

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

Panel Reference	PPSHCC-22
DA Number	DA2019/01169
LGA	Newcastle
Proposed Development	Mixed use development - demolition of structures, erection of two 14 storey mixed-use buildings with shared basement carparking (286 spaces), comprising seniors housing (114 bed aged care facility and 82 independent living units), residential flat building (166 units), medical centre, food and drink premises (café and restaurant) and retail premises (salon).
Street Address	309 King Street Newcastle West (Part Lot 1 DP 826956)
Applicant/Owner	Western Suburbs (Newcastle) Leagues Club Ltd
Date of DA lodgement	06 November 2019
Number of Submissions	Nil
Recommendation	Approval
Regional Development Criteria	<p>As the application related to a DA approval that had a Capital Investment Value (CIV) exceeding \$30 million, the development is deemed to be Regional Development in accordance with Part 4 and Schedule 7 of State Environmental Planning Policy – State and Regional Development (SRD SEPP) 2011.</p> <p>The applicant has nominated the CIV as \$146,272,000 (estimated cost of works \$160,899,200). The Panel is the determining authority under the relevant provisions of the SEPP.</p>
List of All Relevant Section 4.15 (1)(a) Matters	<p>Environmental planning instruments: s4.15(1)(a)(i)</p> <ul style="list-style-type: none"> • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy No. 55 - Remediation of Land • State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development • State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP SH) • State Environmental Planning Policy (Coastal Management) 2018 • State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 • Newcastle Local Environmental Plan 2012 <p>Development Control Plan: 4.15 (1)(a)(iii)</p> <ul style="list-style-type: none"> • Newcastle Development Control Plan 2012 • Section 94A Development Contributions Plan 2009

List all documents submitted with this report for the Panel's consideration	Appendix A - Conditions of consent Appendix B - Documents submitted with the application, including clause 4.6 requests. Appendix C – Subsidence Advisory NSW Appendix D – Transport for NSW (Roads and Maritime Services) Appendix E – Ausgrid Appendix F – NSW Police Appendix G – NSW Government Architect – Design Excellence Waiver
Clause 4.6 requests	<ul style="list-style-type: none"> • Clause 4.6 Variation Request to NLEP Clause 4.3 Height of Buildings development standard – note this request is not technically required due to 10% bonus provisions applicable under cl.7.5 'Design Excellence.' • Clause 4.6 Variation Request to NLEP Clause 4.4 Floor Space Ratio development standard.
Report prepared by	City of Newcastle (CN)
Report date	24 November 2020

Summary of s4.15 matters**Yes**

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Legislative clauses requiring consent authority satisfaction**Yes**

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards**Yes**

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions?

No

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment?

No

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

Development consent is sought under DA2019/01169 for a mixed use development comprising demolition of structures, erection of two 14 storey mixed-use buildings with shared basement carparking (286 spaces), seniors housing (114 bed aged care facility and 82 independent living units), residential flat building (166 units), medical centre, food and drink premises (café and restaurant) and retail premises (salon). The proposed development comprises the following works:

- Demolition of car parking area and associated building, and vehicle ramp from King Street into the 'West City' building (which is also commonly known as NEX).
- Construction of two 14-storey tower buildings with shared basement carparking; including:
 - Three shared levels of car parking (286 car spaces - including 11 accessible spaces, 17 x motorcycle spaces, and 168 bicycle storage spaces) across the site, including two basement levels and one part-basement level,
 - Ground floor commercial facilities fronting King Street and the laneway, including a café (133m²), restaurant (148m²), medical centre (242m²) and salon (hair or beauty – 39m²).
 - A 114-bed seniors aged care facility (92 x one bedroom and 11 x two bedroom), including dining and communal activity rooms.
 - 82 x seniors independent living units (ILUs) consisting of 34 x two-bedroom and 48 x three-bedroom apartments.
 - Community facilities supportive of the ILUs, including dining and recreational facilities (indoor and outdoor).
 - 166 x residential apartments (17 x studio, 52 x one-bedroom, 70 x two-bedroom and 27 x three-bedroom apartments). Apartments are located at podium level and within the proposed towers.
 - Rooftop recreation space (level 14) provided for use by general residential units, including communal facilities such as BBQ areas and a swimming pool.
- Construction of a publicly accessible pedestrian laneway between the proposed development and the 'West City' building (also known as NEX). The laneway provides connections between King Street and Bull Street and would include a memorial to the 1989 Newcastle earthquake victims (public art element).
- Associated site works including earthworks, tree removal, landscaping of the proposed pedestrian laneway, recreational spaces and street frontages.

The development application is reported to the Hunter and Central Coast Regional Planning Panel in accordance with Part 4 and Schedule 7 *State Environmental Planning Policy (State and Regional Development) 2011*, as the development is a type classified under clause 2, with the value of works being \$30 million including GST. The applicant has nominated the CIV as \$146,272,000.

Subdivision Application DA2019/01171

A separate development application (DA2019/01171) proposing Torrens title subdivision of the site and rationalisation of car parking, loading and access for 'West City' club is currently being assessed by City of Newcastle under delegation. The subdivision results in the separation of the 'West City' club (and associated car parking) from the development site. The development site subject of this report is located on proposed lot 1.

Consultation

The development application was placed on public exhibition, being notified and advertised, for a period of 14 days from 18 November 2019 to 02 December 2019 in accordance with the *Environmental Planning & Assessment Act 1979* (EP&A Act), *Environmental Planning & Assessment Regulations 2000* (EP&A Regs) and the City of Newcastle Community Participation Plan. There were no submissions received during the notification period.

Integrated Development

The application was referred to Subsidence Advisory NSW in accordance with the provisions of s4.46 of *Environmental Planning and Assessment Act 1979*:

- Subsidence Advisory NSW - General Terms of Approval dated 28 April 2020.

It is noted that dewatering is required to facilitate the construction of the basement levels. The applicant has not elected to submit an integrated referral to Water NSW for approval under s.90 of the *Water Management Act 2000*. A condition of consent is recommended which requires necessary approvals from Water NSW be obtained prior to issue of Construction Certificate.

External referrals

The application was referred to the following external agencies for comment:

- Transport for NSW (former Roads and Maritime Service) – Referred under cl. 104 and sch. 3 ISEPP (traffic generating development) - Referral response provided dated 2 December 2019 raised no objection to the proposed development.
- Ausgrid - Referred under cl. 45 ISEPP (proximity to overhead powerlines, underline power mains and substation) – Referral response dated 11 November 2020 provides recommendations to satisfy Ausgrid requirements.
- NSW Police – Referred for assessment against Crime Prevention through Environmental Design (CPTED) – Referral response dated 20 November 2019 provides recommended conditions of consent.

Pre-conditions to granting development consent

The following legislative clauses apply to the development proposal which require the consent authority satisfaction prior to the granting of development consent:

- Part 4 'Regionally significant development' and Schedule 7 of *State Environmental Planning Policy (State and Regional Development) 2011* – The development has a CIV over \$30 million including GST (CIV \$146,272,000). The HCCRPP is the relevant determining authority.
- Clause 7 'Contamination and remediation to be considered in determining development application' of *SEPP 55 – Remediation of Land* – A Remediation Action Plan (prepared by Douglas Partners and dated June 2019) has been submitted with the Application. CN is satisfied that the development site will be suitable for the proposed development following remediation works.
- Clause 45 'Determination of development applications – other development' of *State Environmental Planning Policy (Infrastructure) 2007* (ISEPP) – Written notice has been given the electricity supply authority (Ausgrid) and consideration has been given to the response received, including recommended conditions being imposed on the development consent.
- Clause 101(2) 'Development with frontage to a classified road' – Clause 101(2) specifies that the consent authority must not grant consent to development on land that

has a frontage to a classified road unless it has formed the request satisfaction to a number of matters including the safety and efficacy of the classified road, and the impact of traffic noise and vehicle emissions upon the development. Access is proposed via left-in/left out from King Street. However, the proposal has a negligible impact on the efficiency of King Street and is acceptable.

- Clause 104 'Traffic-generating development' of ISEPP – Written notice of the application has been given to RMS (now TfNSW) and consideration has been given to the submission received by RMS (now TfNSW). Further the assessment has considered the accessibility of the site including the efficiency of movement of people and freight to and from the site, and the potential to minimise the need for travel by car. A green travel plan was provided with the application and a detailed traffic assessment has been completed.
- Clause 7 of *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* – Clause 7 provides that a person must not clear vegetation in any non-rural area of the State without the authority confirmed by a permit granted by the council. The application proposes tree removal and the granting of development consent subject to conditions would satisfy the provisions of this clause.
- Clause 15 'Development in coastal zone generally – development not to increase risk of coastal hazards' of *State Environmental Planning Policy (Coastal Management) 2018* (CM SEPP): Clause 15 specifies that development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. The proposed development is located within the city centre and as a result of its siting is not considered likely to cause increased risk of coastal hazards.
- Clause 16 'Development in coastal zone generally – coastal management programs to be considered' CM SEPP: Clause 16 prescribes that development consent must not be granted to development on land within the coastal zone unless the consent authority 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 subject site.
- Clause 2.3 'Zone objectives and Land Use Table' of Newcastle Local Environmental Plan 2012 (NLEP2012) – The development site is zoned B4 Mixed Use – '*car parking*', '*seniors housing*', '*residential flat buildings*', '*medical centres*', '*food and drink premises*', and '*retail premises*', are all permissible development types within the B4 zone.
- Clause 4.6(4) 'Exceptions to development standards' NLEP2012 – Clause 4.6 Variation Requests have been submitted in respect to a proposed 2.6% variation (1.2m) to the maximum 45m building height development standard, and a 9% variation (5.45:1) to the maximum 5:1 floor space ratio (FSR) development standard. CN consider that the applicants written request has adequately addressed the matters required to be demonstrated under cl. 4.6(3). Further that the proposed development is in the public interest as it is consistent with objectives of both the building height development standard and FSR development standards. The proposed development is also considered to be consistent with the B4 zone objectives. Concurrence from the Planning Secretary is provided under Planning Circular PS 20-002 issued 5 May 2020.
- Clause 5.10(4) 'Heritage conservation' NLEP2012 – Clause 5.10(4) specifies that the consent authority must, before granting consent, consider the effect of the proposed development on the heritage significance of the heritage item or heritage conservation area concerned. The subject site is located within the Newcastle City Centre Heritage Conservation Area. A Statement of Heritage Impact (prepared by AMAC Group and John Carr Heritage Design) has been submitted with the application. The development

is generally consistent with the relevant objectives of cl.5.10, being to conserve the heritage significance of heritage items and heritage conservation areas.

- Clause 6.1(3) 'Acid Sulfate Soils' – Clause 6.1(3) specifies that development consent must not be granted for the carrying out of works under the clause unless an acid sulfate soils management plan has been prepared and provided to the consent authority. Subject to cl.6.1(4) a Acid Sulfate Soil Assessment (prepared by Douglas Partners, dated June 2019) was submitted with the application, which indicates the absence of actual or potential ASS and confirms that the preparation of an ASS Management Plan is not required.
- Clause 6.3(3) 'Earthworks' provides several matters that the consent authority must consider prior to granting development consent to earthworks. The matters listed under cl.6.3(3) have been considered during the assessment and the proposed works are acceptable.
- Clause 7.5(4) 'Design excellence' NLEP2012 – Clause 7.5(4) provides that development consent must not be granted to certain types of development unless an architectural design competition has been held in relation to the proposed development, this includes 'development having a capital value of more than \$5M on a site identified as a 'key site'. However, clause 7.5(5) specifies that subclause (4) does not apply if the Director-General certifies in writing that the development is one for which an architectural design competition is not required. A design waiver has been granted to the proposed development. Clause 7.5(5) applies to the subject development and as such a design competition is not required to be held prior to the granting of development consent.

