that the proposed works are regulated by WaterNSW and that DPE – Water did not have any comments to provide. WaterNSW are the relevant authority to carry out the assessment.	Yes

## 5.2 Internal Referrals

The development application has been referred to various CN officers for technical review as outlined in **Table 20**.

Table 20: Consideration of CN Referrals		
Officer	Comments	Resolved
Engineering (Flooding & Stormwater)	The assessment has considered flooding, stormwater, and stormwater connection across the public domain. All three aspects are deemed acceptable, subject to the imposition of conditions.	Yes
Engineering (Traffic & Public Domain)	An assessment of parking, traffic, and the public domain has been completed and the proposal is consistent with ref. <b>RE2024/00002</b> with respect to parking numbers and access arrangements and are therefore acceptable subject to the imposition of conditions. Refer to complete referral comments at <b>Attachment 13</b> .	Yes
Waste Services	The development has been considered having regard to CNs waste management requirements and is satisfactory.	Yes
Environmental Health	An assessment of the proposal having regard to contamination and remediation, acoustic amenity, and acid sulfate soils has been completed (refer to complete referral comments at <b>Attachment 10</b> .) <u>Contamination and Remediation</u> Regarding remediation (pursuant to the submitted RAP at <b>Attachment 2WW</b> ), the site will be validated, and a report submitted to Council and/or the Principal Certifying Authority.	Yes

**Table 20: Consideration of CN Referrals**

Officer	Comments	Resolved
	<p>Council supports this method and will ensure compliance via conditions.</p> <p>Conditions have been included in the recommended Draft Schedule of Conditions (refer to <b>Attachment 1</b>) to satisfy the recommendations raised within the EH referral response.</p> <p><u>Acoustics</u></p> <p>The Acoustic Assessment (provided at <b>Attachment 2AA</b>) is accepted, and necessary conditions have been included in the recommended Draft Schedule of Conditions (refer to <b>Attachment 1</b>). This includes a condition which specifies any commercial premises not seeking to be licensed, is to be restricted to trading hours until 10pm to ensure acoustic amenity for neighbours.</p> <p><u>Acid Sulfate Soils</u></p> <p>Acid Sulfate Soils have not been identified at depth and as such will not need to be managed during construction. No conditions are required in relation to this matter.</p>	
Heritage	<p>The supporting heritage documentation provided by the Applicant has been assessed and, subject to the imposition of conditions the application is satisfactory (refer to complete referral comments at <b>Attachment 11</b>).</p> <p>The proposal involves the retention and conservation of the former Municipal Building (Listing no. I403). The conservation of the Municipal Building facade and its adaptive reuse will ensure the preservation of the building and rectification of previous damage and vandalism, noting the building is currently unused and in poor condition. Conditions have been recommended to ensure protection of the building and façade during construction, and that any extant internal heritage fabric is surveyed and salvaged for retention/re-use.</p> <p>The retention of the contributory facades of Nos. 105 and 111 Hunter Street are supported, and the siting of the vertical additions (behind the decorative parapets) allows for clear separation and distinction between the heritage components and the new building work.</p> <p>With regard to the demolition of Blackall House, conditions are recommended requiring archival recording and salvaging of any extant materials.</p> <p>The locally listed 'Retaining Walls and Sandstone Steps' (Listing no. I477) are to be retained, and the adjacent footpath, as part of the proposal, is to be regraded to a lower height than the retaining wall. This is supported from a heritage perspective.</p>	Yes

Table 20: Consideration of CN Referrals		
Officer	Comments	Resolved
Assets	The proposal is satisfactory subject to the imposition of conditions which are included in the recommended Draft Schedule of Conditions (refer to <b>Attachment 1</b> ).	Yes
Land Information Services (Addressing)	Standard conditions of consent have been included in the recommended Draft Schedule of Conditions (refer to <b>Attachment 1</b> ).	Yes
Building	Standard to conditions of consent have been included in the recommended Draft Schedule of Conditions (refer to <b>Attachment 1</b> ).	Yes
City Greening	Conditions of consent have been included in the recommended Draft Schedule of Conditions (refer to <b>Attachment 1</b> ).	Yes
Specialist Planner (Housing SEPP ADG)	The proposal is generally compliant with the ADG numeric provisions, and where a variation is proposed, the design guidance is achieved. Considering the significant design review and testing the proposal has undergone and the design excellence its exhibits, the proposal is supported with regard to ADG compliance.	Yes
UDRP	The UDRP provided support for the proposal in July 2023 and again in November 2024, noting the proposal is well conceived and documented, and clearly exhibits design excellence and satisfies all objectives of the ADG. Advice received from the UDRP in July 2023 and November 2024 is provided as <b>Attachment 4</b> and <b>Attachment 5</b> of this report.	Yes
Visual impact assessment	An independent visual and view expert was engaged by CN to peer review the Applicant's analysis of visual impacts and impacts to public and private views as part of the recent 8.2(1) review application (ref. <b>RE2024/00002</b> ). The independent report prepared as part of the assessment of ref. <b>RE2024/00002</b> remains applicable, as the proposed built form remains unchanged from that approved under the review application. This report is provided at <b>Attachment 3</b> and the findings are discussed further in <b>Section 6.3</b> of this report.	Yes

### 5.3 Community Consultation

The proposal was notified in accordance with the CN's Community Participation Plan (CPP) from 31 May 2023 until 14 July 2023. Submissions were accepted until 31 October 2024. In response, a total of 29 submissions were received, comprising 26 objections and three in support of the proposal.

The three submissions received in support of the proposal commented on aspects relating to activation and revitalisation of the east-end city centre, increased safety, economic viability, enhanced vibrancy for the city centre, and increased visitor and tourism draws.

In relation to the objections, the primary issues raised within are discussed in **Table 21** below.

<b>Table 21: Community Submissions</b>	
Issue	Assessment Comments
Public view impacts (Christ Church Cathedral)	<p>Ref. RE2024/00002 was recently approved by HCCRPP, in turn permitting an increase in building heights and FSR across Stages 3 and 4. It is therefore crucial to note the proposal is consistent with the approved Concept DA (as modified).</p> <p>The loss of views from isolated distant locations across the harbour were considered in detail during the assessment of ref. <b>RE2024/00002</b>. It was identified that additional impacts are reasonable when balanced against the considerable public benefits arising, which include the delivery of the Harbour to Christ Church Cathedral view corridor.</p> <p>Detailed discussion in relation to public view impacts is provided in <b>Section 6.3</b> of the report.</p>
Private view impacts	<p>A comprehensive assessment of private view impacts has been undertaken by the Applicant in accordance with established caselaw (<i>Tenacity</i>). In addition, an independent consultant was engaged by Council to peer review the findings of the applicant as part of ref. <b>RE2024/00002</b>. The built form remains unchanged from that approved under ref. <b>RE2024/00002</b>. Therefore, the findings of the independent assessment remain applicable to the proposal.</p> <p>Whilst some view losses resulting from the proposal are acknowledged, on balance, they are considered acceptable. In many instances, the view loss which is objected to is the result of the originally approved Concept DA (ref. <b>DA2017/00701</b>).</p> <p>Detailed discussion in relation to private view impacts is provided in <b>Section 6.3</b> of the report.</p>
Insufficient car parking	<p>The proposal is consistent with the Concept DA (as modified) and provides 304 parking spaces on-site across Stages 3 and 4. The deficit of 26 residential visitor parking spaces can be adequately accommodated within public car parks and on-street parking in vicinity of the site, as confirmed by the Applicant's Traffic and Parking Assessment (<b>Attachment 2R</b>). It is also important to note the strategic modal shift between NDCP 2012 and NDCP 2023, including changes from prescribed minimum car parking rates to a merit-based assessment and decreased private car dependency.</p> <p>It is also noted a condition was imposed as part of the Concept DA (as modified, under ref. <b>RE2024/00002</b>), that the shortfall of 26 visitor parking spaces be offset with 26 additional bicycle spaces. The Applicant indicated within the Statement of Environmental Effects this provision will be located close to the entries of all five buildings. A condition of consent is recommended that requires the precise locations to be detailed at the CC stage.</p> <p>Car parking is discussed in further detail in <b>Section 6.4.1</b> of this report.</p>
Heritage impacts	<p>Concerns were raised the proposal would reduce the prominence and historic heritage setting of the Christ Church Cathedral. The proposal is consistent with the approved Concept DA (as modified), and therefore any associated impacts upon the surrounding heritage setting as a result of the building envelopes has already been considered and deemed to be acceptable.</p>



**Table 21: Community Submissions**

Issue	Assessment Comments
	<p>The Harbour to Cathedral view corridor is delivered as part of the proposal, and the angled building footprint of 3W furthermore enhances the heritage outcome of the proposal, as an additional viewing corridor is created from the Hunter and Thorn Street junction toward the Cathedral.</p> <p>The proposal provides for an outcome in line with original town planning schemes for the City of Newcastle envisaged by Dangar in 1823 and will contribute to improving the relationship between the Cathedral and the Newcastle City Centre.</p> <p>Heritage matters are discussed in further detail in <b>Section 6.5</b> of this report.</p>
Height limit exceedances	<p>Ref. <b>RE2024/00002</b> was recently approved by HCCRPP, in turn permitting an increase in building heights and FSR across Stages 3 and 4. It is therefore crucial to note the proposal is consistent with the approved Concept DA (as modified).</p> <p>Whilst it is acknowledged the proposal exceeds the prescribed maximum building heights, the variations sought have been approved as part of the concept DA (as modified). The subject DA is therefore not required to be supported with a Clause 4.6 written request, per the LEC ruling in <i>Karimbla Property (No. 59) Pty Limited v City of Parramatta Council [2023]</i> NSWLEC 1365. Notwithstanding, the Applicant's 4.6 request has been considered as part of this assessment, as set out within <b>Section 4.3</b> of this report.</p> <p>The height exceedances proposed enable the delivery of the Harbour to Cathedral view corridor. In addition, the variance in heights reinforces the notion of a playful and varied skyline, which is characteristic of Newcastle.</p> <p>Detailed discussion in relation to building height is provided in <b>Section 4.3</b> of this report.</p>

## **6. LIKELY IMPACTS OF THE DEVELOPMENT, SITE SUITABILITY, AND THE PUBLIC INTEREST**

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For the purposes of this assessment, the likely impacts of the proposal have been grouped into the following themes:

- Architectural Design
- Public Domain & Landscaping
- Visual and View Impacts
- Traffic, Access and Parking
- Heritage
- Overshadowing and Solar Access
- Acoustic Amenity
- Waste Management
- Ecologically Sustainable Development
- Social and Economic Impacts

In addition, the suitability of the site, and the public interest in relation to the proposal is also discussed in this section of the report.

### **6.1 Architectural Design**

#### **6.1.1 Architectural Design Competition**

The proposal is the winning scheme from the competitive architectural design competition that was held in relation to the site. Four competitors submitted their respective designs for the Stage 3 and 4 developments in accordance with a robust Design Competition Brief that was endorsed by CN and GANSW.

During the preparation of the competition brief, demolition of the former Council Car Park site occurred, which was not previously envisaged. Subsequently, the DCP defined view corridor from the Harbour to Christ Church Cathedral could be realised, and this in turn formed a fundamental criterion of the brief. The DCP defined view corridor is illustrated below in **Figure 28** for reference.



**Figure 28:** Hunter Street key precinct map. View corridor identified by blue horizontal lines. Source: NDCP 2023

The re-arrangement of building mass from the centre of the Stage 3 site was approved pursuant to ref. **RE2024/00002**. The detailed proposal is consistent with the approved Concept DA (as modified).

In the opinion of the Jury, this scheme was the most capable of achieving design excellence. The Jury identified the following elements that contributed to the scheme's success, and were noted to be essential throughout any further refinement processes:

- The demonstrated alignment with the Concept DA and the re-distribution of the massing out of the central view corridor towards other parts of Stage 3 and Stage 4.
- The overall urban arrangement, and the spatial relationships between each building.
- The distinct character of each building which results in a composition of complementary group of buildings, including the Stage 3 South building's unique relationship to the sky.
- The arrangement of Market Square and the perimeter colonnade.

- The address of the Stage 4 South building to the corner of Newcomen and King Streets and its relationship with the Newcastle Club.
- The consolidation of basement access to enable optimal activation opportunities.
- The internal amenity of the apartments.

However, certain matters were raised by the Jury which required further consideration as part of future design development. The winning scheme therefore underwent further refinement ahead of the detailed DA being lodged with CN. This involved six DIP meetings as well as two UDRP meetings.

The matters raised by the Jury for further consideration are itemised within the Applicant's SEE.

Following the refinement of the winning architectural scheme, the DIP endorsed the lodgement of the detailed DA to CN. The proposal is therefore considered to exhibit a very high standard of architectural design, such the form and external appearances of the development will improve the quality and amenity of the public domain and will not detrimentally impact upon view corridors identified in the NDCP 2012 (and NDCP 2023) in accordance with Clause 7.5(3) of NLEP 2012.