Key Issues

The key issues considered during the assessment relate to:

- Clause 4.6 Variation Request to NLEP Clause 4.4 Floor Space Ratio development standard.
- Design excellence.
- Access and loading.
- Public domain works.
- Waste management.
- Land contamination and Acid Sulfate Soils.
- Heritage impacts.
- Social impacts.
- View loss analysis.

The development has been assessed under Section 4.15(1) of the EP&A Act 1979 and is considered satisfactory. Accordingly, it is recommended that the application be approved subject to conditions of consent contained in **Appendix A**.

RECOMMENDATION

That DA2019/01169 for mixed use development comprising demolition of structures, erection of two 14 storey mixed-use buildings with shared basement carparking, seniors housing (114 bed aged care facility and 82 independent living units), residential flat building (166 units), medical centre, food and drink premises (café and restaurant) and retail premises (salon), at 309 King Street, Newcastle West (Part Lot 1 DP 826956) be approved subject to conditions of consent in the attached schedule.

1. INTRODUCTION

This report provides a detailed overview of the development proposal for mixed use development comprising demolition of structures, erection of two 14 storey mixed-use buildings with shared basement carparking (286 spaces), seniors housing (114 bed aged care facility and 82 independent living units), residential flat building (166 units), medical centre, food and drink premises (café and restaurant) and retail premises (salon) at 309 King Street Newcastle West.

The development application is reported to the Hunter and Central Coast Regional Planning Panel in accordance with Part 4 and Schedule 7 *State Environmental Planning Policy (State and Regional Development) 2011*, as the development is a type classified under clause 2, with the value of works being \$30 million including GST. The applicant has nominated the CIV as \$146,272,000.

2. BACKGROUND

The development site is located at 309 King Street, Newcastle West. It currently contains car parking facilities associated with the 'Wests City' club complex (also known as NEX) which is located directly adjacent the development site to the east. The 'Wests City' club (NEX) is located on the same allotment, however a separate development application DA2019/01171 determined by CN granted approval for the two lot Torrens title subdivision of the site. The development site is located on proposed Lot 1. The site is zoned B4 Mixed Use and is identified as a 'Key Site' within the 'Newcastle City Centre' under Newcastle Local Environmental Plan 2012 (NLEP2012).

A preliminary design of the development was presented to CN on 25 July 2018 at a Pre-DA meeting. Formal correspondence addressing numerous matters was issued to the applicant's planning consultant on 17 August 2018. The proposal was also presented to the Urban Design Consultative Group (UDCG) on two occasions on 20 June 2018 and 19 September 2018, prior to lodgment of the DA.

Under Clause 7.5(4)(c) of NLEP 2012 the proposal would require a design competition as it is located on an identified 'Key Site'. However, subclause (5) enables an exemption from a design competition if the Director General confirms one is not required. On 14 August 2018, the NSW Government Architect (as a delegate of the Director General) granted an exemption to the requirement for a design competition for the concept development, subject to the implementation of alternative design excellence process in accordance with the Director General's Design Excellence Strategy. The recommendation provided required a process of design integrity be established to ensure the scheme retains design excellence through to completion of construction. The alternative design excellence process included continuing review by the CN Urban Design Consultative Group (UDCG).

The Development Application was lodged with CN on 6 November 2019. The proposal was presented to the UDCG after lodgment of the DA on 19 February 2020 (Refer to later sections of this report relating to the outcomes of these and other meetings with the UDCG and the alternative design excellence process).

3. SITE DESCRIPTION

The subject site is known as 309 King Street, Newcastle West and is legally described as Part Lot 1 DP 826956) and is located adjacent the existing West City Club and associated carparking structure. The 'Wests City' club (also known as NEX) is located on the same allotment, however a separate development application DA2016/00711 determined by CN

granted approval for the two lot Torrens title subdivision of the site. The development site is located on proposed Lot 1.

The development site area is 6,631 m² (proposed Lot 1) and is irregular in shape. The site has frontages to King Street (104m), Ravenshaw Street (27m) and Bull Street (136m). The development site has a future shared boundary with the 'West City' club to the east of approx. 91m. The site has a gradual slope from Bull Street to King Street, with levels ranging from RL 7m AHD in the south east of the site to RL 3m AHD in the north west. The development site has previously been partially filled with brick and concrete retaining walls fronting King Street and Ravenshaw Street (refer to figure 1 aerial image of site).



Image 1: Aerial view of the site

The development site currently contains a single-storey brick car parking structure and external carparking spaces, totalling 190 spaces, associated with the 'West City' club. The site is accessible via two separated entry/exit driveways to Bull Street. A pedestrian ramp provides access from King Street to the existing car parking. Part of the site has been historically used as a Hunter Water depot.

The wider area has a broad mixture of development including single and double storey commercial, retail and residential toward Cooks Hill Heritage Conservation area across Union Street. Bull Street contains commercial and office premises such as consultancies and gyms. Market Town shopping centre contains a mixed-use building that is a significant shopping precinct for Newcastle West incorporating high density residential apartments. Across the dual lane carriageway of King Street toward the north is a mixture of commercial/retail premises, office spaces and high density including residential. The general area is characterised by a combination of high-density commercial and residential buildings, varying in height from single storey to significantly taller contemporary developments.

The development site is zoned B4 Mixed Use and is identified as a 'Key Site' within the 'Newcastle City Centre' under Newcastle Local Environmental Plan 2012 (NLEP2012).

The site is subject to several environmental constraints as mapped on CN's GIS system including:

- Heritage Conservation Area – General.
- Adjacent mapped Heritage Items (No. 426 and 434 King Street, 102 Union Street, and 595 Hunter Street).
- Contaminated Land.
- Mine subsidence.
- Acid Sulfate Soils – Level 4.

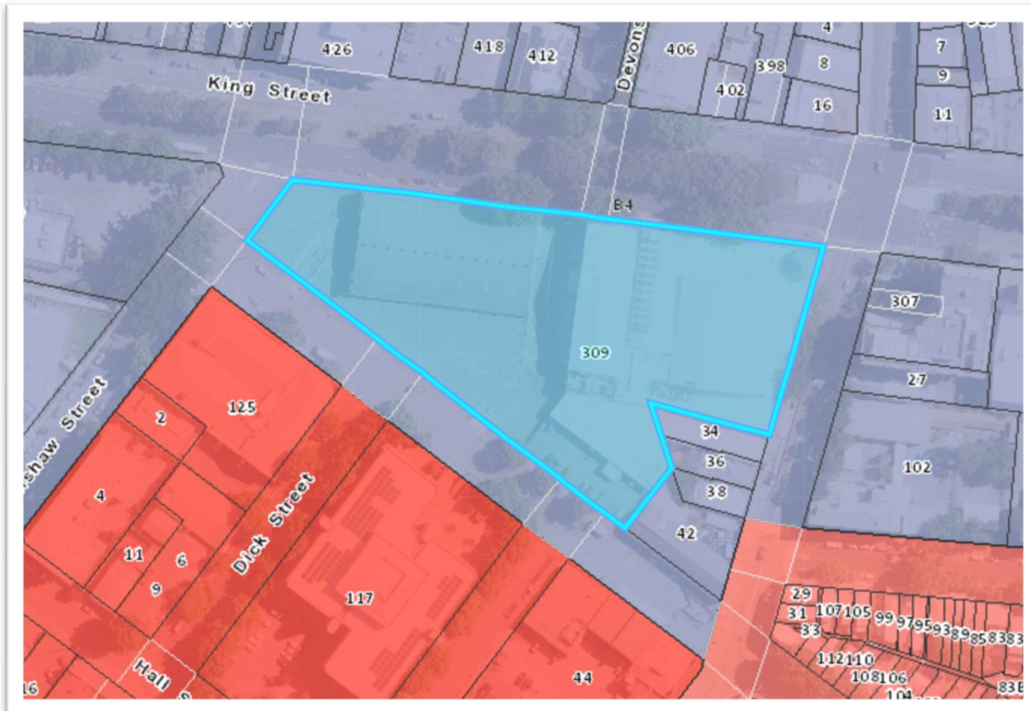


Image 2: NLEP2012 zoning extract

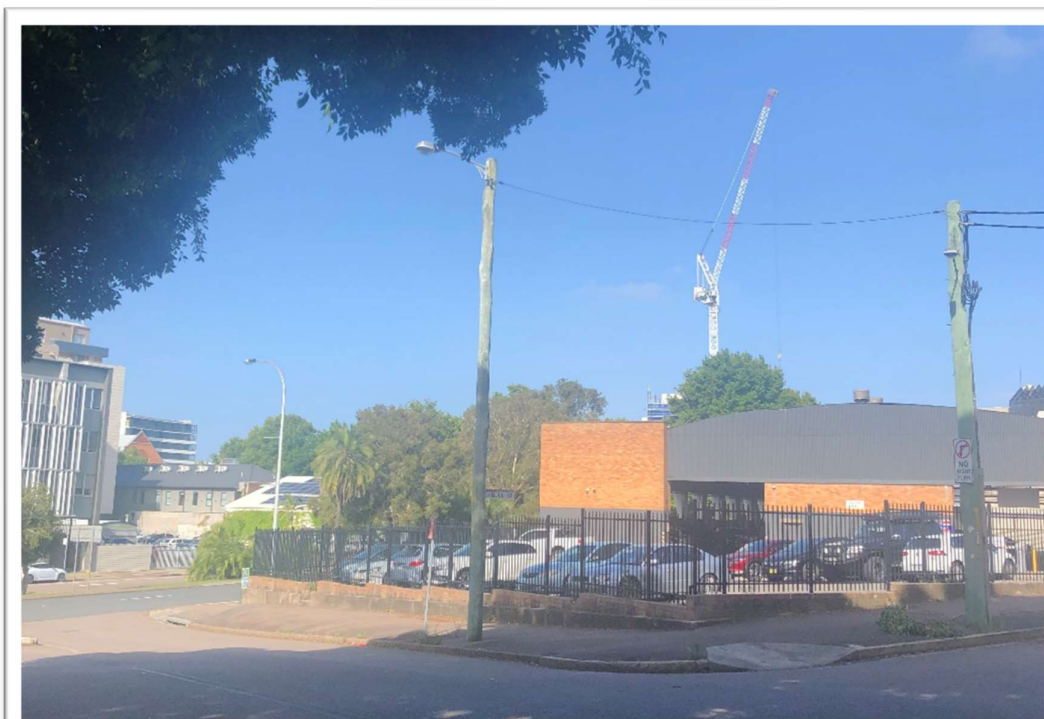


Image 3: View from Ravenshaw Street



Image 4: View from Bull Street - West



Image 5: View from Bull Street - East



Image 6: View of public through location and new boundary location

4. PROPOSAL

Development consent is sought under DA2019/01169 for a mixed use development comprising demolition of structures, erection of two 14 storey mixed-use buildings with shared basement carparking, seniors housing (114 bed aged care facility and 82 independent living units), residential flat building (166 units), medical centre, food and drink premises (café and restaurant) and retail premises (salon). The proposed development comprises the following works:

- Demolition of car parking area and associated building, and vehicle ramp from King Street into the 'West City' (NEX) building.
- Construction of two 14-storey tower buildings with shared basement carparking; including:
 - Three shared levels of car parking (286 car spaces - including 11 accessible spaces, 17 x motorcycle spaces, and 168 bicycle storage spaces) across the site, including two basement levels and one part-basement level,
 - Ground floor commercial facilities fronting King Street and the laneway, including a café (133m²), restaurant (148m²), medical centre (242m²) and salon (hair or beauty – 39m²).
 - A 114-bed seniors aged care facility (92 x one bedroom and 11 x two bed-room), including dining and communal activity rooms.
 - 82 x seniors independent living units (ILUs) consisting of 34 x two-bedroom and 48 x three-bedroom apartments.
 - Community facilities supportive of the ILUs, including dining and recreational facilities (indoor and outdoor).
 - 166 x residential apartments (17 x studio, 52 x one-bedroom, 70 x two-bedroom and 27 x three-bedroom apartments). Apartments are located at podium level and within the proposed towers.
 - Rooftop recreation space (level 14) provided for use by general residential units, including communal facilities such as BBQ areas and a swimming pool.
- Construction of a publicly accessible pedestrian laneway between the proposed development and the 'West City' building (also known as NEX). The laneway provides connections between King Street and Bull Street and would include a memorial to the 1989 Newcastle earthquake victims (public art element).
- Associated site works including earthworks, tree removal, landscaping of the proposed pedestrian laneway, recreational spaces and street frontages.
- Associated public domain works including kerb and guttering and footpath reconstruction on all three site frontages, provision of street lighting, street tree planting, pedestrian crossings and upgraded bus stop on King Street.

Refer to **Appendix B** for a copy of the floor plans and elevations of the proposal. Image 5 below depicts an annotated site plan identifying the key development components of the proposal.



Image 6: Annotated site plan – key development components

5. PLANNING ASSESSMENT

5.1 Environmental Planning and Assessment Act 1979 (EP&A Act)

5.1.1 Section 4.5 – Regional Planning Panels

Section 4.5 of the EP&A Act 1979, Part 4 and Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011 requires the Regional Planning Panel (RPP) to determine applications for general development over \$30 million. The capital investment value of the application is \$146,272,000 including GST.

5.1.2 Section 4.46 – Integrated Development

The proposal is integrated development pursuant to Section 4.46 of the EP&A Act as approval is required from Subsidence Advisory NSW under s.22 *Coal Mine Subsidence Compensation Act 2017*, to erect improvements within a mine subsidence district.

Subsidence Advisory NSW granted General Terms of Approval on 28 April 2020 which included several conditions (refer to **Appendix C**). The General Terms of Approval have been incorporated into the recommended conditions of consent (refer to **Appendix A**).

5.1.3 Section 4.15(1) Evaluation

The application has been assessed having regard to the relevant matters for consideration under the provisions of Section 4.15(1) of the Environmental Planning and Assessment Act 1979, as follows:

5.1.3.1 *The provisions of any environmental planning instrument*

State Environmental Planning Policy (State and Regional Development) 2011

State Environmental Planning Policy (State and Regional Development) 2011 sets out the functions of regional panels in determining applications for regional development. Clause 20 of the SEPP requires the Regional Planning Panel to be the determining authority for development included in Schedule 7 of the SEPP. This includes applications for development over \$30 million in value. The application is submitted to the Hunter and Central Coast Regional Planning Panel for determination as the value of works is over \$30 million, having a nominated CIV of \$146,272,000.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) was introduced to facilitate the delivery of infrastructure across the State by improving regulatory certainty and efficiency. The ISEPP simplifies the process for providing infrastructure in areas such as education, hospitals, roads, railways, emergency services, water supply and electricity delivery.

Clause 45 - Development impacted by an electricity tower, electricity easement, substation, power line

Clause 45 of the ISEPP requires certain development applications to be referred to the relevant electricity supply authority, further that any concerns raised by the electricity supply authority are to be considered as part of the assessment. The development site is located within This includes development within or adjacent to an easement for electricity purposes; adjacent to a substation; within 5m of an exposed overhead electricity power line; or a pool within 30m of a structure supporting an overhead transmission line.

The proposed development is located within 5m of an exposed overhead electricity power line, adjacent to a substation and within proximity to underground power mains. As such, a referral was sent to Ausgrid under clause 45 ISEPP. A referral response has been provided by Ausgrid dated 11 November 2020 (refer to **Appendix E**) which provides recommendations to satisfy Ausgrid requirements, including:

- The developer must submit a NECF-01 'Preliminary Enquiry' form to Ausgrid prior to issue of any Construction Certificate.
- Workcover Code of Practice – Work Near Overhead Powelines minimum safety separation distance requirements between mains/poles to structures within the development must be maintained throughout construction. Ausgrid should be contacted prior to construction to discuss compliance issues.
- Any required relocation of existing overhead mains will be at the developers cost.
- Prior to commencement of works a DBYD search and ground search should be undertaken to locate electricity assets. Reference should be given to 'Ausgrid Network Standard 156 – Working near or around underground cables'. Any alterations to Ausgrid's underground electricity mains will be Contestable Works and funded by the developer.
- Detailed civil plans relating to the chamber substation ventilation are required showing how the duct will be reworked for the ventilation system that is proposed to be altered. Any proposed changes need to be to the satisfaction of Ausgrid and must be adequate, fit for purpose and all penetrations to fire rated walls and ceilings are to be in accordance with current standards.

The recommendations raised within the Ausgrid referral have been imposed upon the conditions of consent (refer to **Appendix A**).

Clause 101 – Development with frontage to classified road

Clause 101 provides that new development should not compromise the effective and ongoing operation and function of classified roads. Clause 101(2) specifies that the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that: (a) where practicable and safe, vehicular access is provided by a road other than the classified road, (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development, and (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

The proposed development is accessed via King Street which is a classified road. The application was referred to the Roads and Maritime Services (RMS - now TfNSW) and no objection to the development was raised. Advice provided within the referral response noted that access from the local road network should be considered.

Given that the proposed King Street driveway will permit left-in/left-out movements only, the impact of King Street traffic efficiency will be negligible. Further, it is noted that DA2019/01171 has been received by CN for the proposed modification of the existing Wests (NEX) building and car parking arrangements. The existing driveway leading to the existing Wests (NEX) building car parking will be removed. Access to the Wests (NEX) building will be relocated to Bull St frontage and this will be the primary access (as illustrated in image 7 below).

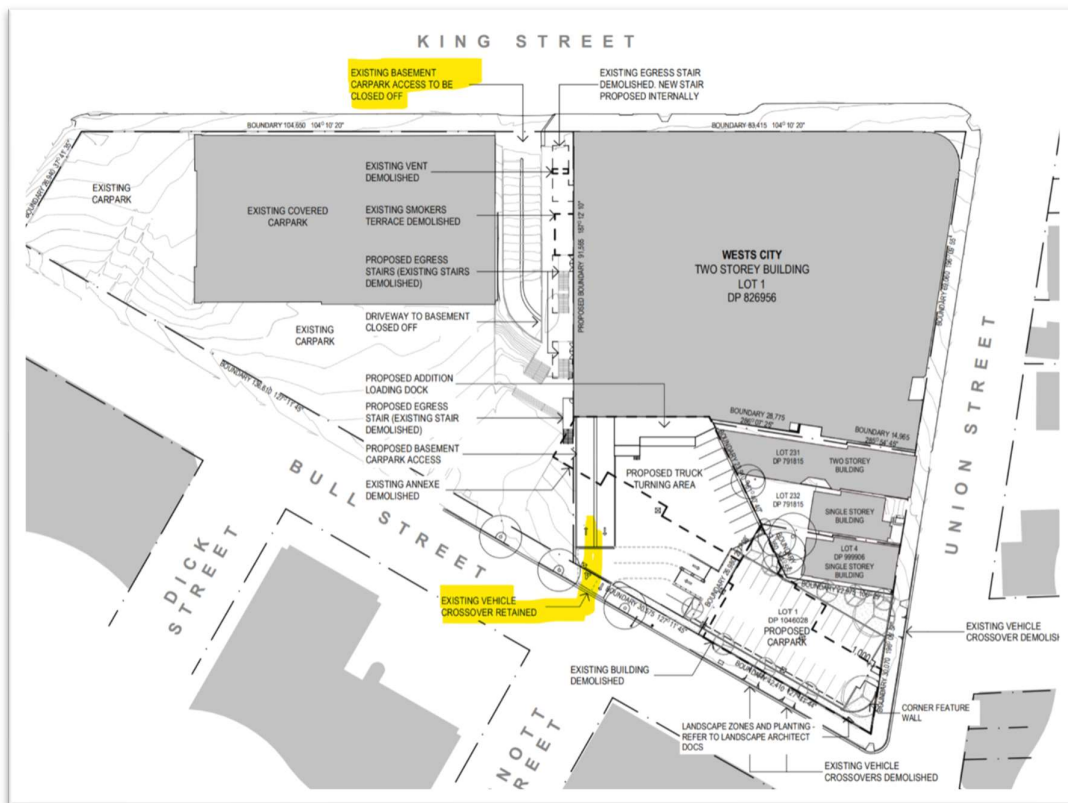


Image 7: Site plan for Wests (NEX) subdivision and amended access DA2019/01171 – access highlighted

Generally, the changes to the NEX building car parking access from Bull St and the proposed development car parking from King Street frontages will provide a much better traffic and trip distribution factor on the local street and limit impacts on the traffic signals on Union Street. Accordingly, the proposed access from King Street to service the development is preferred in this instance.

Subject to conditions of consent the traffic noise impacts to the proposed residential units can be mitigated (refer to acoustic impact discussion elsewhere within this report). Appropriate site setbacks ensure that vehicle emissions do not adversely impact future residential occupants. The proposed access is acceptable.

Clause 102 – Impact of road noise or vibration on non-road development

Clause 102 applies to development that is on land in or adjacent to the road corridor for a freeway, tollway or transit way or any other road with an annual average daily traffic volume of more than 20,000 vehicles (based on traffic volume data published on the website of the RMS). Residential accommodation is development for the purpose of clause 102. The proposed development is located adjacent to King Street which is a classified road. However, King Street is not mapped as being either 'mandatory' or 'recommended' for noise assessment for building on land adjacent to busy roads per the RMS (now TfNSW) traffic volume maps.

Clause 104 and Schedule 3 – Traffic Generating Development

Clause 104 and sch. 3 of the ISEPP, relates to traffic generating development and requires certain applications to be referred to Roads and Maritime Services (RMS – now TfNSW). The application was referred to RMS (now TfNSW) as:

- The proposed car park contains 200 or more car parking spaces (286 spaces proposed).
- The development proposes more than 75 dwellings with access to a classified road (King Street).
- The development will result in 50 or more vehicles entering the site per hour with access and within 90m of a classified road (King Street).

The RMS provided a response on 2 December 2019 which specified that no objection was raised to the proposal as it will not result in a significant impact to the nearby State road network (King Street). In addition, general advice was provided to CN for consideration of the assessment of the application, in respect to access, traffic measures, future traffic and transport studies for the area, sight line distances. The RMS advice further stated that all matters relating to internal arrangements on site are matters for CN to determine.

An assessment of the proposal has been undertaken having regard to traffic generation. The submitted Traffic Impact Assessment (prepared by Intersect Traffic, dated May 2019) indicates that an estimated 124 vehicle trips and 105 vehicle trips per hour will be generated by the development in AM and PM peak hours.

Given that the King Street driveway will permit left-in/left out movements only, the impact of King Street traffic efficiency will be negligible. Due to the central median on King Street, right-turning traffic into and out of the development will be distributed onto the adjoining road network with negligible impact. The traffic generation and distribution from the development are not anticipated to cause any significant issues and no road work upgrades are necessary to accommodate development traffic. Furthermore, the site within proximity to public transport options and with walking distance to Newcastle interchange.