#### **6.1.2 Built form, bulk and scale**

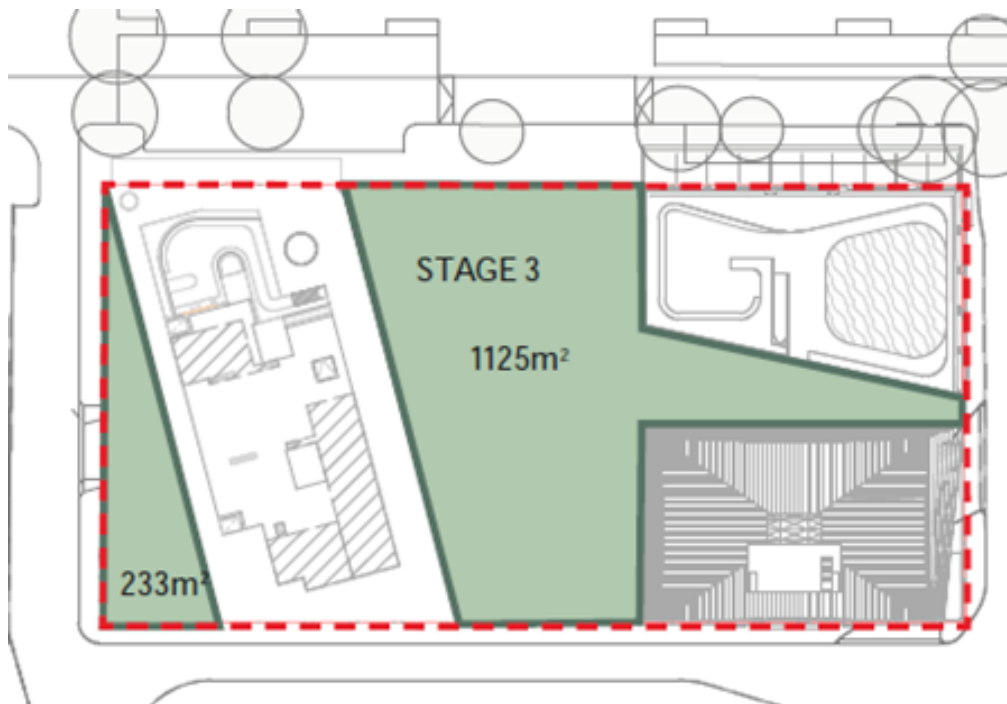
A Design Report, DCP assessment and an ADG assessment (i.e. Housing SEPP assessment) have been prepared by the Applicant (refer to **Attachments 2G, 2RR, 2F** respectively) which include an assessment of the built form, bulk and scale of the proposal.

The proposal is consistent with the approved Concept DA (as modified) and represents a betterment of the endorsed winning architectural scheme from the design competition. The built form has been subject to rigorous testing and refinement and was deemed to be the most suitable solution for the site.

The built form has been designed to architecturally respond to the site's context and surrounding streetscape character. The Stage 3 and 4 developments will integrate seamlessly with Stages 1 and 2 and will deliver a public domain outcome in accordance with that envisaged within the NDCP 2012 via Market Square and the delivery of the Harbour to Christ Church Cathedral view corridor.

Key built form attributes include the variation of building heights and floorplates across Stages 3 and 4, proposed materiality that is both reflective of Connecting with Country principles and the surrounding heritage setting, and retention of contributory facades at Nos. 105 and 111 Hunter Street.

Building 3W comprises an angled building footprint, with increasing side setbacks from its western (side) boundary, from nil to 11.2m. This angled footprint allows for an enhanced public domain area, and it also delivers an additional viewing corridor to the Cathedral from the Thorn and Hunter Street junction. A secondary public open space area, measuring 233 m<sup>2</sup> in area, is provided to the west of the building as a result of the angled footprint. This is demonstrated in **Figure 29** below.



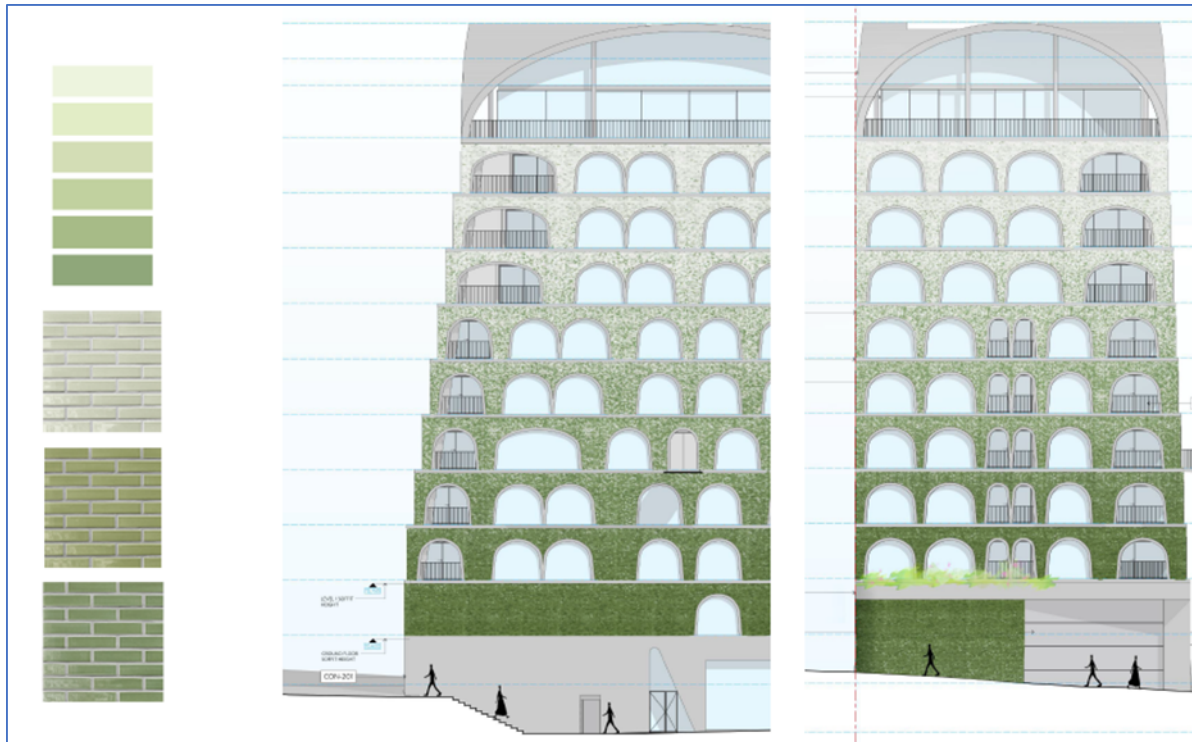
**Figure 29:** Stage 3 Public Domain. Source: Urbis

3E has been sensitively designed such that the locally listed Municipal Building (3N) retains its original external fabric and setting within the broader mixed-use development. The removal of any massing from atop of 3N also assists in offsetting the greater height of the adjacent building behind (3S).

Building 3S has a relatively small building footprint which is further reduced as it increases in height, through a gradual stepping of each additional level. This tapered form, which is topped by a simple domed roof, is playful but carefully considered.

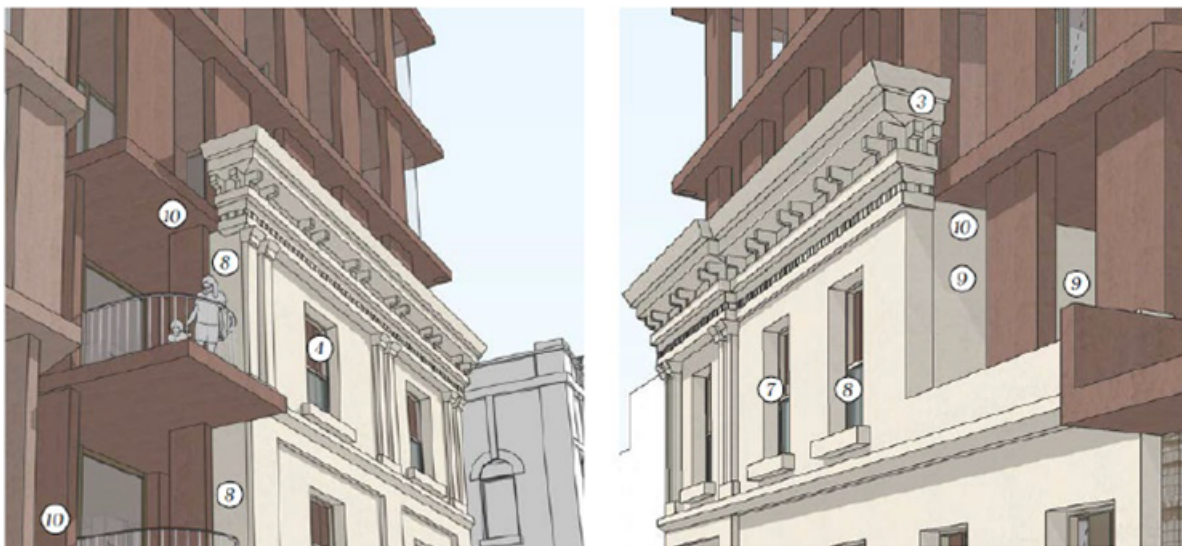
The materiality of this building is of a high quality, with darker more solid green tones across the lower portion of the building, which transitions to lighter, pale green glazed brickwork at the top (refer to **Figure 30** below).





**Figure 30:** Proposed materiality for Building 3S – glazed green brickwork. Source: Urbis

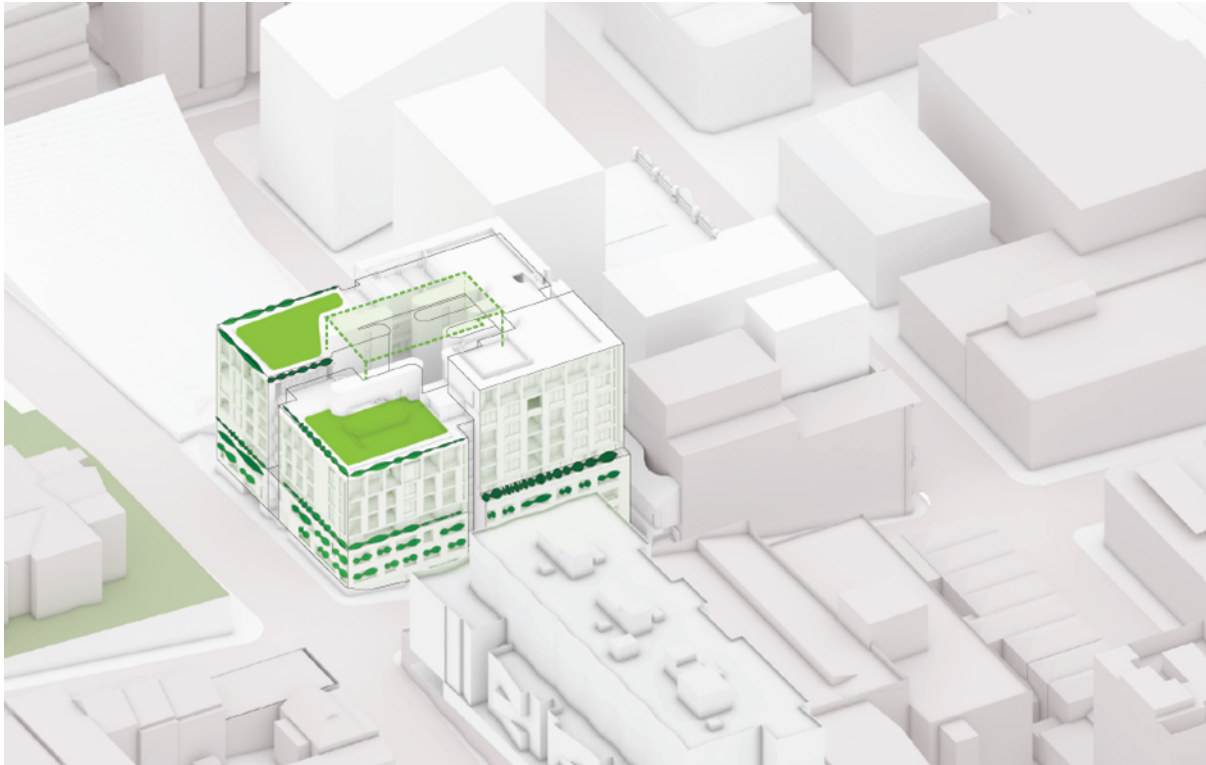
4N retains both the Hunter Street and Morgan Street contributory facades of Nos. 105 and 111 Hunter Street (refer to **Figure 31** below). The high floor-to-floor dimensions of the original buildings are also retained, meaning the openings align appropriately. The new additions atop of the retained facades are setback behind the decorative parapets and are well articulated such that the heritage elements are readily identifiable from the new building works, as depicted in the extract below. Furthermore, sensitive building separation and open spaces have been incorporated to ensure reasonable amenity is maintained for the existing residents within the Newcomen Apartments (at Nos. 16-18 Newcomen Street).



**Figure 31:** Proposed retention of contributory facades. Source: Urbis

The upper levels of 4S are expressed in four cubic elements, with varying roof top levels that in turn provide an articulated, landscaped roofscape. The provision of landscaped open space

at such rooftops assists in the breakdown of the massing, via cascading plants and greenery. This is depicted in the landscaping design excerpt below in **Figure 32**.



**Figure 32:** Landscape design render for 4S. Source: Urbis

The five mixed use buildings, having been designed by three independent architectural firms, are not uniform in design, however the variety of building forms, heights, and materiality appears cohesive. The variation in building height was preferred by the panels, in comparison to a homogenous form. The built form is visually interesting, and the diversity of profiles and rooftops has been commended by the design panels.

### **6.1.3 Connecting with Country**

The proposal has been designed having regard to the GANSW “Connecting with Country” Framework, as commended by the competition Jury as well as the DIP and UDRP. Connecting with Country design principles have been incorporated throughout the proposal, including:

- Integration of aboriginal history, culture, and language
- Materiality and material responsibility
- The use of place and first nations participation in the life of the project
- Landscape architecture and native plant selection

These design principles have informed the following aspects of the proposal:

- Building 3W is proposed to be framed at the first floor with midden-like shell colour materials to connect the ground plane to Country principles of ‘shoreline’ and ‘rive and rockpool’.
- Material selections for 4N include midden-like materials, which integrate history and culture into the project. Similarly, 4S will incorporate elements of the midden story in

the through-site link to extend the Connecting with Country elements into private lobbies and the landscaped courtyard.

- The Country Wall on building 4S is to include midden and artefacts and will be designed in collaboration with an artist and community members.

An endorsement letter (refer **Attachment 2T**) was also provided by the First Nations community, who commended the Applicant team for the involvement requested from the community as part of the design development process.

#### 6.1.4 Harbour to Christ Church Cathedral View Corridor

The proposal facilitates the delivery of the NDCP 2012 (and NDCP 2023) prescribed Harbour to Christ Church Cathedral view corridor. This is consistent with the approved Concept DA (as modified). This is further re-enforced by the subtle tapering of the 3S building façade, which steps in with each additional storey.

In addition to the realisation of the view corridor from the Harbour and Market Street towards the Cathedral, an additional view corridor is also provided at the Hunter and Thorn Street junction as a result of the angled floorplate of building 3W. The tapered building envelope, with an increasing side setback from its western side boundary allows for a new view corridor to be delivered for the public.

Refer to **Figure 33** below for an excerpt of the Harbour to Cathedral view corridor to be delivered as part of the proposal.



**Figure 33:** Harbour to Christ Church Cathedral delivered as part of proposed development. Source: Urbis

## 6.2 Public Domain and Landscaping



### 6.2.1 Public Domain and Market Square

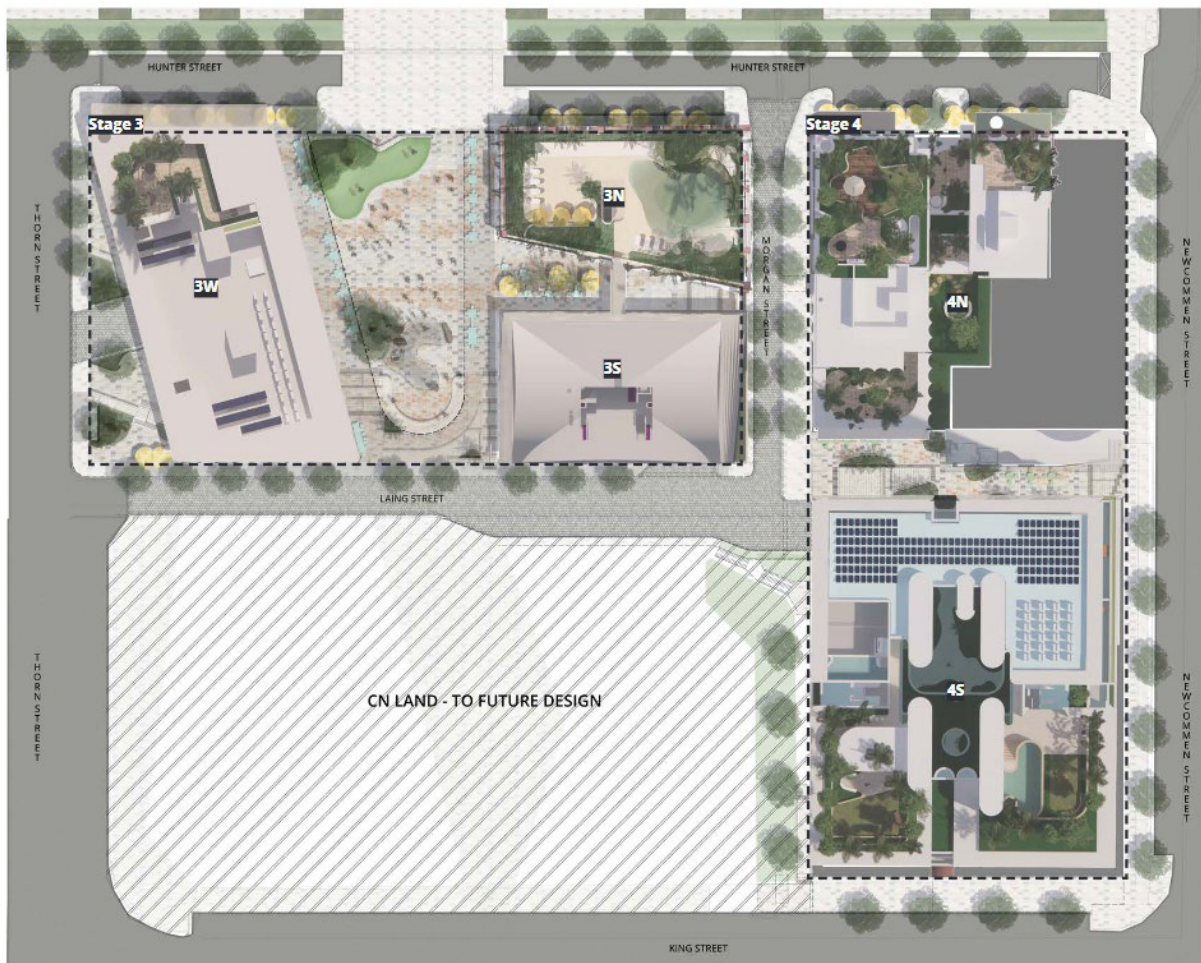
A new 1,125 m<sup>2</sup> public open space “Market Square” is provided in Stage 3, oriented in a north-south direction to visually connect the Harbour to the Christ Church Cathedral. This also provides an opportunity to connect the two points physically in the future, as part of the development of the former Council car park site.

As described by the Applicant, Market Square *“will accommodate commercial, and community uses that can spill out into the public realm and will be bordered by tree canopy cover. The landscaped elements contained within this central plaza include themed grasses and civic-scaled tree species which respond to the character and embellish the site with elements supported by First Nations community members.”*

The proposed public domain arrangement delivers a significant public benefit. It will improve ground plane activation and permeability through the site. The planning of this space is in keeping with the site's historic and originally intended use. Market Square is left open to possibility and will be able to adapt to the community needs including community markets. The Market Square space will be framed using a canopy-like structure, to enhance visual interest and create a subtle yet intentional framing for the space.

The ground floor activation, through provision of fine grain retail and commercial premises will also spill out onto this public domain area. This area will receive significant solar access through the summer months, as well as mid-winter.

Connecting with Country design principles have been incorporated across the ground floor and public domain areas, through landscaping, native species selection, and materiality that will embellish the space, with elements supported by First Nations community members. Refer to **Figure 34** below for an excerpt of the proposed public domain layout.



**Figure 34:** Proposed Public Domain. Source: Urbis

Furthermore, it is noted that the public domain area will fall under the ownership of the Applicant, and as set out within the draft 88B Instrument (**Attachment 2BBB**), an easement will be registered across this space to allow public access. This aligns with the existing arrangement of Stages 1 and 2. This will be enforced via a condition of consent.

Consistent with the approach adopted for Stages 1 and 2, the public domain works for Stages 3 and 4 will require the design and construction of public domain upgrade works within Hunter, Newcomen, King, Thorn, and Morgan Streets adjacent to the site at no cost to Council. This is inclusive of the following:

- Road shoulder pavement
- Kerb and gutter replacement
- Footway formation
- Footpaving
- Associated drainage works
- Street tree planting
- Retaining walls and vehicular safety barrier fencing
- Street furniture

It is recommended conditions be imposed requiring a full upgrade of the public domain across each frontage of the site. It is also recommended conditions be imposed that are consistent



with condition numbers 42 – 49 of the Concept DA (as approved, pursuant to ref. **RE2024/00002**) which relate to works in the public domain.

### 6.2.2 Landscaping

The proposal incorporates generous provisions of landscaping across the mixed-use buildings as well as the public open space areas. COLA Studio (the project landscape architects) have incorporated a range of suitable native trees, shrubs, and grasses of differing heights, colours, and textures, to soften the built form, incorporate connecting with country design principles, and provide functional amenity space for future residents and members of the public. The excerpts below (**Figures 35-37**) provide a sample of the proposed planting schedule and strategy.



**Figure 35:** Proposed Planting Selection. Source: COLA Studio



**Figure 36:** Proposed Planting Selection. Source: COLA Studio

## Overall Precinct Planting Strategy

*Native plaza - local native species that play with the civic character*



*Themeda - flowering arbor*



*Ferns + Palms - lowlight courtyards*



*Coastal native rooftops*



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COLA  
studio

**Figure 37:** Proposed Planting Strategy. Source: COLA Studio

The communal open space provisions across the five buildings are located atop 3W, 3N, 4N, and 4S. The rooftop communal area for 3W has been designed having regard to the river mouth and coastline features, incorporating cascading plants and a winding path that presents views toward the harbour. A sheltered patio is also provided for residents to enjoy, and the perimeter planting and planted balustrade areas are intended to spill over across the building façade.

The 3N communal area includes a rooftop terrace and pool area, with perimeter planting, and inset communal sun lounges and shade devices dispersed throughout. The species selection incorporates native trees, shrubs, and ground covers.

The 4N and 4S communal areas are split across various levels of the building, including ground floor, the laneway (adjoining the Laing Lane café) and rooftop levels (levels 4, 5, 8 and 9). The communal open area at level 8 (4S) includes a swimming pool in addition to soft and hard paved landscaped areas. The species selection varies between the ground floor and level 5, and those selected for the rooftop terraces at levels 8 and 9.

The Market Square public domain has been designed to represent a 'rockpool meets hill' connection with country. A low depth water feature is positioned to the south of the space, with an organic lawn shaped area fronting Hunter Street to the north. A curved awning will border the open space, which is to be adorned with midden-like artworks/materiality under the canopy, with cascading plants along its top. Furthermore, due to the angled building footprint of 3W, an additional landscaped area is to be provided along the Laing and Thorn Street interface.

## 6.3 Visual and View Impacts

The application is supported by a comprehensive assessment of both public and private view impacts. The documentation that was relied upon as part of the review application recently approved (ref. **RE2024/00002**) is also provided for the subject DA.

It is noted that for ref. **RE2024/00002**, an independent visual consultant was engaged by CN to review the documentation prepared by the Applicant. Considering the same documentation is relied upon for the subject DA, and the building envelopes remain unchanged from ref. **RE2024/00002**, the independent assessment remains valid and forms part of this assessment.

### 6.3.1 Public View Impacts

The Visual Impact Assessment ('VIA') (dated April 2023) (**Attachment 2M**), View Sharing and Visual Impact Assessment (dated February 2024) (**Attachment 2N**), and the Visual response to additional information (dated October 2024) (**Attachment 2O**) have been prepared by the Applicant to assess the impacts of the proposal on public views. It is crucial to note that the proposal is consistent with the approved Concept DA (as modified) and therefore the associated impacts upon public views have already been considered and deemed to be acceptable.

Notwithstanding, to assess public view impacts, 13 viewpoint locations were considered in the Applicant's assessment. This included three relevant View Corridors from NDCP 2012 and two additional viewpoint locations from Stockton foreshore requested as a part of an RFI issued during ref. **RE2024/00002**.