A construction traffic management plan addressing the traffic generation, pedestrian management, heavy vehicle movement and parking impact during the construction phase is required to be submitted in accordance with the recommended conditions of consent.

The advice provided by the RMS (now TfNSW) was considered during the assessment of the Application and subject to conditions of consent the proposed development is satisfactory with respect to cl. 104 and sch.3 of the ISEPP.

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to buildings that are defined as 'BASIX affected development', being "development that involves the erection (but not the relocation) of a BASIX affected building," (i.e.: contains one or more dwelling).

Accordingly, provisions of the SEPP apply to the current development proposal. In this regard the applicant submitted a BASIX Certificate 1026173M (Dated 20 August 2019 and prepared by Building Sustainability Assessments) which list the commitments to achieve appropriate building sustainability. A condition is included on the development consent requiring such commitments to be fulfilled.

State Environmental Planning Policy No.55 (Remediation of Land) (SEPP No.55)

This policy requires consideration to be given to previous uses on the site and whether the site needs to be remediated for future uses. Clause 7(1) (b) and (c) of SEPP No.55 require that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation.

The subject site is mapped as contaminated land on CN GIS system. A Preliminary Site Investigation (PSI) was carried out in 2015, which comprised a review of the site history, site walkover and the preparation of the report. Following a desktop review and observations made during the site inspection, several sources of potential contamination were identified as being located on the site. These sources included imported fill material, fuel/chemical storage (associated with the Hunter Water depot) and possible motor parts/automotive dealer.

Douglas Partners conducted a targeted site investigation for contamination across the development area (i.e. Lot 1 - residential/aged care development and adjacent proposed car park) in September 2018. The assessment included subsurface investigation, soil sampling, groundwater well installation, groundwater sampling, laboratory testing for a range of contaminants and preparation of a report. The subsurface investigation targeted areas of potential contamination such as the former Hunter Water depot, former mechanics/car sales area and general site filling. The results of the assessment indicated the following (Section 2.2.2):

- General absence of gross petroleum hydrocarbon, PAH, pesticide and PCB impacts.
- Presence of contaminated (likely imported) filling within the site, generally comprising sand with ash and slag components (encountered in Bores 4 and 7). Heavy metal concentrations (copper, lead and zinc) in the filling exceeded the adopted health-based land use criteria. The heavy metal impacted filling generally comprised grey/dark grey gravelly sand filling (ash/slag).
- A moderate propensity for lead to leach from the heavy metal-impacted filling, based on the ASLP leachability testing results.
- Some minor building rubble was encountered in filling across the site. Bonded fibre cement fragments (possible asbestos-containing materials – ACM) were also observed at the site surface during the previous assessment (Ref 1). It is noted that the fragments were located in an area that has subsequently been paved for car parking.
- The majority of soil samples tested are classified as 'General Solid Waste' based on total and leachable (TCLP) concentrations of contaminants, however, some fill samples from Bores 4 and 7 indicated total and/or leachable concentrations above 'General Solid Waste' and 'Restricted Solid Waste' criteria (i.e. 'Hazardous Waste'). The possible depth and extent of impacted soils has not been confirmed.
- The general absence of gross impact in groundwater at the sampled locations.

- Presence of elevated concentrations of heavy metals (namely chromium, copper and zinc) in all groundwater samples. It is noted that previous groundwater testing in the Newcastle area has identified heavy metal impact (i.e. results were considered to be typical of regional groundwater quality) and the general absence of elevated concentrations of lead in groundwater.

Based on the results of the investigation, remediation and management was recommended by Douglas Partners to render the site suitable for the proposed development with respect to site contamination, due to the presence of localised heavy metal (copper, lead and zinc) impacted fill. Remediation options for the site included onsite management of heavy metal and asbestos contamination, or excavation and off-site disposal of contamination.

Accordingly, Douglas Partners prepared and submitted a Remediation Action Plan (RAP) (dated June 2019) which stated, that given the excavations required for construction of the proposed residential/aged care development (i.e. the proposed two-level basement), off-site disposal of heavy metal and asbestos impacts was considered to be the most appropriate remediation option for the site. As such, the remediation strategy nominated for the RAP is off-site disposal of impacted. Conditions of consent have been recommended in respect to the required remediation works (refer to **Attachment A**).

The proposal satisfies the requirements and SEPP55, in particular clause 7 'contamination and remediation to be considered in determining development application', which requires the consent authority is satisfied that the development site will be suitable for the proposed development following remediation works.

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP SH)

The purpose of SEPPSH is to encourage the appropriate supply of housing to meet the needs of seniors and people with disabilities. The proposed development includes a component of seniors housing comprising 114 bed aged care facility and 82 independent living units. Seniors housing development is permissible in the B4 zone under NLEP 2012 and therefore the applicant is not relying on the provisions of the SEPP SH for permissibility.

However, the application has been assessed against the design principles of the SEPP SH to ensure that the proposed built form responds to the characteristics of the site and its form, as well as ensuring that appropriate support services have been provided. In this regard, the development standards contained within SEPP SH have been considered in the merit assessment of the application as a relevant matter for consideration under s.4.15(1)(a)(i).

The proposed 114 bed aged care facility is defined as a '*residential care facility*' under both the SEPP SH and NLEP2012, being:

'a residential care facility is residential accommodation for seniors or people with a disability that includes -

(a) meals and cleaning services, and

(b) personal care or nursing care, or both, and

(c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care,

not being a dwelling, hostel, hospital or psychiatric facility'.

The proposed 82 independent living units (ILUs) are defined as a '*group of self-contained dwellings*', being:

'a self-contained dwelling is a dwelling or part of a building (other than a hostel), whether attached to another dwelling or not, housing seniors or people with a disability, where private

facilities for significant cooking, sleeping and washing are included in the dwelling or part of the building, but where clothes washing facilities or other facilities for use in connection with the dwelling or part of the building may be provided on a shared basis.'

An assessment of the proposal against the relevant clauses of the SEPP SH is provided below.

Relevant clause	Comment	Compliance
Clause 23 - Development on land used for the purposes of an existing registered club	<p>The application is not relying on the existing club in relation to permissibility.</p> <p>Irrespective, it is noted that there are appropriate measures to separate the club from the residential areas as required under cl.23. The registered club shall be located on a separate allotment to the proposed seniors housing development as approved under DA2019/01171. Furthermore, the seniors housing component of the development is located in proposed building A which is separated from the registered club by proposed building B.</p>	Complies – the seniors living component of the development is suitably separated from the existing registered club.
Clause 26 - Location and access to facilities	<p>Clause 26 requires that suitable access to facilities and services including shops, bank service providers and other retail and commercial services, community services, recreation facilities, and the practice of a general medical practitioner should be available to the residents of the proposed development.</p> <p>Written evidence has been provided by the applicant (Access Review, prepared by Morris Goding Access Consulting, dated 27 June 2019), which identifies the site is within proximity to 'Markettown Shopping Centre' which provides access to retail tenancies, supermarkets, banks, pharmacy and medical centre. In addition, it is noted the proposed development includes commercial facilities including café, restaurant, medical centre and salon. There are also independent retail premises located in proximity to the development site along Hunter and King Streets.</p> <p>Clause 26 specifies that the required facilities and services are not located more than 400m from the proposed development by suitable access pathway, or as the site is located outside the Greater Capital City Statistical Area, that there is a transport service available to the residents not more than 400m from the site and that will take residents to the required facilities and services.</p> <p>The proposed commercial facilities are within 400m of the seniors living component of the development. Markettown Shopping Centre (and retail premises along King and Hunter Streets) are within 400 metres of the site along a level and flat path of travel. Further, the Access Review confirms that the local bus services which service the site satisfy the requirements of clause 26.</p>	Complies – the development site is located within proximity to necessary facilities, services, and infrastructure.
Clause 27 Bushfire prone land	The site is not located upon bushfire prone land.	N/A.
Clause 28 - Water and sewer	Water is to be provided to the site through connection to Hunter Waters 150mm diameter main. The submitted Services Report (prepared by GHD and dated June	Complies – water and sewer infrastructure

	2019) identifies that the development does not trigger water main upgrades. Further, connection to sewer will be facilitated through connection to Hunter Waters existing oviform main located on Ravenshaw Street. The proposal can be adequately serviced with water and sewer.	provided by Hunter Water are available to the site.
Clause 29 - Consent authority to consider certain site compatibility criteria for development applications to which clause 24 does not apply	<p>This clause requires the consent authority to consider whether the proposed development is compatible with the surrounding land uses having regard to (at least) the criteria referred to in clause 25(5)(b)(i), (iii) and (v) which includes: (i) the natural environment and existing uses/approved uses, (iii) the services and infrastructure available to meet the demands arising from the proposed development, and (v) likely impact of the bulk, scale, built form and character of the development upon existing, approved and future uses in the vicinity of the development.</p> <p><i>cl.25(5)(b)(i) - Natural environment and land uses</i></p> <p>The subject site is located within the Newcastle City Centre and is not affected by significant environmental constraints. The site is subject to mines subsidence and General Terms of Approval have been issued by Subsidence Advisory NSW.</p> <p>The development is permissible within the B4 mixed use zone and is generally compliant with the applicable development controls (or has been supported by an acceptable cl.4.6 variation request). The proposed development is compatible with the existing and future land uses within the locality.</p> <p><i>cl.25(5)(b)(iii) – Services and infrastructure</i></p> <p>The development is located within proximity to existing services and infrastructure which is available to meet the demands arising from the proposed development. The development also proposes a café, restaurant, salon and medical centre to meet the demands of the future residents.</p> <p><i>cl.25(5)(b)(v) – Bulk, scale, built form and character</i></p> <p>The subject site is identified as a 'key site' within NLEP2012 and is within the Newcastle City Centre. The applicable NLEP2012 and DCP2012 controls envisage the site and the surrounding area as containing high-density residential and commercial development. Then proposed development is generally compliant with the applicable development standards (or supported by an acceptable cl.4.6 variation request) and controls. As such, the bulk, scale, built form and character of the proposed development is acceptable.</p>	Complies – the development is compatible with the surrounding land uses and is in keeping with its city centre context.
Clause 30 - Site analysis	A site analysis and associated detailed information (such as urban analysis) have been submitted with the development application. The proposal is considered satisfactory and in accordance with this clause.	Complies – adequate site analysis provided.
Clause 31 Design of in-fill residential development	'in-fill self-care housing' is defined as seniors housing on land zoned primarily for urban purposes that consists of two or more self-contained dwellings where none of the following services are provided on site as part of the development: meals, cleaning services, personal care, and nursing care.	N/A.