For the original 11 viewpoint locations (**Figure 38**) assessed, an assessment methodology was adopted *"based on a combination of established methods used in NSW. It includes concepts and terminology that included in the Guideline for landscape character and visual impact assessment, Environmental Impact Assessment practice note EIA -NO4 prepared by the Roads and Maritime Services December 2018 (RMS LCIA), and other more bespoke approaches developed over the last 30 years by academics at Sydney University."*

For the additional 2 locations (**Figure 39**) identified for assessment as a part of the 8.2(1) review application, the 'Rose Bay Principle' established in *Rose Bay Marina Pty Limited v Woollahra Municipal Council [2013] NSWLEC 1046* was adopted, with the following justification provided by the Applicant:

*"In the absence of any specific controls within the DCP for assessing the extent and importance of visual change from the nominated locations A and B, Urbis considered the intent and guidance set out in Rose Bay Marina Pty Limited v Woollahra Municipal Council [2013] NSWLEC 1046, commonly referred to as the Rosebay Planning Principle.*

*Rosebay is a widely applied and accepted, method of objectively assessing impacts of development on public domain views. It is the most cited and relevant principle to use and provides further rigour to any assessment of potential impacts on public views.*

*We consider Rosebay to be the appropriate methodology to use to assess the impact of the proposal from View A and B."*

The viewpoint locations assessed by the Applicant included the following:

- View 01 View south towards Newcastle CBD from Stockton Ferry Wharf
- View 02 View south-west towards site from Fort Scratchley Parade Ground
- View 03 View south-west towards site from Nobbys pedestrian walkway
- View 04 View south towards Cathedral from Market Place
- View 05 View south towards Cathedral from Queens Wharf promenade
- View 06 View north-east over site from Cathedral Park
- View 07 View north towards site from north side of the Cathedral

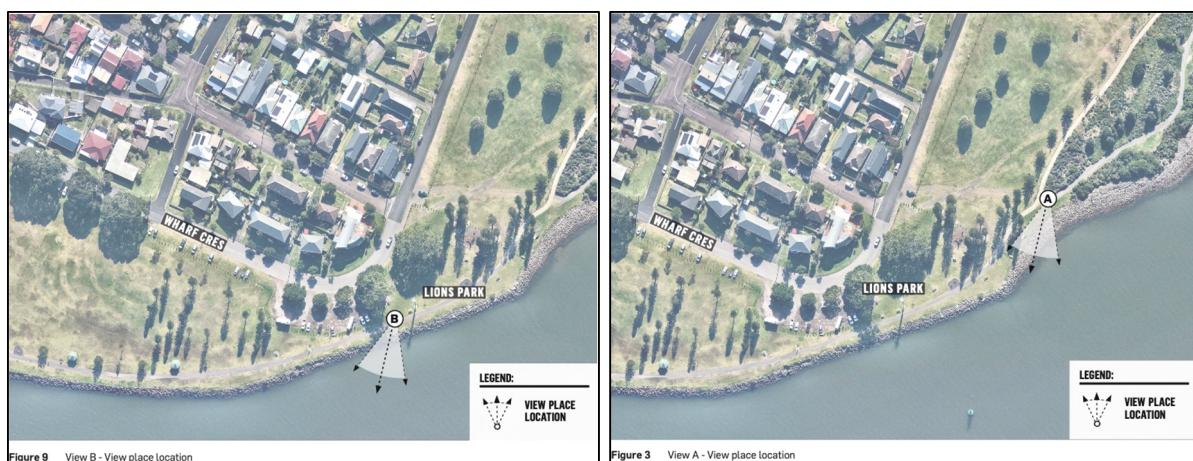


- View 08 View east towards site along Hunter Street
- View 09 View south towards Cathedral from The Station public domain
- View 10 View north over site from Cathedral Park steps
- View A View south towards Newcastle CBD from Pitt Street Reserve (Stockton)
- View B View south towards Newcastle CBD from Lions Park (Stockton)
- Unnumbered view corridor from Morgan Street (View corridor 17)

Of the viewpoint locations considered, V01, V04, V05 and the unnumbered view from Morgan Street looking southwest are the only view corridors identified within NDCP 2012.



**Figure 38:** Map of all viewpoints considered in the original VIA/Visual Addendum. Source: Urbis



**Figure 39:** Additional viewpoints from Stockton requested as a part of an RFI. Source: Urbis

A Visual Impact Assessment Review was prepared by the independent visual consultant (Envisage Consulting) to support the recently approved review application ref. **RE2024/00002 (Attachment 3)**.

**Figure 40** below is an extract from the independent visual consultant's report, which outlines the Urbis rating applied to each public viewpoint assessed, and whether this rating is agreed with.

**Table 2-1: Summary of public viewpoints illustrated by Urbis photomontages and impact levels (including my opinion)**

Public view	Description	Urbis rating	My response
NDCP View Corridor 17	Morgan Street, looking south west (from Hunter Street Mall)	Low	Agree
View 01 DCP View Corridor 21	View south towards Newcastle CBD from Stockton Ferry Wharf	Low	Medium (discussion section. 2.4.1)
View 02	View south-west towards site from Fort Scratchley Parade Ground	Low	Agree
View 03	View south-west towards site from Nobbys pedestrian walkway	Low	Agree
View 04 (DCP View Corridor 15)	View south towards Cathedral from Market Place (Cathedral to Harbour Corridor)	Low-medium	Agree
View 05 (DCP View Corridor 15)	View south towards Cathedral from Queens Wharf promenade (Cathedral to Harbour Corridor)	Medium	Agree
View 06	View north-east over site from Cathedral Park	Medium	Agree
View 07	View north towards site from north side of the Cathedral	Low	Agree
View 08	View east towards site along Hunter Street	Low	Agree
View 09	View south towards Cathedral from The Station public domain	Low	Agree
View 10	View north over site from Cathedral Park steps	Medium	Agree
View A	View south towards Newcastle CBD from Pitt Street Reserve (Stockton)	Low	Medium (discussion section. 2.4.2)
View B	View south towards Newcastle CBD from Lions Park (Stockton)	Low	Medium (discussion section. 2.4.2)

**Figure 40:** Independent visual consultant's summary of public viewpoints illustrated by Urbis photomontages and impact levels. Source: Envisage Consulting



Notably, there is a consensus between the Applicant and the independent consultant in relation to the rating which should be applied to 10 of the 13 public viewpoints considered. Furthermore, both the Applicant and the independent consultant acknowledged the proposal would result in substantial benefit when viewed from VP08 (Queens Wharf) and VP04 (Market Square), and the immediate surrounds of the subject development near Market and Hunter Street. This is achieved through the delivery of the view corridor from the Newcastle Harbour to the Cathedral which is depicted in **Figure 41** below.

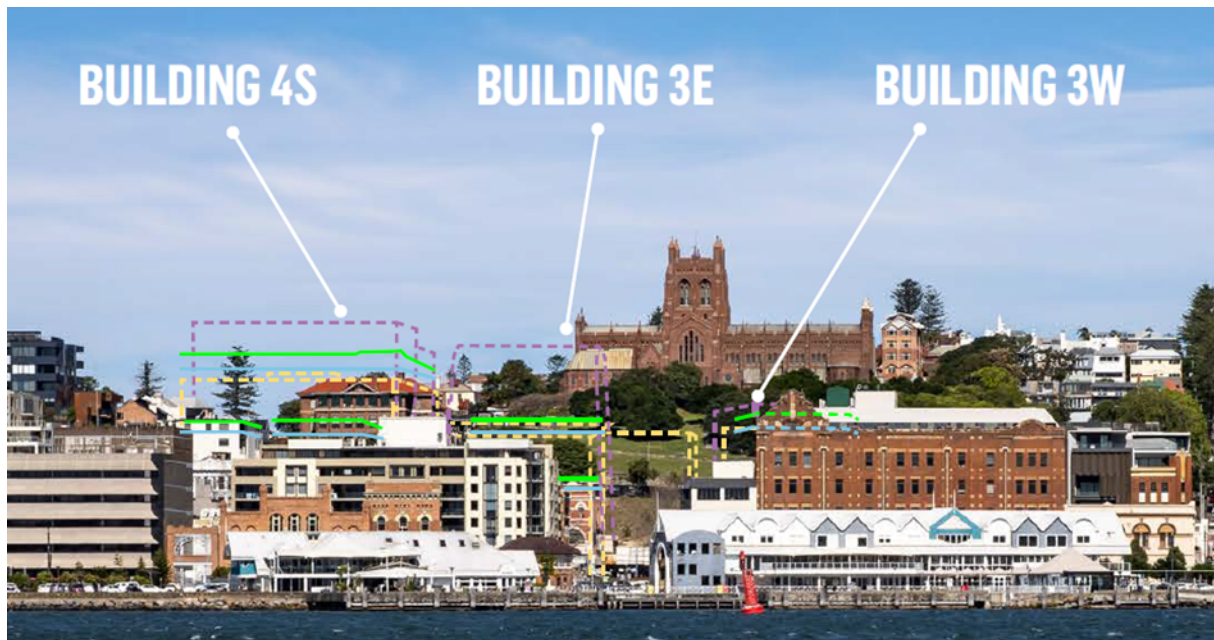


**Figure 41:** VP4 depicting the proposed detailed design, as approved under ref. RE2024/00002. Source: Urbis

However, the parties do not concur in relation to VP01, View A and View B. Specifically, the independent consultant states the following in relation to the additional impacts resulting from the proposal from Stockton foreshore:

*“...The upper storeys of Building 3S (dome), and to a lesser extent Building 4S, would reduce views of the Cathedral’s silhouette and its historic dominance of Newcastle’s city skyline from Stockton. That image of the Cathedral over the city is a valued view of Newcastle.”*

**Figure 42** and **Figure 43** below provide extracts of the abovementioned views and are also provided in **Attachment 2M** and **Attachment 2N** of this report.



**Figure 42:** VP1 depicting the originally approved concept in yellow and the now-approved modified concept envelopes in purple (approved under ref. **RE2024/00002**). Source: Urbis



**Figure 43:** VPB depicting the originally approved concept in yellow and the now-approved modified concept envelopes in purple (approved under ref. **RE2024/00002**). Source: Urbis

The independent assessment undertaken concludes the proposal allows for a public view corridor from Newcastle Harbour through to the Cathedral, which is the only location that such a direct view could occur. The public benefit of this view corridor is acknowledged as very positive and desirable.

The independent assessment also outlines the impacts of the proposal will include the loss of views of the full silhouette of the Cathedral on Newcastle city skyline from parts of Stockton. It is also noted the Cathedral is referred to in the State Heritage listing under the 'aesthetic significance' criteria as having 'landmark qualities, having dominated and defined the Newcastle skyline for many years'. The loss of view increases from just east of Stockton Ferry Wharf as one moves further east, being caused firstly by the upper storeys of Building 3S and

eventually also caused by Building 4S (upper 2-3 storeys) by the time Lions Park, Stockton, is reached.

Considering the Concept DA has now been modified to facilitate the winning architectural scheme (under ref. **RE2024/00002**) the resulting visual impact and public view loss has been deemed to be acceptable in the circumstances. The supporting reasons for this conclusion are provided below for reference:

- As discussed further in **Section 6.5** of this report, the visual role of the Cathedral referenced in the state heritage listing is primarily of relevance from the Newcastle City Centre as opposed to isolated locations on Stockton Foreshore.
- Whilst the proposal will obscure views to the Cathedral from viewpoints A and B on Stockton foreshore and partially reduce views to the Cathedral from VP01, the impact of views in these isolated locations is outweighed by the substantial public benefit of creating a visually connected view corridor, which extends from the Christ Church Cathedral through to the Queens Wharf and the Stockton Wharf.
- The proposal provides for an outcome in line with original town planning schemes for the City of Newcastle envisaged by Dangar in 1823 and will contribute to improving the visual relationship between the Cathedral and the Newcastle City Centre. This visual relationship between the Newcastle City Centre is what is of primary heritage importance in the circumstances, as opposed to views from isolated locations along the Stockton foreshore.
- The Harbour to Christ Church Cathedral view corridor is envisaged within the NDCP 2012 (View corridor 15) and was the primary desired public domain outcome identified within the architectural competition brief endorsed by both CN and the GANSW.
- Full views of the Cathedral will likely continue to be seen from the vast majority of the foreshore heading towards the Carrington Bridge beyond Stockton Ferry Wharf.

In addition to the above, the public view impacts associated with the proposal are also considered supportable from a landscape character perspective, as assessed by the UDRP Chair, Dr Pollard, in **Attachment 14**. The methodology of assessing landscape character facilitates a broader and more holistic consideration of specific geographic areas of high value in respect to its visual, heritage, social and other characteristic attributes.

#### Summary of assessment of public view impacts

The proposal is consistent with the approved Concept DA (as modified). Therefore, the associated impacts upon public views have already been considered and deemed to be acceptable, considering the building envelopes the subject of this DA remain as approved under ref. **RE2024/00002**. It is however recommended a condition be imposed to ensure a Reflectivity Statement be prepared by the Applicant.

It is acknowledged that some degree of public view impact will occur as a result of the proposal in isolated locations on Stockton foreshore. However, as concluded by the HCCRPP for ref. **RE2024/00002**, the additional impacts identified are reasonable when balanced against the considerable public benefits arising from the delivery of the Harbour to Christ Church Cathedral view corridor.

Further, from a landscape character perspective, the proposal results in a refined development outcome. Within an immediate urban context, the proposal will result in a significant visual improvement, whereas from afar, any associated impact would be low.

The proposed development will deliver a vital visual corridor between Christ Church Cathedral and the Harbour. The proposal will improve the public domain experience for residents, workers, and visitors alike. In addition, as discussed in **Section 6.5** of the report in further detail, it will also reinstate aspects of Dangar's 1823 plan which have been lost over time and

will contribute to improving the relationship between the Cathedral and the Newcastle City Centre.

### 6.3.2 Private View Impacts and View Sharing

As with the public view discussion above, the proposal is consistent with the approved Concept DA (as modified). Therefore, the associated impacts upon private views have already been considered and deemed to be acceptable, considering the building envelopes the subject of this DA remain as approved under ref. **RE2024/00002**.

Notwithstanding, for completeness the assessment of private views has been guided by the underlying intent (purpose) and application of the view sharing Planning Principle established in the Land and Environment Court *Tenacity Consulting v Warringah Council [2004]* NSWLEC 140, commonly referred to as *Tenacity*.

A summarised interpretation of the four-step approach established under *Tenacity* is as follows:

- Step 1 – Assessment of views and view values
- Step 2 – Assessing where the views are obtained from
- Step 3 – Assessing the extent of impact
- Step 4 – Assessing the ‘reasonableness’ of the impact

Private view impacts are assessed by the Applicant in the View Sharing and Visual Impact Assessment provided as **Attachment 2N** and the Applicant's Response to RFI View Matters View A and B provided as **Attachment 2O**.

The assessment of private view impacts involved the inspection, surveying, and modelling of private views from upper floor locations within the following buildings:

- The Newcastle Club, 40 Newcomen Street, Newcastle
- Segenhoe Apartments, 50 Wolfe Street, Newcastle
- Herald Apartments, 60 King Street, Newcastle, and
- Newcomen Apartments, 16-18 Newcomen Street, Newcastle

Multiple views were inspected, surveyed, and modelled from upper floor locations as detailed in **Figure 44** below.



Location	Dwellings/ locations Inspected	Building levels inspected	Surveyed Views	Modelled Views
Newcastle Club, 40 Newcomen Street Newcastle	6	G, 1 & 2	6	3
Segenhoe Apartments, 50 Wolfe Street Newcastle	7	6 & 7	7	3
Herald Apartments, 60 King Street Newcastle	2	5 & 6	2	1
Newcomen Apartments, 16-18 Newcomen Street Newcastle	7	G, 3 & 4	7	2

**Figure 44:** Extract from View Sharing and Visual Impact Assessment, dated February 2024. Source: Urbis

#### The Newcastle Club - 40 Newcomen Street, Newcastle

The Newcastle Club is located at the southwest corner of King and Newcomen Streets on sloping land that is elevated above the subject site and is visually prominent. The Newcastle Club site includes a carpark to the south, and part-two and part-three storey buildings across the site.

The Newcastle Club is a local heritage item (Listing nos. I437 and I438), with the statement of heritage significance on the State Heritage Inventory ('SHI') providing that *"The Newcastle Club is of outstanding historical, associative and aesthetic significance to the state. The site, encompassing the former residence, 'Claremont' has been associated with some of the most prominent members of the business, industrial and professional community in the city and state, including former managers of the AA Company, an organisation of utmost importance in the history of Newcastle, NSW and Australia. With its prominent siting, high on the hill overlooking the city, the club is a landmark site and makes an imposing and impressive contribution to the street and townscape."*

The view sharing and visual impact assessment states that the SHI statement of significance does not cite existing or former views, to or from the club as being of any historical significance. Whilst this is acknowledged, it could be interpreted that the significance of maintaining views to the listing is outlined through noting of its *"prominent siting, high on the hill overlooking the city"*.

Three viewpoints from the Newcastle Club were specifically assessed, including:

- VP3 Newcastle Club, West End Upper Ground Level Garden Terrace, View North;
- VP4 Newcastle Club, West End Mid-Level Garden Terrace, View North-North-West; and
- VP5 Newcastle Club, Centre of Level 1 Bar (Top Floor) view North.



Photomontages for each of the viewpoints listed above are provided in **Attachment 2N** of this report. For each of the views, Urbis provided a view impact rating of moderate, which was accepted by the independent consultant engaged by CN. However, in relation to the steps undertaken in accordance with Tenacity, the independent assessment provided the following (**NB.** any references to the 'modification' have been updated with 'proposal'):

- **Applying Tenacity - Step 1 and Step 2:** The general description of available views from the Newcastle Club is agreed, however the designation of the King Street frontage as a side boundary is not supported, notwithstanding the fact that the Newcastle Club is accessed and oriented towards Newcomen Street. In relation to this, the independent consultant states, *"Although the entrance to the Newcastle Club fronts Newcomen Street, the building sits at the corner of King Street and has been designed so that the building itself and the majority of function rooms, outside terraces and the bar take advantage of the northern views of Newcastle Harbour and the coast."*
- **Applying Tenacity – Step 3:** For all three viewpoints the assessment by the Applicant finds that most windows and formal rooms within the club present to the east, and that south-westerly views towards the Cathedral and surrounding grounds will be unaffected. Only those views from the public use/front of house rooms and the western elevated terraces at ground and upper ground will be affected by the proposal. In response, the independent assessment found that the main views are towards the Harbour with the majority of function rooms, terraces and bars being oriented to take advantage of northern views.
- **Applying Tenacity – Step 4:** In applying Tenacity Step 4, the Applicant assesses the view loss associated with the proposed development as reasonable, as below:
  - *The views are fortuitous, gained wholly across the centre of a privately owned site (rather than accessible or created as a result of the application of planning controls which affect views for example setbacks or height controls).*
  - *The views are all available via a side boundary of the Newcastle Club site, making an expectation of their retention, unrealistic.*
  - *The majority of the loss of scenic and more highly valued parts of the views, is caused by lower and complying built form including below the LEP + 10% bonus and within the existing Concept Approval. As such the majority extent of view loss of such scenic features is contemplated by the Approved Concept and the LEP controls.*
  - *Some views include more distant scenic features, the majority of which are blocked by lower and complying parts of the proposal or Approved Concept.*
  - *The additional height sought predominantly blocks areas of open sky and creates no significant or material additional view loss to that which is already approved and complying 'view loss' on the view impacts or view sharing outcome for the Newcastle Club.*
  - *Northerly views from all three levels at the north end of the Club are not whole views that are predominantly characterised by either a combination of, or individual features of high scenic quality.*
  - *The Tenacity assessment also intimates that achieving reasonable development potential across a site is a relevant matter for consideration in the assessment and should be afforded some weight.*

The independent assessment reiterates the opinion that the northern views are not fortuitous and that only sky views would be lost as a product of the proposal. Furthermore, the reasonableness of view loss resulting from non-complying built form has also been raised.

In the absence of any information being provided to the contrary by CN, the Applicant, or the independent consultant, the position of the Applicant is accepted and it is deemed that the northern views from the Newcastle Club are gained across a side boundary. This has been determined as the Newcastle Club is clearly oriented towards Newcomen Street, as is evident from the architecture of the club, and the location of the primary access point for patrons.

In relation to the view rating applied, it is also accepted that the impact of the proposed development is minor to moderate and this is agreed between both the Applicant and independent consultant.

Regarding the reasonableness of the impact, whilst it is acknowledged that some additional view loss will be created to the north as a result of the proposal (and as already approved pursuant to the Concept DA (as modified)), this is acceptable, notwithstanding the fact that it partially results from a non-compliance with the height standard. The resulting additional view loss is not considered substantial, views are not owned, and the club will still continue to benefit from views across the City.

#### Segenhoe Apartments, 50 Wolfe Street, Newcastle

The Segenhoe Building (also known as Segenhoe Flats) is a State Heritage listed 7 storey Inter-War Art Deco residential flat building constructed c.1937, comprising 25 dwellings (listing no. 02038). The Segenhoe Building is located opposite and lower relative to Cathedral Park. The Park occupies steeply sloping topography, the western edge of which is retained above the road carriage way and is populated by mature vegetation.

The three viewpoints from the Segenhoe Apartments include the following:

- VP18 Apartment 21, Segenhoe Building (dining),
- VP19 Apartment 20, Segenhoe Building (study), and
- VP21 Apartment 17, Segenhoe Building (dining), view north-east.

Photomontages for each of the viewpoints listed above are provided in **Attachment 2N** of this report.

The view impact rating applied by Urbis was minor-moderate for VP18 and VP21 and minor for VP19, which is accepted by the independent consultant. However, the reasonableness of the view loss (Tenacity step 4) is different between the parties.

In relation to the steps undertaken in accordance with Tenacity, the following is provided by the independent consultant (***NB. any references to the 'modification' have been updated with 'proposal'***):

- **Applying Tenacity Step 1 and Step 2:** The independent assessment agreed with the Applicant in relation to the assessment of views affected stating:
  - *16 units across levels 1, 2, 3 and 4 retain all existing views in all directions and are unaffected by the proposal.*
  - *All 12 units which cover levels 5, 6 and 7 have potential views to the proposal. Based on on-site observations, the rooms mostly affected in all units are not bedrooms, being rooms such as living/dining, kitchen and study areas.*
- **Applying Tenacity Step 3:** The following view impact ratings were agreed with:
  - *VP18 – Minor – moderate view impact rating*

- VP19 – Minor view impact rating
- VP21 – Minor – moderate view impact rating

It was noted that *“The majority of view loss occurs due to the upper levels of Building 3S (dome), involving the loss in most cases of the highly valued views of Nobbys Head and visually breaks the land/water interface and ocean horizon. There is also some minor view loss of Fort Scratchley due to Building 4S, although as it is on the edge of the view it has far less effect and is therefore of less concern.”*

- **Applying Tenacity – Step 4:** In applying Tenacity Step 4, the Applicant assesses the view loss associated with the proposed development as reasonable, as below:
  - *The view to be lost is fortuitous, gained wholly across a privately owned, underdeveloped site (rather than accessible or created as a result of the application of planning controls which affect views, for example setbacks or height controls).*
  - *Views to a well-known and recognisable local landscape feature, Nobby's Head and in some views a minor section of local heritage item Fort Scratchley, are lost from the north-eastern corner of the northern elevation of this dwelling [NB this comment is common to Urbis assessment for Units 17 and 21], in one view direction (north-east). Complying parts of Building 4S block the scenic features in the north-easterly view.*
  - *The dwellings and flat building enjoy access to an expansive view in a wide arc from the west to the north-east, where the proposal and in particular, the minor extent of additional height sought, occupy only a short and minor extent of the composition.*
  - *The views are all available via a side boundary of the Segenhoe Building site, making an expectation of their retention, unrealistic.*
  - *The majority of view loss is caused by complying built form including below the LEP + 10% bonus and within the existing Approved Concept. The majority of the extent of view loss of scenic features such as Fort Scratchley is therefore contemplated by the Approved Concept and LEP controls.*
  - *The additional height sought in relation to Building 3E (above the green lines) blocks sections of land water interface within the north-east mid-ground composition including to the headland to Nobby's Head. The majority of the composition, which is characterised by all of the most scenic features, and the combinations of those elements which form the scenic and highly valued view are retained.*
  - *All expansive northerly views from this dwelling and other dwellings inspected in the Segenhoe Building will not be affected by the proposal. The dwelling is characterised by several expansive, scenic and highly valued views in multiple directions.*
  - *The Tenacity assessment also intimates that achieving reasonable development potential across a site is a relevant matter for consideration and should be afforded some weight.*

The independent assessment agrees that the extent of view loss varies from minor to minor-moderate depending upon the location and orientation of the apartment. It is noted that non-complying built form (with regard to building height) can be attributed to the loss of some high value views of parts of the eastern harbour (including in some cases Nobbys Head) and partly

the ocean horizon from the upper three levels (all 12 apartments), in addition to those views lost through the originally approved Concept DA.

Whilst some additional view loss is acknowledged because of the proposal (which has already been permitted, under ref. **RE2024.00002**), this is a product of the need to redistribute massing within the Stage 3 and Stage 4 site to enable the realisation of the Harbour to Cathedral view corridor and the enhanced Market Square. Both the view corridor and Market Square will result in substantial public benefit as detailed throughout. In addition, whilst some private view loss is acknowledged to occur, expansive views of the harbour and broader city will continue to be enjoyed notwithstanding the development, as is evident from the montages prepared.

Taking into consideration the above, the resulting view loss is not considered to be unreasonable and, importantly, it is consistent with the approved Concept DA (as modified).