	The proposed development includes 82 independent living units (self-contained dwellings), however as the development also includes a 114 bed residential care facility with associated services (including meals, cleaning, personal and nursing care), the development is not considered to be defined as 'in-fill self-care housing'.	
Clause 32 - Design of residential development	Clause 32 provides that a consent authority must not consent to a development application made under SEPP SH unless it is satisfied with the design principles contained within Division 2 of the SEPP SH.	Noted - The Division 2 clauses (33-39) are discussed below.
Clause 33 - Neighbourhood amenity and streetscape	<p>Clause 33 specifies that proposed development is required to contribute to the quality and identify of the area, including complementing heritage conservation areas, maintaining reasonable neighbourhood, amenity and residential character / setbacks, and through provision and retention of landscape plantings.</p> <p>The development site is located within the Newcastle City Heritage Conservation Area and is in proximity to several locally listed heritage items. The development is located a sufficient distance away from nearby heritage items that it will not directly impact upon their setting or interpretation. The closest heritage item, Miss Porter's Residence, will not be viewed in the same viewline as the subject site. The width of King Street and the existing median strip also contribute to soften views between the two sites and maintain a visual separation. No significant landscaping features or outbuildings would be impacted by the proposal.</p> <p>The development has been sited and designed to maximise the use of site in a manner that preserves and mitigates impacts to the neighborhood, amenity and streetscape by providing quality development within the city centre.</p>	Complies – the development has been sited and designed to maintain and contribute to neighbourhood amenity and streetscape.
Clause 34 - Visual and acoustic privacy	<p>Clause 34 requires that the development be designed to adequately address visual and acoustic privacy of neighbours in the vicinity.</p> <p>The development has been designed to ensure that the separation between windows and balconies is provided to ensure visual privacy is achieved.</p> <p>The development complies with the required separation distances prescribed within the Apartment Design Guidelines (ADG) which ensures that adequate separation is provided to both neighbouring development and within the site itself (between buildings) in order to ensure adequate visual and acoustic privacy.</p>	Complies – refer to SEPP 65 and ADG assessment for further detail.
Clause 35 - Solar access and design for climate	<p>Clause 35 specifies that proposed development should ensure adequate daylight to: the main living areas of neighbours in the vicinity, residents and substantial areas of private open space.</p> <p>The proposed development does not result in unacceptable impacts by way of overshadowing to adjoining properties. Further, the living rooms and private open space of 63% of the proposed independent seniors living apartments receive a minimum of 2hrs direct sunlight between 9am to 3pm.</p> <p>The Level 5 Terrace which is the principle useable part of the Building A (seniors housing) communal open space,</p>	Complies – refer to SEPP 65 assessment for further detail.

	has northerly aspect and achieves a minimum of 2hrs sunlight between 9am and 3pm in mid-winter to over 50% of the area.	
Clause 36 - Stormwater	<p>Clause 36 provides that development should control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site stormwater detention or reuse.</p> <p>The applicant has been submitted with a Stormwater Report (prepared by GHD, dated 26 August 2020) and associated civil drawings. The development proposes a stormwater harvesting and reuse scheme with a total storage of 75kL, including 5kL tanks on the roof tops for rooftop landscaping watering and a 65KL tank on the ground floor for toilet flushing, washing machine usage and landscape watering. A 60m³ detention tank located at ground level is also proposed.</p> <p>The application has been assessed and the proposal is satisfactory in relation to stormwater management subject to conditions of consent.</p>	Complies - subject to recommended conditions.
Clause 37 - Crime prevention	<p>Clause 37 identifies that proposed development should provide personal security for residents and visitors and encourage crime prevention, including by site planning that allows observation and providing secure shared entries.</p> <p>The applicant has submitted a Crime Risk Assessment prepared by CHD partners, dated June 2018. NSW Police provided referral comments (dated 20 November 2019) which provided a CPTED assessment and raised no objection subject to recommended conditions. Safety was also considered by the UDCG as part of the ADG assessment.</p> <p>The development inclusive of the seniors housing component has clear legibility and transition from private to semi-private space. Additionally, semi-private areas are distinct from public space which promotes territoriality. There is clear legibility from public to private space with clear and specific entrance points being provided to residential accommodation.</p> <p>Clear sightlines exist through the site to the public domain. Landscaping has been designed to ensure surveillance of public areas and that there are no entrapment areas.</p> <p>Conditions of consent are recommended which require detailed landscape documentation, appropriate lighting to communal / public areas, and appropriate security mechanisms to control access after-hours.</p>	Complies - subject to recommended conditions.
Clause 38 - Accessibility	<p>Clause 38 specifies that proposed development should have obvious and safe pedestrian links from the site that provide access to public transport services or local services. Development should also provide attractive and safe environments for pedestrian and motorists with convenient access and parking.</p> <p>The Access Review (prepared by Morris Goding Access Consulting, dated 27 June 2019) demonstrates that the development achieves safe pedestrian links to the site to services, facilities and public transport.</p>	Complies – adequate pedestrian linkages are provided within and around the site.

	<p>The development includes an eastern pedestrian link between King and Bull Streets. The UDCG noted that whilst this pedestrian link provides an attractive space during the day, proposed concrete walls may provide screening and hiding spaces which would result in antisocial behaviour and safety concerns. These concerns can be addressed by way of conditions of consent and submission of further detail at construction certificate stage with design solutions.</p>	
Clause 39 - Waste management	<p>Clause 39 provides that development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.</p> <p>The proposal includes a Waste Management Plan. The proposal has identified that garbage will be collected via a private contractor. There are provisions for promoting recycling onsite.</p> <p>However, City of Newcastle requires that the residential components of the development are capable of being serviced by CN. Further discussion is contained elsewhere within this report regarding waste management, however it is noted that compliance with CN servicing requirements can be achieved subject to conditions of consent.</p>	Complies – subject to conditions of consent.
Clause 40 - Development standards—minimum sizes and building height	<p>Clause 40 specifies development standards, as discussed below:</p> <ul style="list-style-type: none"> • Site size - The site meets the minimum area requirement of 1,000 square metres. • Site frontage - The site meets the minimum site frontage requirement of 20 metres. • Height in residential zones where residential flat buildings are not permitted - The site is not within a residential zone, so this clause does not apply. 	Complies.
Clause 41 - Standards for hostels and self-contained dwellings	<p>This clause specifies that a consent authority must not consent to a development application for the purpose of a self-contained dwelling unless the proposed development complies with the standards specified in Schedule 3 for such development. Schedule 3 provides the standards concerning accessibility for useability for hostels and self-contained dwellings.</p> <p><u>Part 1 – Standards applying to hostels and self-contained dwellings</u></p> <ul style="list-style-type: none"> • <i>Clause 2 - Siting standards (wheelchair access):</i> Access has been provided in accordance with AS1428.1 to ensure that a person using a wheelchair can use common areas and common facilities. Refer to Access Review (prepared by Morris Goding Access Consulting, dated 27 June 2019). • <i>Clause 3 – Security:</i> Clause 3 prescribes requirements for pathway lighting and can be addressed by conditions of consent. • <i>Clause 4 – Letterboxes:</i> Clause 4 specifies requirements for the design and location of letterboxes, including that letterboxes must comply with access requirements under AS1428.1, be 	Complies – subject to recommended conditions.

	<p>lockable and located in a central location adjacent street entry. Subject to conditions of consent the proposed development complies with clause 4.</p> <ul style="list-style-type: none"> • Clause 5 – Private car accommodation: Accessible spaces have been designed to comply with AS 2890. Ten of the eleven accessible spaces allocated in basement level one are assigned to the independent living units and have been designed to be 2.4m x 5.4m with 2.4m wide shared space and a bollard are compliant to AS2890.6. The proposed private car accommodation for the independent living units is considered acceptable. • Clause 6 – Accessible entry: Every entry to a dwelling complies with clause 4.3.1 and 4.3.2 of AS 4299, the submitted plans demonstrate doors are provided with clear widths of 850mm and circulation spaces are compliance with AS1428. This requirement will be included in the recommended conditions of consent. • Clause 7 – Interior general: Clause 7 prescribes minimum dimensions for corridors and requires compliance with AS1428.1. The Access Review identifies that the 'typical 3 bed type' will need to have the corridor width adjusted to satisfy this provision, however compliance can be achieved subject to further detail at construction stage. • Clause 8 – Bedroom: Clause 8 prescribes minimum requirements for bedroom design. Compliance with the requirements can be addressed by way of conditions of consent specifying further detailed design information prior to release of any construction certificate. • Clause 9 – Bathroom: Clause 9 prescribes minimum requirements for bathroom design. Compliance with the requirements can be addressed by way of conditions of consent specifying further detailed design information prior to release of any construction certificate. • Clause 10 – Toilet: A toilet must be provided at ground floor which complies with AS4299. The submitted plans demonstrate circulation space of 900mm x 1200mm in compliance with AS4299. • Clause 11 – Surface finishes: Balconies and external paved areas are to have slip-resistant surfaces. This can be addressed by conditions of consent. • Clause 12 – Door hardware: Door handles and hardware is to comply with AS4299. This can be addressed by conditions of consent. • Clause 13 – Ancillary items: Switches and power points must be provided in accordance with AS4299. Compliance can be achieved subject to conditions of consent. <p><u>Part 2 – Additional standards for self-contained dwellings</u></p> <ul style="list-style-type: none"> • Clause 15 – Living room and dining room: Living rooms are required to have appropriate circulation space (compliance with AS4299) and be adjacent telephone and general power outlet (GPO). Both living 	
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	<p>and dining rooms are to have necessary wiring to achieve 300 lux illumination. All dwellings can accommodate a 2250mm diameter clear circulation space compliant with cl.4.7 AS4299. Requirements for GPO, telephone and power can be addressed by conditions of consent.</p> <ul style="list-style-type: none"> • <i>Clause 16 – Kitchen:</i> Clause 16 specifies the requirements for kitchen design, including the need for circulation space to satisfy AS4299. The Access Review identifies that a majority of the proposed units have been designed with a bench along the wall with an adjacent island bench top which is non-compliant as a 1500mm width clearance is needed between benchtops. However, compliance can be achieved through submission of detailed design in accordance with AS4299 prior to issue of construction certificate. A condition of consent has been recommended. • <i>Clause 17 – Access to kitchen, main bedroom, bathroom and toilet:</i> The proposed independent living units are not multi-storey. This clause does not apply. • <i>Clause 18 – Lifts in multi-storey buildings:</i> Lifts in multi-storey buildings containing separate self-contained dwellings on different storeys must provide lift access in compliance with E3.6 of the Building Code of Australia. Compliance with this requirement can be satisfied through conditions of consent. • <i>Clause 19 – Laundry:</i> All proposed independent living units show a functional clearance of 1300mm. • <i>Clause 20 – storage for linen:</i> Storage for linen is provided to all proposed independent living units. • <i>Clause 21 – Garbage:</i> Garbage chute rooms have been provided in the common areas of the building near the lifts. The proposal complies with the requirements of clause 21. <p>The proposed development has not been lodged under the provisions of SEPP SH. However, the requirements contained in schedule 3 have been adopted to ensure that self-contained dwellings used for seniors housing are appropriately designed and constructed for their intended use and fit-for-purpose for future occupants. As such, conditions of consent have been recommended to ensure compliance with the requirements of this section of the SEPP SH.</p>	
Part 7 – Development standards that cannot be used as grounds to refuse consent	<p>Clause 48 and 50 set out standards which cannot be used as grounds to refuse development consent for residential care facilities and self-contained dwellings.</p> <p>The development has been lodged under CN LEP and does not seek to rely on the provisions under Part 7.</p>	Not applicable.
Clause 55 - Residential care facilities for seniors required to have fire sprinkler systems	<p>Clause 55 requires residential care facilities include a fire sprinkler system. The Applicant has confirmed that proposal will incorporate the required system. This requirement will be addressed by recommended conditions of consent.</p>	Complies – subject to recommended conditions.

In summary, the application is proposed under NLEP2012. For benefit of consistency with relevant development standards in SEPP SH the proposal was considered under this SEPP and is considered satisfactory.

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

This policy applies to the development of new residential flat buildings and aims to improve the quality of residential flat development. Clause 28(2) of the SEPP requires the consent authority to take into consideration the advice of a Design Review Panel (constituted under Part 3 of the Policy), the design quality of the development when evaluated in accordance with the design quality principles and the Apartment Design Guide (ADG). An assessment of the development under the design principles is provided below.