#### Herald Apartments, 60 King Street, Newcastle

The Herald Apartments at 60 King Street completed in 2019, is a contemporary residential flat building with ground level commercial uses, including 116 apartments and 3 commercial suites which includes a restored heritage listed building at 28 Bolton Street (Newcastle Herald Building). The building has 9 levels (a basement, ground and 7 storeys) with essentially a rectangular floor plate with a square shaped extension of the site where it adjoins the retained heritage building.

VP15 Unit 701, Herald Apartments (balcony), view north-east was assessed in the view sharing assessment undertaken with a view impact rating of minor applied. Both the Applicant and the Independent consultant agree in relation to this rating applied, and it is noted that additional view loss resulting from the proposed development would be negligible.

Taking into consideration the above, the resulting private view impacts from the Herald Apartments are considered acceptable.

#### Newcomen Apartments, 16-18 Newcomen Street, Newcastle

16-18 Newcomen Street is a 6-storey contemporary residential flat building with a formal presentation east towards Newcomen Street. The building is located mid-slope between Hunter Street (north) and King Street (south), where the underlying topography falls in elevation to the north.

Two viewpoints from two different apartments were specifically assessed by Urbis and illustrated by photomontages, being:

- View 01 VP8, Apartment 12 (Terrace) view north-west
- View 02 VP11, Apartment 10 (Terrace) view north-east

The view impact rating applied was minor for both views assessed. Both the Applicant and the Independent consultant agreed in relation to this rating with it being concluded that view loss would occur predominantly due to the originally approved Concept DA and given the negligible additional view loss created by the proposal, did not relate to a view of significance in Tenacity terms.

Taking into consideration the above, the resulting private view impacts from the Newcomen Apartments are considered acceptable.

#### Summary of assessment of private view impacts

The proposal is consistent with the approved Concept DA (as modified). Therefore, the associated impacts upon private views have already been considered and deemed to be acceptable, considering the building envelopes the subject of this DA remain as approved under ref. **RE2024/00002**.

The proposal is therefore acceptable in relation to private view impacts based on an assessment against the principals in *Tenacity* and consistency with the Concept DA (as modified). The impact to private views is reasonable. While some private views will be partially obstructed, expansive views of the city and harbour will still be enjoyed, and the overall development brings significant public benefits, including enhanced visual corridors and visual improvements within the public domain.

Furthermore, the substantial benefit that will result from public views must be given determining weight and on balance should be prioritised ahead of private views. In this regard, the proposal results in significant public benefit that arises from the realisation of the Harbour to Cathedral view corridor and delivery of Market Square.

## **6.4 Traffic, Access and Parking**

The assessment around traffic, access, and parking has been separated into two subheadings, Car and bicycle parking and Servicing and Access. Refer to the proceeding sections below.

### **6.4.1 Car and Bicycle Parking**

The Concept DA (as modified) provides approval for a total of 735 parking spaces across the 4-stages of development. This includes provision for residential, commercial/retail, and residential visitor parking. Per condition 19 (as amended), the location and quantum of spaces required for each use is set out, as follows:

*“19. The number of car parking spaces shall be provided within each stage in accordance the requirements of Section 7.03 of Newcastle Development Control Plan 2012 (NDCP 2012) or the applicable standard at the date of lodgement of the application for each stage. The submitted plans and Traffic and Parking Impact Assessment for each stage shall detail the number and location of spaces required in accordance with this condition:*

*a) 100% of car spaces required for residents are to be provided on site;*

*b) A minimum of 25% of the required number of residential visitor parking spaces shall be provided for residential visitor parking. These spaces are not to be subdivided, leased or controlled by or on behalf of particular unit owners or residents. Spaces cannot be allocated or deferred to different Blocks/stages unless there is a specific condition that allows this and has formed part of a separate development consent. The remaining 75% is to be accommodated both on-street in existing time restricted parking spaces and off-street in publicly available car parking.*

*c) Stages 1 to 4 of the development shall each provide on-site car parking for commercial and retail staff and their patrons as follows:*

*Stage 1: 26 spaces*

*Stage 2: 10 spaces*

*Stage 3: 42 spaces (comprising 10 spaces for Stage 1; 11 spaces for Stage 2; 17 spaces for Stage 3; and 4 spaces for Stage 4)*

*Stage 4: 5 spaces*

*The remaining parking being accommodated both on-street in existing time restricted parking spaces and off-street in publicly available car parking.*

*d) 42 carparking spaces are to be provided for the hotel located within Stage 1 of the development, comprising 34 guest and 8 staff spaces which may otherwise be reduced if justified or approved through a separate development consent or modification after a minimum of two (2) years operations.*



*e) An additional 5 hotel parking spaces and 11 residential visitor parking spaces from Stage 1 are to be included in Stage 3, in addition to compliance with Section 7.03 of Newcastle Development Control Plan 2012 (NDCP 2012) or the applicable standard at the date of lodgement of the application for this stage.*

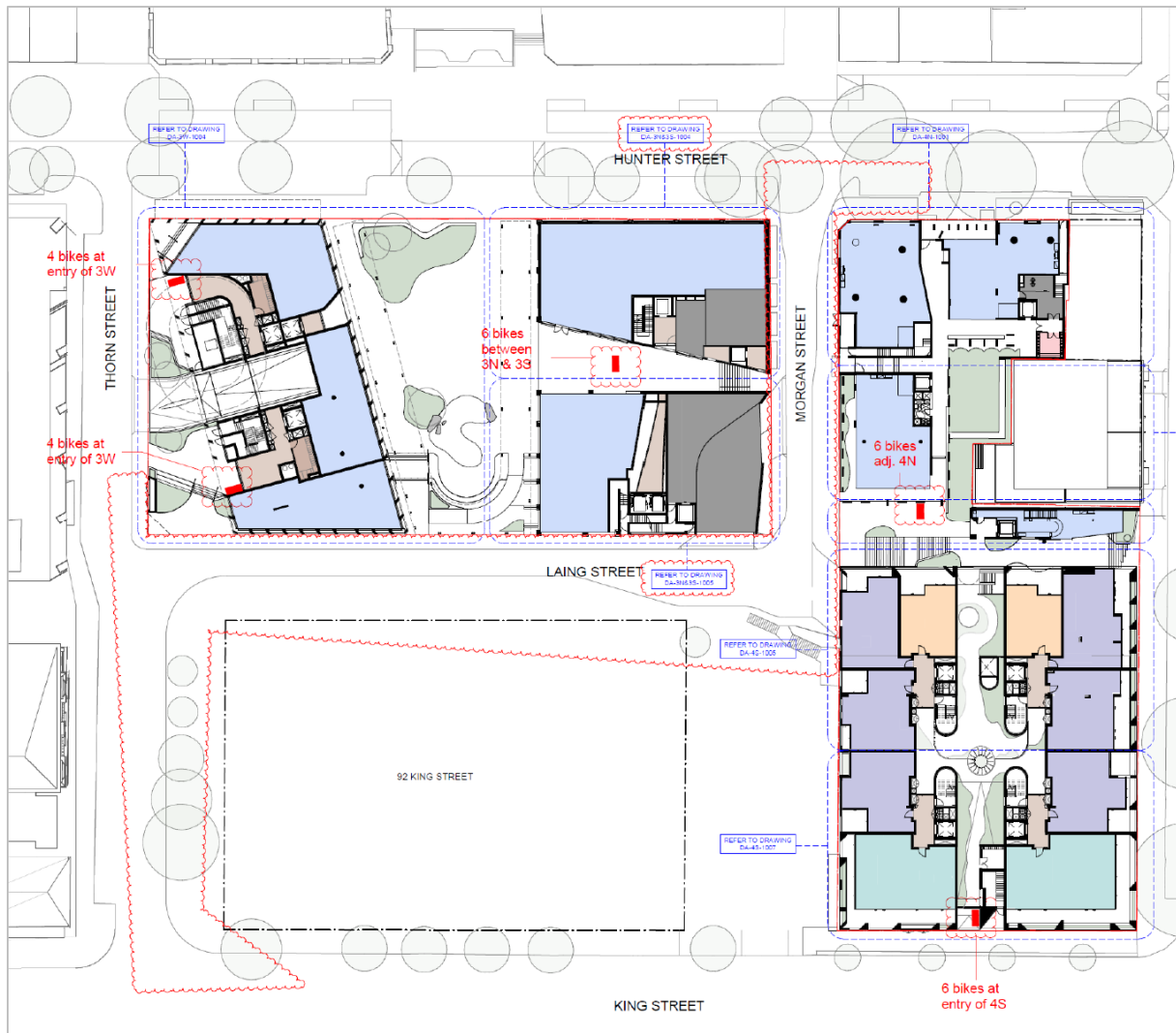
The overall quantum of parking proposed as part of the subject DA is consistent with Condition 19 of the Concept DA (as modified) and is supported.

In addition, the proposal is consistent with Condition 20A which was included as part of the most recent Concept DA modification, which provides that:

*“26 visitor bicycle parking spaces are to be provided with Stage 3 and Stage 4 of the development. Visitor bicycle parking is required to be provided at grade near key access points to the development, and in locations with good passive surveillance.”*

The Applicant has provided an annotated site plan excerpt within the accompanying SEE, which details the general location of these additional 26 visitor bike spaces, as follows and as shown in **Figure 45**:

- 4 spaces at the northern entry to building 3W
- 4 spaces at the southern entry to building 3W
- 6 spaces in between the entry to buildings 3N and 3S
- 6 spaces at the southern entry to building 4N
- 6 spaces at the southern entry to building 4S



**Figure 45:** Locations of 26 visitor bicycle parking. Source: Urbis

A condition is recommended which requires the precise locations of these spaces be confirmed prior to construction.

In addition to the conditioned spaces above, bicycle parking for the remainder of the development is proposed in line with the NDCP 2012 rates, as shown in the excerpt below from the Traffic and Parking Assessment (**Figure 46**). In summary, 209 additional off-street bicycle parking spaces are provided, plus private residential storage cages at the basement level. 9 motorcycle spaces are also provided within Stage 3, in accordance with the NDCP 2012 rates. Stage 4 however has not been provided with any motorcycle parking. Considering condition 20 of the Concept DA (as modified) requires motorcycle parking be provided in accordance with the NDCP 2012 rates, the 8 spaces nominated within the Traffic and Parking Assessment Report (**Attachment 2R**) are required to be provided within the Stage 4 basement. This has been recommended as a condition of consent.

Table 8.4 – Stages 3 & 4 Proposed DA Bicycle & Motorcycle Parking Provision			
Land Use	Parking Requirement	Proposed Parking Provision	Complies
<b>Stage 3</b>			
Residential bicycles	95 spaces (Level A)	106 spaces	Yes
Visitors bicycles	10 spaces (Level C)		
Comm/retail bicycles	4 spaces (50% Level B & C)	4 spaces	Yes
Motorcycles	6 spaces	9 spaces	Yes
<b>Stage 4</b>			
Residential	132 spaces (Level A)	93 spaces + private storage	Yes
Visitors	13 spaces (Level C)		
Comm/retail	3 spaces (50% Level B & C)	6 spaces	Yes
Motorcycles	8 spaces	0 spaces	No*
<b>Condition 26A</b>			
Visitors	26 spaces (Level C)	26 spaces	Yes

\* capable of being conditioned given the abundance of potential locations within the Stage 4 car park

**Figure 46:** Bicycle and motorcycle proposed parking provision. Source: CJP Consulting Engineers

### 6.4.2 Servicing and Access

The proposal has been designed to ensure it is capable of being serviced by a variety of commercial vehicles. Both Stages 3 and 4 have dedicated service areas that can accommodate HRV access, with a 4.5m clearance. Pursuant to the accompanying traffic and parking report and the swept path analysis contained within, all service vehicles (and B99 vehicles) can enter and exit the site in a forward direction (refer to **Section 5.2** of this report for further details).

A Road Concept Plan has also been prepared by the applicant (refer **Attachment 2DDD**). In summary, the concept plan details the following:

- Kerb returns at the intersection of Hunter and Morgan Streets;
- The HRV left hand turn at the intersection of Laing and Thorn Streets command the road;
- Beyond the required taper for the HRV to enter Morgan Street, a 3.5m wide carriageway has been adopted. A 2m wide footpath along the western side and a 3.5m wide footpath along the eastern side are proposed;
- A 3.5m carriageway for Morgan Street is proposed, maintaining the existing 1.9m wide norther footpath. The southern footpath will also be retained as existing, with variable widths;
- Road widening at the eastern end of Laing Street to facilitate the HRVs right hand turn from Morgan onto Laing Street, as well as the HRVs right hand turn exit from building 3E loading dock onto Laing Street;
- Both loading docks within Stages 3 and 4 are capable of accommodating forward entry and exit movements for 12.5m long HRVs; and
- Both loading docks are capable of accommodating 12.5m long HRVs with closed roller doors (for acoustic control), maintaining sufficient loading/unloading areas at the rear of the truck.