CN's Urban Design Consultative Group (UDCG) have considered the application twice. First, on 20 June 2018, prior to lodgement of the development application. Following lodgement, the development application was referred to the UDCG for the second time on 19 February 2020.

In response to matters raised by CN in a request for information, which included the concerns raised by the UDCG February 2020 advice, additional information including amended architectural documentation was submitted in September 2020.

The amended proposal has sufficiently incorporated the recommendation and resolved the concerns raised by the UDCG. Such as, the development has now satisfied the UDCG advice and is considered an appropriate design response.

A summary of the UDCG advice in relation to the nine Design Quality Principles is provided in below.

Design Quality Principles	Assessment
Principle 1. Context and Neighbourhood Character	
<p><u>UDCG Comment – 20 June 2018 (UD2018/00018)</u></p> <p><i>“The site is located on an almost triangular corner site and fronts King Street, Ravenshaw and Bull Streets. It is adjacent to the existing NEX site also owned by the West Group which will remain as the Wests Sporting club for the foreseeable future.</i></p> <p><i>While not a ‘gateway site’, its redevelopment will have a significant impact on the surrounding area and as such is a key site in the rejuvenation of the west end of Newcastle. The site is also in the Newcastle heritage conservation area. The Tonella Centre is to the south which is the original Allowrie Butter factory in Newcastle. This has been repurposed as a commercial centre for numerous small businesses. There is a mixture of new and old, commercial and retail premises on nearby sites and a large residential flat complex on top of a retail shopping centre to the west across Ravenshaw Street. The site is on the southern side of King Street which is a heavily trafficked primary artery through Newcastle. This road will continue to be used by buses and carry the majority of vehicles in and out of the city. Its significant width and centre median strip of</i></p>	<p><u>Officer Comments</u></p> <p>The UDCG comments are noted.</p>

established landscaping softens this busy road. Currently a vehicular access and ramp down to the basement carpark of the NEX Club is located on the eastern side of the site."

UDCG Comments - 19 February 2020
(UD2018/00018.01)

"Nothing further to add."

Principle 2. Built Form and Scale

UDCG Comment – 20 June 2018
(UD2018/00018)

"The development proposed presents a well-considered built form which responds to its context and takes into account the existing controls for the site.

The generators of the forms are the adjacent street grids which continue through the site in the form of pedestrian links which connect to King Street and potentially through to Devonshire Lane on the northern side of King Street. This results into two built forms which logically complete the built blocks bounded by Ravenshaw and Dick Streets and Dick and Arnott Streets. The relocated driveway access to the basement parking for the Club to Bull Street, allows the zone required for setbacks to the club site to be landscaped and provide a pedestrian link between King Street and Bull Street. The change in level across this link has been used to provide an opportunity for a fitting memorial to the victims of the 1989 Earthquake in Newcastle who lost their lives in the old Workers Club on the adjacent NEX site. This division of the site into two smaller blocks to be built on allows the scale of the forms to be in keeping with the scale of nearby developments.

The two buildings have been designed with a 16m street wall height with towers set back varying amounts. The podium presents as a solid masonry form using sandstone as the dominant material. The overall mass of the podium has been reduced by introducing the finer grain of the balconies and significant landscaping proposed for the buildings. Above the podium level the two towers present more as glazed towers with curved corners. This provides a softness of form with the added benefit of reducing wind problems associated with the taller buildings."

UDCG Comments - 19 February 2020
(UD2018/00018.01)

"Concern was raised regarding the location of the substation on the corner of King Street and Ravenshaw Street. It is unusual to see a prominent corner site allocated to such a service. Although the slope of the road will conceal much of the bulk of the substation minimising the

Officer Comments

In response to the UDCG concerns regarding the location of the substation on the corner of King and Ravenshaw Streets, the applicant provided the following response (Response to Request for Information letter prepared by City Plan Strategy & Development Pty Ltd dated 8 September 2020);

"Alternative locations for the substation were considered early in the design process. With the provision of the through site link, the entire frontage of the development will be visible from the public domain, making it difficult to hide these elements. Notwithstanding, the current proposed location was considered preferable having regard to the location of existing electrical infrastructure, separation from sensitive receivers, positioning away from the main King Street frontage, the site's topography, access requirements and the functionality of the site layout.

As shown in the extracted elevation plan below, the substation is partly concealed from view due to the slope of the adjoining road. Landscaping in the form of street tree planting and raised planter beds will further assist in screening the substation from public view."



This is considered acceptable.

Furthermore, the development application was referred to Ausgrid for comment on 2 December 2019. The advice received from Ausgrid in Letter dated 7 February 2020 raised no objection to the proposal.

<i>negative aspect, alternative locations should be explored.”</i>	
Principle 3. Density	
<p><u>UDCG Comment – 20 June 2018 (UD2018/00018)</u></p> <p><i>“On this site the applicable FSR under clause 7.10 of the NLEP is 4:1, not 5: 1 as proposed in the submission. This advice is based on information indicated on the relevant FSR Map of the NLEP, as displayed on the NSW Legislation website, which showed the subject site as being in Area A. This FSR map was gazetted on 17 April 2018 in response to three amendments made to the NLEP.</i></p> <p><i>Council revisited this issue as some of the information contained on the map raised doubts about the statutory integrity of the map. Strategic Planning has confirmed the map gazetted by the Department of Planning and Environment is not correct. Unfortunately, notwithstanding this error by the Department, this map remains the relevant statutory control until such time as the correct map is gazetted. In this regard, Council has made an application to the Department for a minor amendment to the NLEP to effectively restore the FSR map as it existed prior to the amendments made on 17 April 2017. This matter will be dealt with expeditiously by the Department and should be finalised soon. It is anticipated that after the changes have been made the site will be excluded from Area A and therefore not trigger clause 7.10 and the relevant FSR for the site will be again 5:1.</i></p> <p><i>However, until this is rectified a cl 4.6 application would need to be lodged for Council to consider any variations to the FSR. The Panel has no issue with the 5:1 FSR proposed for the site.</i></p> <p><u>UDCG Comments - 19 February 2020 (UD2018/00018.01)</u></p> <p><i>“There has been a slight increase in FSR to 5.45:1 which was considered acceptable given the mixture of uses proposed for the site, and the high quality of the design.</i></p>	<p><u>Officer Comments</u></p> <p>The maximum permissible floor space ratio (FSR) for the subject site is 5:1 under Clause 4.4 of NLEP2012.</p> <p>As acknowledged in the most recent UDCG advise, the development proposed a maximum FSR of 5.45:1 which exceeds the applicable FSR of 5:1 prescribed under Clause 4.4.</p> <p>A clause 4.6 variation request has been submitted in support of proposal and this is assessed in detail later in this report under NLEP2012 assessment. The clause 4.6 variation request is considered to be well founded. Consequently, the proposed density of the subject development is acceptable.</p>
Principle 4. Sustainability	
<p><u>UDCG Comment – 20 June 2018 (UD2018/00018)</u></p> <p><i>“The development appears to be able to accommodate the principles of the sustainable development with good use of passive solar design, water harvesting and use of landscaping to reduce the impact of urban heat generation.”</i></p> <p><u>UDCG Comments - 19 February 2020 (UD2018/00018.01)</u></p> <p><i>“The proponents demonstrated excellent sustainability initiatives such as Photo Voltaic</i></p>	<p><u>Officers Comment</u></p> <p>The UDCG comments are noted.</p> <p>Furthermore, a current BASIX Certificate has been submitted for the development application (Certificate Number: 1026173M) which lists the commitments to achieve appropriate building sustainability.</p> <p>A condition of consent is recommended to be included in the development consent requiring compliance with BASIX commitments to ensure that the development incorporates environmentally sustainable design.</p>

arrays on the roof, considered solar shading to windows, optimising water reuse with recycling and generally minimizing water use.”

Principle 5. Landscape

UDCG Comment – 20 June 2018 (UD2018/00018)

“The landscaping proposed for this development is of very good standard with considerable effort put into designing spaces which would enhance the public domain and protect the private spaces. Landscaping devices are used to change levels and provide pathways for the public through the building. The use of landscaping on the outside of the building is carefully considered to create a significant improvement to the façade of the building while taking into consideration costs associated with setting it up and maintaining the landscaping.

Planting of deciduous trees along King Street is in keeping with Council’s DCP. The inclusion of a small playground on the site, perhaps near the café would further enrich the development and provide added amenity for visitors to the older residents on site.”

UDCG Comments - 19 February 2020 (UD2018/00018.01)

“The landscaping on the roof top of the eastern block was considered to be of excellent quality and design. It would be very desirable to have a small section of this area fully enclosed by glass so that the communal space can be used at all times, and in all weather. Detailed design should ensure that there will be adequate protection from winds to the pool and other areas.”

Officers Comment

Detailed landscape documentation was submitted with the development application responded to the advice received prior to the lodgement of the development application from both CN and UDCG.

Whilst the landscape documentation submitted with the development application have not included a small playground on the site as suggested by the UDCG June 2018 advise, the landscape documentation submitted was considered by the UDCG during the February 2020 meeting and the UDCG did not raise any objections in this regard.

As such, the detailed landscape design submitted with the development application is considered to have suitably addressed the concerns previously raised by the panel in relation to added amenity for visitors to older residents without the provision of a playground onsite.

In response to both CN staff assessment and UDCG advice, several amendments have been made to proposed development during the assessment process, including;

- Building B Level 14 (rooftop) communal space reconfigured to include an area enclosed by glass to create a ‘winter garden’.

The applicant provided the following comments regarding this change;

“This space will provide attractive views of, and connectivity with, the surrounding landscape and communal areas, and will achieve excellent solar access year-round whilst providing protection from the elements.”



The amendments have addressed the concerns raised in the UDCG February 2020 advice and is considered satisfactory.

Principle 6. Amenity	
<p><u>UDCG Comment – 20 June 2018</u> (UD2018/00018)</p> <p><i>“The apartments generally would have good amenity with excellent communal facilities and attractive landscaping. Nevertheless, several significant issues remain to be addressed: -</i></p> <ul style="list-style-type: none"> <i>• The over-long corridors at each level in the tower block</i> <i>• Internal corridor without daylighting at level 5 in the independent living block</i> <i>• The shortfall in cross-ventilation. Whilst this is not an issue at higher levels, it is of concern at the lowest three floors in the tower block.</i> <i>• The shortfall in solar access to the independent living units (stated to be 64%).</i> <p><u>UDCG Comments - 19 February 2020</u> (UD2018/00018.01)</p> <p><i>“Most of the above issues have been addressed.</i></p> <ul style="list-style-type: none"> <i>• The long corridors remain however they have been provided with windows at either the end of the corridor or along the side providing much needed daylighting and natural ventilation.</i> <i>• The use of in ceiling ducts over the common foyers to provide cross ventilation for units across the hall increased the number of units with good cross ventilation, however, while stating that 70% of units achieve cross ventilation, this is achieved by relying on deeply recessed balconies for many units providing effective air circulation but not strictly cross ventilation.</i> <i>• Solar access was shown to be 72%.</i> 	<p><u>Officers Comment</u></p> <p>As acknowledged in the UDCG February 2020 advice, the development application has addressed the amenity concerns identified in the UDCG June 2018 advice, which was provided prior to lodgement.</p>
Principle 7. Safety	
<p><u>UDCG Comment – 20 June 2018</u> (UD2018/00018)</p> <p><i>“The Landscaping proposed shows areas where people could hide. However, when questioned these spaces were explained as being in the private areas which would be inaccessible by the public after certain hours and therefore unlikely to create a safety issue. Gates would secure areas after hours. Good passive surveillance of public areas also reduces the potential for safety concerns.”</i></p> <p><u>UDCG Comments - 19 February 2020</u> (UD2018/00018.01)</p> <p><i>“The elongated ground-level courtyard attached to the independent living units was discussed, and it was noted that the physical layout offered the possibility for it to be open to the public during the day and secured at night by gates. It is</i></p>	<p><u>Officers Comment</u></p> <p>The applicant provided the following comments about safety concerns raised in the UDCG February 2020 advice:</p> <p><i>“The concrete faceted wall element is proposed to screen the adjacent Club building and associated stairs and host a memorial to the victims of the 1989 Newcastle Earthquake. Additional safety measures will be considered during the detailed design phase, including lighting and discrete fencing / gates to prevent public access behind the wall.</i></p> <p><i>Further consideration to additional soft landscaping along parts of the wall will also be given during the detailed design phase, as required.”</i></p>

<p><i>intended that the control of this space will be managed by the future operator of the aged care facility and will be subject to further security and social considerations in due course.</i></p> <p><i>The eastern pedestrian link between King and Bull Streets offers the opportunity for an attractively landscaped public space that serves a range of purposes. The adjacent dwellings look into and over the space, and soft landscaping should achieve a vertical scale sufficient to complement the volume. As well, the link provides for a number of small to medium spaces with soft landscaping, that can be used by both residents and the public. The area also has to provide multiple practical functions and traverses a significant level rise between King and Bull Streets, including provision for emergency egress from the adjacent NEX club. It is also proposed to include a public artwork in the space that commemorates the tragic occurrence of the 1989 Newcastle earthquake. The large, angular masonry blade-walls visually screening the side of the existing NEX club and its fire stairs, may have drawn inspiration from the large, solid mass concrete cubes that are used to maintain the Nobbys breakwall at the Harbour entrance. These proposed concrete raked walls actually suggest even larger forms than the Nobbys application, and occupy a visually compressed space – whereas the breakwall is characterized by its lack of spatial enclosure and can thereby absorb the harshness of the block forms. Within the proposed landscaped corridor, the concrete forms risk being overly visually hard and dominant. On a practical level, there appears a potential that some spaces screened by the concrete walls may become hiding places for anti-social activity. It is doubtful that as proposed, any overlooking from the units above can practically overcome CPTED issues with this walkway of an evening. The result could be an attractive space to walk through during the day, but a space few people would feel comfortable to venture through of a night.</i></p> <p><i>Greater use of visually softer built forms and partially transparent screens was recommended, in addition to increased use of soft landscape footprint and volume.”</i></p>	<p>This is considered acceptable. It is recommended provision of detailed landscape documentation, appropriate lighting to communal/ public areas and appropriate security mechanisms to control access after-hours be addressed via conditions of consent.</p>
Principle 8. Housing Diversity and Social Interaction	
<p><u>UDCG Comment – 20 June 2018 (UD2018/00018)</u></p> <p><i>“The design presents an exceptional variation of unit types catering for studios, 1, 2, 2 bedrooms plus study, and 3-bedroom units. The addition of Independent living units and a Residential Aged Care Facility extends this further providing an opportunity for a rich mix of occupants.”</i></p> <p><u>UDCG Comments - 19 February 2020 (UD2018/00018.01)</u></p>	<p><u>Officers Comment</u></p> <p>The UDCG comments are noted.</p>

<i>"Nothing further to add."</i>	
Principle 9. Aesthetics	
<p><u>UDCG Comment – 20 June 2018 (UD2018/00018)</u></p> <p><i>"The architectural character as proposed breaks the buildings down into components which relate to their function. Combined with the Landscape treatment for the site this approach is appropriate and should result in a very positive outcome. The use of stone in the lower façade while relating to the better-quality buildings in the city, is somewhat out of character for the immediate area. Masonry and polished blockwork could create the desired quality of building and relate better to the immediate local character."</i></p> <p><u>UDCG Comments - 19 February 2020 (UD2018/00018.01)</u></p> <p><i>"The stone proposed originally has been reviewed and changed to precast concrete and pigmented concrete which the Panel considered would blend in well with the surrounding area.</i></p> <p><i>The glass balustrade at the very top of the building would create a visually weak top to the buildings: a more solid top section or more emphasis on the top floor could resolve this concern."</i></p>	<p><u>Officers Comment</u></p> <p>As acknowledged in the UDCG February 2020 advice, the development application has addressed the concerns relating to aesthetics identified in the UDCG June 2018 advice, which was provided prior to lodgement.</p> <p>In response to both CN staff assessment and UDCG advice, several amendments have been made to proposed development during the assessment process, including:</p> <ul style="list-style-type: none"> • Changing the Level 14 (roof) balustrades material selection from clear to opaque glass. <p>The appearance of the buildings has been suitably 'strengthened' by the change of materiality at the very top of the building, creating a more solid top visually.</p> <p>The proposal has now satisfied the UDCG advice and is considered an appropriate design response in this regard.</p>
Amendments required to Achieve Design Quality:	
<p><u>UDCG Comment – 20 June 2018 (UD2018/00018)</u></p> <p><i>"The development requires no significant amendments.</i></p> <p><i>Further thought needs to be given to the materiality of the building to ensure it sits comfortably in its immediate environment and all avenues to improve cross ventilation should be explored. The design of the building and landscaping is of a very high standard and should create a high-quality addition to the area.</i></p> <p><i>The UDCG is supportive of the design competition waiver request for the Wests' proposal as we believe the thoroughness of the design presented to date combined with input from the UDCG will ensure a high-quality design outcome. A design competition is considered unnecessary in this instance."</i></p> <p><u>UDCG Comments - 19 February 2020 (UD2018/00018.01)</u></p> <p><i>"Most of the items previously listed have been addressed adequately. The main area of concern is the walkway between the NEX club and the residential apartments. Other detailed issues could readily be resolved."</i></p>	<p><u>Officers Comment</u></p> <p>As detailed in the officer comments provided above for each of the nine Design Quality Principles, the current amended documentation is considered to address the recommendations of the UDCG and CN's assessment and is an acceptable form of development within the context of the site and its location.</p> <p>Further discussion on this matter has been provided within officer's comments in response to Principle 9. Aesthetics and Principle 7. Safety regarding building materiality, and the pedestrian through-site link, respectively.</p>
Summary Recommendations	

<p><u>UDCG Comment – 20 June 2018</u> (UD2018/00018)</p> <p><i>“This proposal has the support in principle of the Panel pending the finalisation of the design.</i></p> <p><i>It is recommended that the applicant consider the outstanding issues relating to Amenity and FSR and resubmit the design, potentially then for unqualified recommendation from the Panel for waiver from the design excellence competition process.”</i></p> <p><u>UDCG Comments - 19 February 2020</u> (UD2018/00018.01)</p> <p><i>“This proposal has the support in principle of the Panel pending the finalisation of the design.</i></p> <p><i>A waiver of the requirement for a design competition continues to be supported.”</i></p>	<p><u>Officers Comment</u></p> <p>As detailed in the officer comments provided above for each of the nine Design Quality Principles, the current amended documentation is considered to address the recommendations of the UDCG and CN's assessment and is an acceptable form of development within the context of the site and its location.</p> <p>On balance, the proposed development is considered to have adequately addressed the issues raised above and the proposal is considered an appropriate design response that achieves acceptable design quality.</p>
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Further to the nine Design Quality Principles, the ADG provides greater detail on how residential development proposals can meet these principles through good design and planning practice.

The application has been assessed for compliance with the required topic areas within Parts 3 and 4 of the ADG pursuant to Clause 6A under SEPP65. This assessment only addresses compliance with the objective and design criteria of the required topic area. Where a required topic area is not specified a design criteria, or where it is not possible for the development to satisfy the design criteria, the compliance comments in the following table will have regard to the design guidance relevant to that topic area.

3D Communal and public open space		
Objective 3D-1		
An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping		
Design Criteria:	Comment:	Compliance:
1. Communal open space has a minimum area equal to 25% of the site.	<p>Mixed-use development (Building A + Building B)</p> <p>25% of the total site area equals 1,657.75m²</p> <p>The proposed development includes three areas of communal open space.</p> <ul style="list-style-type: none"> • Level 1 Courtyard (Building A + Building B) = 663m² • Level 5 Terrace Building A (seniors housing) = 513m² • Level 14 (Roof) Building B (residential flat building) = 1194m² <p>The total communal open space provided is 2,370m², or 35% of the total site area.</p> <p>This communal open space area is supported by landscaping areas.</p>	Complies
Design Criteria:	Comment:	Compliance:
	Building A (seniors housing)	Complies

2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).	The Level 5 Terrace, which is the principle useable part of the Building A (seniors housing) communal open space, has northerly aspect and achieves a minimum of 2hrs sunlight between 9am and 3pm in mid-winter to over 50% of the area.	
	Building B (residential flat building) The Level 14 (Roof) which is the principle useable part of the Building B (residential flat building) communal open space, has northerly aspect and achieves a minimum of 2hrs sunlight between 9am and 3pm in mid-winter to over 50% of the area.	Complies

3E Deep soil zones

Objective 3E-1

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

Design Criteria:	Comment:	Compliance:						
1. Deep soil zones are to meet the following minimum requirements:	7% of the total site area equals 464.17m ² The proposed development includes two areas of deep soil zone. <ul style="list-style-type: none"> • Level Ground = 260m² • Level 1 = 390m² The total deep soil provided is 650m ² , or 9.8% of the total site area.	Complies						
<table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>greater than 1500m²</td><td>6m</td><td>7%</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	greater than 1500m ²	6m	7%		
Site area	Minimum dimensions	Deep soil zone (% of site area)						
greater than 1500m ²	6m	7%						

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.

Design Criteria:	Comment:	Compliance:												
1. Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:	The site is irregular in shape, with three street frontages: King Street (north boundary), Bull Street (south boundary), and Ravenshaw Street (west boundary). As such, the site has one 'side boundary' – east boundary – for which the minimum separation distances are applicable.	Complies												
<table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms & balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table>	Building height	Habitable rooms & balconies	Non-habitable rooms	up to 12m (4 storeys)	6m	3m	up to 25m (5-8 storeys)	9m	4.5m	over 25m (9+ storeys)	12m	6m	Separation distance to Building B (residential flat building) to east boundary All levels of Building B are setback 12m from the east boundary and as such comply with the required separation distances at all heights. Separation distance between Building A (seniors housing) and Building B (residential flat building) <u>Up to 12m [Level 1, Level 2, Level 3 and Level 4]</u> At Level 1 to Level 4, an average 12m separation distance is provided between Building A (seniors housing) and Building B	Complies
Building height	Habitable rooms & balconies	Non-habitable rooms												
up to 12m (4 storeys)	6m	3m												
up to 25m (5-8 storeys)	9m	4.5m												
over 25m (9+ storeys)	12m	6m												