It is noted that this concept plan has been designed with input from CN and the proposed layout is acceptable, as detailed within **Section 5.2** of this report.

## 6.5 Heritage

The assessment around heritage matters has been separated into two subheadings, European Heritage and Aboriginal Cultural Heritage. Refer to the proceeding sections below.

### 6.5.1 European Heritage

The Applicant has provided a Heritage Impact Statement (**Attachment 2V**), which has been reviewed in detail (referral response provided at **Attachment 11**) and HNSW (referral provided at **Attachment 8**, respectively).

The following local and state listed heritage items within the site and broader surrounds are of relevance to the assessment of the proposal:

- Municipal Building (Listing No. I403) located at 113-121 Hunter Street, Newcastle (building 3N);
- Christ Church Cathedral (Listing No. I562);
- Christ Church Cathedral, Moveable Collections, Cemetery and Park (Listing No. 01858);
- Cathedral Park and Cemetery (Listing No. A6); and
- Newcastle City Centre Heritage Conservation Area (C5).

#### Municipal Building (I403) located at 113 – 121 Hunter Street, Newcastle

Stage 3 contains a locally listed heritage item (pursuant to NLEP 2012, Listing no. I403) referred to as the Municipal Building. This is also known as Building 3N. The statement of heritage significance provides the following:

*“It contributes to the overall architectural character of the Hunter Street Mall and it is an interesting example of an Edwardian commercial building.”*

The Applicant has provided recent photographs of the interior of this building which show that the building has deteriorated and that there is very little heritage fabric remaining internally. It is noted that the building would require significant restructuring and replacement of all extant fabric, which in turn would result in a similar impact on heritage significance as the proposal.

The proposed internal upgrade works are supported, considering the winter gardens will generally appear as external rooms and only one unit will comprise an internal partition wall that bisects the historical arched windows fronting Hunter Street. All existing windows are to be retained and refurbished to be operable by future residents. This will furthermore assist in screening/softening the visual appearance of the winter gardens behind the Hunter Street facade.

Conditions have been recommended to ensure protection of the structural stability of the building and facades during construction, as well as to ensure that any internal extant heritage fabric is surveyed and salvaged for retention and/or reuse.

#### Christ Church Cathedral (Listing No. I562); Christ Church Cathedral, Moveable Collections, Cemetery and Park (Listing No. 01858); and Cathedral Park and Cemetery (Listing No. A6), located at 52A Church Street, The Hill

A critical consideration in relation to the proposal relates to the possible impacts upon the Christ Church Cathedral. It is also noted that the proposal is consistent with the approved Concept DA (as modified). Therefore, any impact associated with the visual relationship between the proposed built form and the Cathedral is considered acceptable, as the building envelopes remain as approved under ref. **RE2024/00002**.

In the most recent HNSW referral received dated 17 August 2023, it states:

*“...the building envelopes have been increased such that views from the Market Place and Queens Wharf Promenade to the Cathedral will be diminished. In addition, increment in the building envelopes further encroaches on the views from the Cathedral Park towards north and northeast, such that the views to the water are significantly lost.”*

Furthermore, the referral from HNSW also stated that:

*“...comments provided to Newcastle City Council on the Concept DA by the Approvals Committee in 2016, the building envelopes have been increased such that views from the Market Place and Queens Wharf Promenade to the Cathedral will be diminished.”*

In response to the comments received by HNSW (which are noted to be the same as those provided by HNSW for the recent review application ref. **RE2024/00002**), the UDRP’s heritage expert provided the following as part ref. **RE2024/000024**, which remains relevant for proposal:

*“...do not relate to the subject Concept modification proposal, and lack specificity. It is simply asserted that an increase in envelopes (heights) from the approved Concept DA envelopes causes additional view loss. The opening up of the Market Place view corridor is not acknowledged or discussed, nor is the reduction in bulk of a number of the buildings, and view opportunities arising between them. Likewise the removal of approved new built form to the top of the locally heritage listed Municipal Building, which the UDRP considers a positive move, is not mentioned.”*

HNSW have not commented on specific aspects of the proposal, including the two view corridors delivered between 3W and 3E as well as that to the west of 3W, or the positive heritage outcome that results from adaptive re-use of the locally listed Municipal building.

As established within the assessment of ref. **RE2024/00002**, it is agreed that the proposal provides a positive heritage response in terms of the visual relationship between the Harbour, City Centre, and the Christ Church Cathedral. The proposal also delivers an outcome in line with original town planning schemes for the City as envisaged by Dangar in 1823, as set out in the accompanying Heritage Impact Statement (**Attachment 2V**).

The floorplates and varying building heights across the site ensure that the landmark heritage values and defining features of the skyline of Newcastle associated with the Cathedral are preserved. This is achieved through the angled floorplate of building 3W, which provides a new view corridor from the Hunter and Thorn Street junction, as well as the western public domain area toward the Cathedral.

The tapered design of building 3S, which steps in gradually at each level, also promotes views toward the Cathedral from the Harbour and City Centre. The Cathedral and its grounds will remain prominent as viewed from the immediate urban context, and from afar, any associated impact would be low.

#### Newcastle City Centre Heritage Conservation Area

The subject site is within the Newcastle City Centre Heritage Conservation area as defined under the NLEP 2012.

It is noted that the angled siting of building 3W does not conform to the significant street and block layout of Dangar’s 1828 town layout referenced within the Statement of Significance for the Newcastle City Centre HCA. However, the proposed arrangement is an improvement to the existing layout of buildings on the site and is supported. It is also acknowledged that many blocks within Newcastle have been amalgamated and as such do not represent the boundaries as envisaged in Dangar’s original layout.

As set out above, the Municipal Building facade (3N) is to be retained, with appropriate internal upgrade works carried out. The preservation of this building’s facade and the continued



commercial ground floor use is a positive heritage outcome for the HCA. The Statement of Heritage Significance for the HCA references the rich historic character of commercial and civil buildings, which the proposal will continue to reflect with the ground floor commercial activation.

There are two contributory buildings within the 4N footprint, being Nos. 105 and 111 Hunter Street. The proposal seeks to retain the northern and western facades of both buildings, which is strongly supported. The proposed additions maintain a zero setback, however, are to be set behind the decorative parapets. The Applicant states this approach is similar to that adopted for Stage 1 and is consistent with the recommendations of the accompanying Conservation Management Plan (**Attachment X**). It is acknowledged that a clear distinction between the original heritage fabric and the additions would be evident as part of the proposal. Furthermore, existing timber windows are to be retained, and the facade will be returned at the corners which are supported as the visual impact of the proposal behind is reduced. The facade returns are sympathetic to the HCA and present a more cohesive design outcome.

Blackall House (No. 22 Newcomen Street) is also identified as a contributory building within the site. The contributory heritage significance is derived from the social and community associations with the Adult Deaf and Dumb Society. The proposal seeks demolition of the building, which accords with the approved Concept DA (as modified). Whilst the demolition would have an adverse impact upon the heritage significance of the HCA, a new pedestrian through site link and the Laing Lane Cafe will be delivered in its place. The public benefits associated with this revitalisation is afforded significant weight, and the removal of Blackall House is supported (noting this is consistent with the approved Concept DA (as modified)). Conditions relating to archival recording and salvaging of any extant heritage materials have been recommended.

Building 4S is adjacent to the locally listed 'retaining walls and sandstone steps' (Listing no. 1477). The proposal seeks to retain the sandstone retaining wall, and the adjacent footpath to be regraded such that it sits lower than the height of the wall. This is a positive heritage outcome for the HCA and is supported.

The conservation and adaptive re-use of the Municipal building and contributory facades at Nos. 105 and 111 Hunter Street significantly contribute to the HCA and wider heritage setting. On balance, the removal of Blackall House is outweighed by the public benefits to be delivered across the site, and the proposal can be supported from a heritage perspective.

### **6.5.2 Aboriginal Cultural Heritage**

Meaningful engagement was undertaken with the Aboriginal community throughout the detailed design process, as indicated in the endorsement letter provided as **Attachment 2T**.

In the advice provided by Dr Pollard, it was noted that:

*"One of the multiple aspects of the proposal that reflect a carefully considered response to input from Awabakal and Worimi Community representatives, is the re-establishment of the close juxtaposition of the landform of the Hill with the more level foreshore areas of the Site and the foreshore, and beyond that to the waters of the harbour (Coquon) and the Stockton foreshore beyond. This landform was an important meeting place of the Awabakal people (from the southern side of the harbour) and the Worimi, from the northern side. It was a place that enjoyed a very abundant and diverse range of food sources, some of which are evidenced in the enormous middens that were found in the area that were the size of sand dunes. These were exploited by early European settlers for making lime for construction purposes. The extensive consultation with the Community demonstrated a strong desire for a direct visual link between the waters of Coquon and the landform of the Hill – which the proposed Concept Modification achieves well."*

Consideration of Aboriginal cultural heritage as part of the proposal is evident through the thoughtful landscape design and native species selection, as well as the incorporation of midden-like materiality across the buildings and the public domain spaces.

Furthermore, the application is accompanied by an Aboriginal Cultural Heritage Assessment Report (**Attachment 2VV**). This has been prepared to inform an application for an AHIP. It is noted the site overlaps with the bounds of a Potential Archaeological Deposit (PAD) with artefacts (ref. Newcastle CBD PAD AHIMS ID#38-4-1081). As such, an application was referred to HNSW under the *NPW Act 1974* for their review. HNSW have issued general terms of approval which include the requirement to obtain an AHIP.

## 6.6 Solar access and overshadowing

A shadow analysis has been undertaken by the Applicant and is provided within the set of architectural drawings for each building, as well as the precinct drawing set. It includes detailed shadow diagrams and 'view from the sun' solar analysis.

Considering the proposal is consistent with the Concept DA (as modified), the overshadowing impacts have already been assessed as reasonable and can therefore be supported.

Notwithstanding, a detailed assessment of the solar access received within the proposed residential apartments has been undertaken as part of the ADG assessment (refer **Attachment 12**). This concludes that of the 195 apartments, 70% (or 136 apartments) will achieve a minimum of 2 hours of direct sunlight during 9am and 3pm on the Winter solstice, to both living rooms and private open space areas. 11% (or 22 out of 195 apartments) will receive less than 15 minutes of solar access to both living rooms and private open space areas between 9am and 3pm on the Winter solstice. However, when considering the constraints of the site, including an adaptative re-use of a heritage item and the provision of north-facing communal open space, the non-compliance is acceptable (refer to **Attachment 12** for detailed assessment).

With respect to surrounding developments, the proposal will cause a degree of overshadowing to certain elements as summarised below. This is further discussed as part of the accompanying ADG assessment (**Attachment 12**).

- *Former carpark site*: the overshadowing of this site has been improved pursuant to the approved Concept DA (as modified). The delivery of the Harbour to Cathedral view corridor improves solar access for this site between 9am and 1pm. Future development opportunities are therefore not prejudiced by the proposed development.
- *The Newcastle Club*: Overshadowing of the Club's northern garden area occurs between 9am and 3pm, however, the northern windows across the Club House itself are afforded direct solar access between 9am and 3pm.
- *The Herald Apartments*: The proposed development will not discernibly reduce the level of solar access currently obtained within units of this building. Apartments will continue to receive more than 3 hours of solar access between 9am and 1pm, mid-winter, in accordance with ADG provisions.
- *Newcomen Apartments (eastern side)*: The units on the eastern side of this building will be overshadowed by their own building at 9am and 10am. The residents of such units will however receive 3 hours of solar access from 11am.
- *Newcomen Apartments (western side)*: The units on the western side of this building will receive solar access during the morning hours, between 9am and 11am. This provision has not changed from the originally approved Concept DA.

Market Square will receive a significant amount of solar access during both mid-winter and summer, which contributes to the usability and welcoming nature of this space.

## **6.7 Acoustic Amenity**

An Acoustic Report has been prepared in support of the application, by Renzo Tonin & Associates (refer **Attachment 2AA**). The report addresses external noise emissions from adjoining road traffic as well as expected operational noise associated with licensed food and drink and retail premises local at ground floor across the development. The report concludes that based on the assumptions modelled, subject to recommended controls being in place, the proposed development can satisfy the assessment criteria.

The report has been assessed and the findings are agreed. In summary, the proposal has incorporated mitigation measures to ensure the internal noise levels of all apartments are within the desired noise criteria. This includes installation of thicker glazing to apartments fronting Hunter Street (within buildings 3W, 3N, and 4N) to mitigate the acoustic pollution arising from the ground level retail/commercial activation (i.e. outdoor dining). The proposed external wall and roofing materiality is sufficient such that no additional upgrades are required for acoustic purposes. Furthermore, the roller shutters attached to both loading zone areas within Stages 3 and 4 are able to be closed once a vehicle is inside, which will also assist in retaining reasonable acoustic amenity for residents and neighbours.

The report assumes that outdoor dining would be limited to food and drinks premises located on the Hunter Street frontages and the Market Square Plaza i.e. outdoor dining is not proposed on the Newcomen Street frontage. Outdoor dining is assumed to be used until 10pm, with only internal use between 10pm and 12am. The report concludes that the site is capable of accommodating food and drink premises with outdoor dining until 10pm, with indoor usage until 12am, providing the management controls identified are adopted. These recommendations including the glazing of the apartments oriented toward Hunter Streets, control of music levels, limitation of 20 patrons per retail tenancy for outdoor dining, and after 6pm, outdoor dining is to be limited to areas that have an awning over.

Future licensed premises operating until 12am (with only indoor use from 6pm), could be supported based on the submitted documentation. However, any un-licensed premises are to be restricted to 10pm considering additional modelling would be required for operations between 10pm and 12am. Given it is not yet known which tenancies will be used as food and drink premises, all outdoor seating associated with such uses are recommended to be restricted until 6pm, unless a separate DA to vary the hours of operation or trading has been submitted to and approved by CN. Accordingly, conditions of consent have been recommended.

## **6.8 Waste Management**

A Waste Management Plan has been prepared by MRA Consulting in support of the application and is provided at **Attachment 2CC**. This covers both the operational and construction waste management requirements associated with the proposed development.

The Waste Management Plan has been assessed and is acceptable. Further the submitted Traffic and Parking report has been analysed having regard to the proposed access and servicing arrangements that would be required to facilitate ongoing waste disposal servicing. Sufficient access, egress, and servicing is capable of being undertaken within the site.

Subject to the recommended conditions the proposal can be appropriately managed with respect to construction and operational waste management.

## **6.9 Ecologically Sustainable Development ('ESD')**

The applicant has provided the following information pertaining to the ESD components that have been incorporated throughout the proposal:

- Extensive landscaping to roofs and over structure, minimising storm water run-off;
- On-site rainwater detention and re-use;
- Natural ventilation to the majority of apartments (85% of apartments are cross-ventilated);
- Maximising direct sun to apartments while utilising overhangs to control summer heat gain (70% of apartments receive a minimum of 2 hours direct sunlight in mid-winter);
- Materials demolished are to be reused or recycled where possible;
- The proposal is to be predominantly constructed from locally produced, sustainable materials chosen favouring longevity and minimising maintenance;
- Energy-efficient lighting and appliances;
- Water-efficient fixtures; and
- Proximity to public transport and local shops to encourage passive transport modes.

The proposal is accompanied by a BASIX Certificate for each building (refer **Attachments 2DD – 2GG**) which confirms the proposals compliance with the BASIX requirements for sustainability.

#### **6.10 Social and Economic Benefits**

The proposal will deliver a development outcome that provides substantial social and economic benefits during the construction and operational phases, both locally and regionally.

The proposal is a transformational project for the Hunter Mall Precinct, which will assist in realising the vision for the area and will also reinstate heritage (visual) connections between the Cathedral and the Newcastle City Centre and Harbour. The proposal exhibits a very high standard of design excellence, as commended by the GANSW, the Design Competition Jury, DIP, and the UDRP members. Elements of the development have been collaboratively designed alongside First Nations community members, such that the built form, landscaping, and materiality is reflective and inclusive of Aboriginal cultural design principles.

In addition, it will enable the delivery of much needed new homes, which will assist in tackling the housing crisis. Further, additional employment generating floor space will be provided which will further contribute to the revitalisation and viability of the Newcastle CBD.

#### **6.11 Suitability of the site**

The proposal, as set out within the body of this report, is suitable for the site, subject to the recommended Draft Schedule of Conditions included at **Attachment 1**.

#### **6.12 The Public Interest**

The proposal is suitable for the site and is in the public interest.

The proposal is generally consistent with applicable planning controls contained within the relevant SEPPs, NLEP 2012, NDCP 2012, and NDCP 2023. Where non-compliances exist, these are considered to be justified on merits in the circumstances, given the opportunities and significant public benefits the proposal allows for. As set out above, it is critical to note that the proposal is consistent with the approved Concept DA (as modified), and therefore any associated environmental or amenity impacts have already been considered and supported in principle under ref. **RE2024/00002**.

The public benefits associated with the proposal include (though are not limited to) the delivery of a DCP defined view corridor between the Christ Church Cathedral and the Newcastle

Harbour, the large and welcoming Market Square public domain, and the provision of a considered architectural development which exhibits design excellence.

## **7. CONCLUSION**

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Following a thorough assessment of the relevant planning controls, concerns raised in submissions, and the key issues identified in this report, it is recommended that the proposal be supported as it is in the public interest, with no unreasonable built or environmental amenity impacts, or social or economic impacts considered likely to occur.

The proposal is acceptable having regard to the relevant heads of consideration under Section 4.15(1) of the EP&A Act 1979 and is supported on the basis that the recommended conditions in **Attachment 1** are included in any consent granted.

## **8. RECOMMENDATION**

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It is recommended that the HCCRPP approve the proposed development application (ref. **DA2023/00419**), subject to the recommended conditions of consent.

Approval is recommended for: *Demolition of existing buildings and erection of a five-building mixed use development, consisting of shop top housing, commercial premises, and a residential flat building with 195 dwellings, 304 parking spaces and stratum and strata subdivision*, subject to the recommended conditions of consent (at **Attachment 1**).

## **9. ATTACHMENTS**

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The following attachments are provided:

- Attachment 1: Draft Schedule of Conditions
- Attachment 2: Statement of Environmental Effects V8, prepared by Urbis dated 11 November 2024
- Attachment 2A: Architectural Drawings – Precinct, prepared by SJB dated 15 October 2024
- Attachment 2B: Architectural Drawings – 3 North & 3 South, prepared by Durbach Block Jagers dated 15 October 2024
- Attachment 2C: Architectural Drawings – 3 West, prepared by SJB dated 15 October 2024
- Attachment 2D: Architectural Drawings – 4 North, prepared by Curious Practice dated 15 October 2024
- Attachment 2E: Architectural Drawings – 4 South, prepared by SJB dated 15 October 2024
- Attachment 2F: Housing SEPP Design Statement, prepared by SJB, Durbach Block Jagers, Curious Practice dated 14 October 2024
- Attachment 2G: East End Stages 3 and 4 DA Design Report, prepared by SJB, Durbach Block Jagers, Curious Practice dated 29 October 2024
- Attachment 2H: Survey Plans, prepared by Monteath & Powys Sheets 1- 10, 12- 17, 19-26 and 28 dated 15 July 2008; Sheet 11 dated 26 March



2014; Sheet 18 dated 15 July 2008; and Sheet 27 dated 26 March 2014

- Attachment 2I: Landscape Plans Public Domain, prepared by COLA Studio dated 29 November 2023
- Attachment 2J: Landscape Plans Stage 3, prepared by COLA Studio dated 29 November 2023
- Attachment 2K: Landscape Plans Stage 4, prepared by COLA Studio dated 17 November 2023
- Attachment 2L: Landscape Development Application Design Report, prepared by COLA Studio dated April 2023
- Attachment 2M: Visual Impact Assessment, prepared by Urbis dated April 2023
- Attachment 2N: View Sharing and View Impact Assessment, prepared by Urbis dated February 2024
- Attachment 2O: Response to RFI (8.2 Review) View A and B, prepared by Urbis dated October 2024
- Attachment 2P: Legal Advice on CI 7.5 NLEP 2012 and Former Council Carpark, prepared by Mills Oakley dated 27 August 2024
- Attachment 2Q: Approved Demolition and Retention Plan, prepared by SJB dated 21 November 2022
- Attachment 2R: Revised Traffic & Parking Assessment report, prepared by CJP Consulting Engineers dated 8 November 2024
- Attachment 2S: Ground Anchors Structural Letter, prepared by Xavier Knight dated 24 January 2024
- Attachment 2T: Designing with Country Endorsement Report and Letter, prepared by Dhira dated April 2023
- Attachment 2U: Design Report for 92 King Street, prepared by SJB dated 28 August 2024
- Attachment 2V: Heritage Impact Statement, prepared by City Plan dated October 2024
- Attachment 2W: Conservation Management Plan, prepared by City Plan dated March 2023
- Attachment 2X: Heritage Design Response Study, prepared by SJB, Durbach Block Jaggers, Curios Practice dated August 2024
- Attachment 2Y: Response to Submissions (Mod and DA), prepared by Urbis undated
- Attachment 2Z: Response to Submissions (Section 8.2 Review), prepared by Urbis undated

- Attachment 2AA: DA Acoustic Report, prepared by Renzo Tonn & Associates dated 21 February 2024
- Attachment 2BB: Commercial in Confidence Cost Report, prepared by Altus Group dated 10 May 2023
- Attachment 2CC: Waste Management Plan, prepared by MRA Consulting Group dated 20 April 2023
- Attachment 2DD: BASIX Certificate – Building 3W, prepared by EPS dated 10 May 2023
- Attachment 2EE: BASIX Certificate – Building 3N & 3S
- Attachment 2FF: BASIX Certificate – Building 4N
- Attachment 2GG: BASIX Certificate – Building 4S
- Attachment 2HH: Infrastructure Services Report, prepared by Xavier Knight dated 31 March 2023
- Attachment 2II: Heritage Façade Retention Plans, prepared by James Taylor and Associates dated 11 April 2023
- Attachment 2JJ: Fire Engineering Report, prepared by GHD dated 28 April 2023
- Attachment 2KK: Detailed Site Investigation, prepared by Foundation Earth Sciences dated April 2023
- Attachment 2LL: Geotechnical Report, prepared by Tetra Tech Coffey dated 19 March 2023
- Attachment 2MM: Acid Sulfate Soils Assessment, prepared by Foundation Earth Sciences dated April 2023
- Attachment 2NN: Access Report, prepared by Projected Design Management dated 4 May 2023
- Attachment 2OO: BCA Report, prepared by Philip Chun dated 11 May 2023
- Attachment 2PP: Electric Vehicle Charging Provisions, prepared by Neuron dated 21 April 2023
- Attachment 2QQ: Engineering Services Spatial Report, prepared by Neuron dated 16 December 2022
- Attachment 2RR: DCP Compliance Table, prepared by Urbis undated
- Attachment 2SS: Clause 4.6 Variation Request, prepared by Urbis dated November 2024
- Attachment 2TT: Hunter Water Services, prepared by WDG dated 25 January 2023
- Attachment 2UU: Historical Archaeological Assessment, prepared by Umwelt dated 9 May 2023

- Attachment 2VV: Aboriginal Cultural Heritage Assessment Report, prepared by Umwelt dated 7 July 2023
- Attachment 2WW: Remediation Action Plan, prepared Foundation Earth Sciences dated April 2023
- Attachment 2XX: Stormwater Management Report, prepared by Xavier Knight dated 31 March 2023
- Attachment 2YY: Civil Plans, prepared by Xavier Knight dated 31 March 2023
- Attachment 2ZZ: Substation Chamber Plans Stage 3 and 4 Combined, prepared by Power Solutions dated 28 March 2023
- Attachment 2AAA: Flood Upstream Catchment Report, prepared by Xavier Knight dated 31 March 2023
- Attachment 2BBB: Draft 88B Instruments, prepared by LTS Lockley undated
- Attachment 2CCC: Draft Stratum Plans, prepared by LTS Lockley dated 10 October 2024
- Attachment 2DDD: Road Concept Plan, prepared by CJP Consulting Engineers dated 17 April 2024
- Attachment 2EEE: Draft Strata Plans, prepared by LTS Lockley dated 15 October 2024
- Attachment 2FFF: GFA Plans per Land use, prepared by SJB dated 11 November 2024
- Attachment 3: Visual Impact Assessment Review, prepared by Envisage Consulting dated 10 October 2024
- Attachment 4: UDRP Report meeting held 5 July 2023
- Attachment 5: UDRP Electronic Referral 8 November 2024
- Attachment 6: Subsidence Advisory NSW General Terms of Approval dated 21 November 2024
- Attachment 7: Subsidence Advisory NSW Stamped Plans dated 4 October 2024
- Attachment 8: Agency Advice - Heritage NSW NLEP CI 5.10 dated 17 August 2023
- Attachment 9: Agency Advice - Heritage NSW NPWS Act dated 28 August 2023
- Attachment 10: CN Referral Advice – Environmental Health dated 12 March 2024
- Attachment 11: CN Referral Advice - Heritage dated 6 November 2024
- Attachment 12: CN Referral Advice – Specialist Planner dated 25 November 2024

- Attachment 13: CN Referral Advice – Development Engineering (Traffic & Public Domain) dated 25 November 2024
- Attachment 14: UDRP Addenda Observations dated 8 October 2024
- Attachment 15: Concept DA (as modified) Conditions Compliance Table dated 25 November 2024