<p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2). Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	<p>(residential flat building). This complies with the minimum separation distances for buildings on the same site at this height.</p> <p><u>Up to 25m (Level 5, Level 6, Level 7 and Level 8)</u></p> <p>At Level 5, a separation distance of over 20m is provided between the apartment windows and balconies of Building A (seniors housing) and the apartment windows and balconies of Building B (residential flat building), which complies with the minimum separation distance for buildings on the same site at this height. It is noted that a minimum 14m separation distance is provided between the Level 5 communal terrace of Building A (seniors housing), and the Level 5 apartment windows and balconies of Building B (residential flat building). Raised planter beds are provided to the perimeter of the communal terrace which provide a landscape buffer to the apartment windows and balconies in Building B adjacent. The ADG is not clear on how communal open space should be treated when measuring privacy separation distances between buildings. On balance, the building separation and landscape design are considered to achieve suitable visual privacy within the development and is considered acceptable in this regard.</p> <p>At Level 6 to Level 8, a separation distance of over 20m is provided between Building A (seniors housing) and Building B (residential flat building), which complies with the minimum separation distance for buildings on the same site at this height.</p>	Complies
	<p><u>Over 25m (Level 9 to Level 13)</u></p> <p>At Level 9 to Level 13, a minimum 22m separation distance is provided between Building A (seniors housing) and Building B (residential flat building). Whilst a minimum separation distance of 24m is required between buildings on the same site at this height, in locations where the separation distance is less than 24m the configuration/ orientation of the balconies, combined with privacy screens, have ensured suitable visual privacy is still achieved.</p> <p>This is considered acceptable.</p>	Satisfactory (Merit based assessment)
A4 Solar and daylight access		
Objective 4A-1 To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space		
Design Criteria:	Comment:	Compliance:
1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm	178 out of the 248 total apartments proposed, or 72%, will achieve a minimum of 2hrs sunlight during 9am and 3pm at mid-winter.	Complies

at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.	<ul style="list-style-type: none"> 126 out of the 166 residential apartments proposed within Building B, or 76%, will achieve a minimum of 2hrs sunlight during mid-winter 52 out of the 82 independent seniors living apartments proposed within Building A, or 63%, will achieve a minimum of 2hrs sunlight during mid-winter 	
Design Criteria:	Comment:	Compliance:
2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter.	N/A	N/A
Design Criteria:	Comment:	Compliance:
3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	<p>51 out of the 248 total apartments proposed, or 20%, will receive no direct sunlight between 9am and 3pm at mid-winter;</p> <ul style="list-style-type: none"> 21 out of the 166 residential apartments proposed within Building B, or 13%, will receive no direct sunlight between 9am and 3pm at mid-winter, 30 out of the 82 independent seniors living apartments proposed within Building A, or 36%, will receive no direct sunlight between 9am and 3pm at mid-winter <p>The design guidance provided for this objective acknowledges that achieving technically compliance with the design criteria may not be possible on sites.</p> <p>The design drawings have suitably demonstrated how; (1) the site constraints and orientation (dual east/ west street frontages) preclude meeting the design criteria 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</p> <p>As such, the proposal complies with the design guidance for this objective.</p>	Satisfactory (Merit based assessment)
4B Natural ventilation		
Objective 4B-3		
The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.		
Design Criteria:	Comment:	Compliance:
1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	<p>115 out of the 178 apartments proposed on the first nine storeys of Building A (seniors housing) and Building B (residential flat building) combined, or 64%, are naturally cross ventilated.</p> <ul style="list-style-type: none"> 87 out of the 130 residential apartments proposed on the first nine storeys within Building B, or 67%, are naturally ventilated 	Complies

	<ul style="list-style-type: none">28 out of the 48 independent seniors living apartments proposed on the first nine storeys within Building A, or 58%, are naturally ventilated									
Design Criteria:	Comment:	Compliance:								
2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	N/A	N/A								
4C Ceiling heights										
Objective 4C-1										
Ceiling height achieves sufficient natural ventilation and daylight access.										
Design Criteria:	Comment:	Compliance:								
1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <table><tr><td colspan="2">Minimum ceiling height for apartment and mixed-use buildings</td></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table> These minimums do not preclude higher ceilings if desired.	Minimum ceiling height for apartment and mixed-use buildings		Habitable rooms	2.7m	Non-habitable	2.4m	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	<u>Mixed use</u> The Ground Floor has a floor-to-floor height of 4m. As such, a minimum ceiling height from finished floor level to finished ceiling level of 3.3m can be achieved for the Ground Floor retail premises. <u>Apartments</u> All storeys containing apartments (Level 1 to Level 13) have a floor-to-floor height of 3.1m. As such, a minimum ceiling height from finished floor level to finished ceiling level of 2.7m to habitable rooms and 2.4m to non-habitable rooms can be achieved for all apartments.	Complies <
Minimum ceiling height for apartment and mixed-use buildings										
Habitable rooms	2.7m									
Non-habitable	2.4m									
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use									

A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m ² each.		
Design Criteria:	Comment:	Compliance:
2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	248 out of the 248 total apartments proposed provide every habitable room with a window in an external wall.	Complies
Objective 4D-2 Environmental performance of the apartment is maximised.		
Design Criteria:	Comment:	Compliance:
1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	N/A (all apartments are provided a combined living/ dining/ kitchen area)	N/A
Design Criteria:	Comment:	Compliance:
2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	248 out of the 248 total apartments proposed have a maximum habitable room depth of 8m from a window for open plan living, dining and kitchen area.	Complies
Objective 4D-3 Apartment layouts are designed to accommodate a variety of household activities and needs.		
Design Criteria:	Comment:	Compliance:
1. Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space)	All master bedrooms have a minimum area of 10m ² and all other bedrooms have a minimum area of 9m ² (excluding wardrobe space).	Complies
Design Criteria:	Comment:	Compliance:
2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	All bedrooms have a minimum dimension of 3m (excluding wardrobe space).	Complies
Design Criteria:	Comment:	Compliance:
3. Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments. • 4m for 2 and 3 bedroom apartments. 	248 out of the 248 total apartments proposed have living rooms or combined living/ dining rooms which achieve the minimum dimensions required for the number of bedrooms provided.	Complies
Design Criteria:	Comment:	Compliance:
4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	N/A	N/A
4E Private open space and balconies		
Objective 4E-1		

Apartments provide appropriately sized private open space and balconies to enhance residential amenity.																	
Design Criteria:	Comment:	Compliance:															
<p>1. All apartments are required to have primary balconies as follows:</p> <table border="1"> <thead> <tr> <th>Dwelling type</th><th>Min. area</th><th>Min. depth</th></tr> </thead> <tbody> <tr> <td>Studio</td><td>4m²</td><td>-</td></tr> <tr> <td>1 bedroom</td><td>8m²</td><td>2m</td></tr> <tr> <td>2 bedroom</td><td>10m²</td><td>2m</td></tr> <tr> <td>3+ bedroom</td><td>12m²</td><td>2.4m</td></tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	Dwelling type	Min. area	Min. depth	Studio	4m ²	-	1 bedroom	8m ²	2m	2 bedroom	10m ²	2m	3+ bedroom	12m ²	2.4m	<p>248 out of the 248 total apartments proposed have primary balconies that achieve the minimum area required for the number of bedrooms provided.</p> <p>216 out of the 248 total apartments proposed have primary balconies that achieve the minimum depth required for the number of bedrooms provided.</p> <p>The 32 non-complying apartments proposed are one-bedroom residential apartments located across Level 1, Level 2 and Level 3 within Building B (residential flat building).</p> <p>The non-compliance proposed is minimal; the maximum variation proposed is 300mm and is considered acceptable given the relevant apartment layout is functional, well designed and provides a high standard of amenity.</p>	Satisfactory (Merit based assessment)
Dwelling type	Min. area	Min. depth															
Studio	4m ²	-															
1 bedroom	8m ²	2m															
2 bedroom	10m ²	2m															
3+ bedroom	12m ²	2.4m															
<p>Design Criteria:</p> <p>2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</p>	<p>Apartments located on the podium level (Level 1) have not been provided with a private open space, instead a balcony is provided.</p> <p>The design guidance provided for this objective acknowledges that achieving technically compliance with the design criteria may not be possible on sites by specifying increased communal open space should be provided where the number or size of balconies are reduced.</p> <p>As such the proposal complies with the design guidance for this objective by providing additional communal open space onsite; as detailed under Objective 3D-1 above, an area equal to 35% of the total site area is provided as communal open space (where a minimum of 25% is required).</p>	Satisfactory (Merit based assessment)															
4F Common circulation and spaces																	
Objective 4F-1																	
Common circulation spaces achieve good amenity and properly service the number of apartments.																	
Design Criteria:	Comment:	Compliance:															
<p>1. The maximum number of apartments off a circulation core on a single level is eight.</p>	<p>Building A (seniors housing)</p> <p>Given Building A (seniors housing) is provided two lifts at each level, the maximum number of apartments of one lift on a single level is 5 (Building B, Level 6 to Level 11).</p>	Complies															
	<p>Building B (residential flat building)</p> <p>Given Building B (residential flat building) is provided two lifts at each level, the maximum number of apartments of one lift on a single level is 12 (Building B, Level 2 and Level 3).</p> <p>The design guidance provided for this objective acknowledges that achieving technically compliance with the design criteria may not be possible.</p>	Satisfactory (Merit based assessment)															

	<p>The proposal complies with the design guidance for this objective by demonstrating a high level of amenity for common lobbies, corridors and apartment, including:</p> <ul style="list-style-type: none">• sunlight and natural cross ventilation in apartments• access to ample daylight and natural ventilation in common circulation spaces• common areas for seating and gathering <p>The design guidance goes on the specify that when design criteria 1 is not achieved, no more than 12 apartments should be provided off a circulation core on a single level.</p>							
Design Criteria:	Comment:	Compliance:						
2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Building A (seniors housing) Building A (seniors housing) contains two lifts and services a total of 82 independent seniors living apartments which means each lift services an average of 41 apartments each. The non-compliance proposed is minimal; a variation of one apartment is considered acceptable given the circulation space achieve good amenity.	Satisfactory (Merit based assessment)						
	Building B (residential flat building) Building B (residential flat building) contains two circulations, the <ul style="list-style-type: none">• ‘Podium core’ contains two lifts and services a total of 69 residential apartments which means each lift services an average of 35 apartments• ‘Tower core’ contains two lifts and services a total 97 residential apartments which means each lift services an average of 49 apartments The following justification was provided to support the variation proposed: <i>“In design development consultation with lift service providers, showed that the number of lifts, speed and size, adequately serve the number of apartments proposed.”</i> This is considered acceptable.	Satisfactory (Merit based assessment)						
4G Storage								
Objective 4G-1								
Adequate, well designed storage is provided in each apartment.								
Design Criteria:	Comment:	Compliance:						
1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	248 out of the 248 total apartments proposed are provided the minimum storage volumes required in accordance with the number of bedrooms provided. The storage for each apartment is provided by a combination of; (1) storage located and access from within the individual apartments, and (2) storage volume access from a common	Complies						
<table><tr><td>Dwelling type</td><td>Storage size volume</td></tr><tr><td>1 bedroom</td><td>6m³</td></tr><tr><td>2 bedroom</td><td>8m³</td></tr></table>	Dwelling type	Storage size volume	1 bedroom	6m ³	2 bedroom	8m ³		
Dwelling type	Storage size volume							
1 bedroom	6m ³							
2 bedroom	8m ³							

3+ bedroom	10m ³	area (a secure storage cage within the carparking areas). At least 50% of the required storage is located within the individual apartments.	
At least 50% of the required storage is to be located within the apartment.			

State Environmental Planning Policy (Coastal Management) 2018

State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP) aims to protect and manage the New South Wales coast and foreshores and requires the consideration of specific criteria based on the type of coastal area affected.

Clause 5 – Land to which the policy applies – The CM SEPP applies to land the whole or any part of which is within the ‘coastal zone’. The site is mapped as being within the ‘coastal environment area’.

Clause 13 - Development on land within the coastal environment area : Clause 13 provides that development consent must not be granted to development on land that is within the coastal environment area unless the consent authority is satisfied that the proposed development will not cause an adverse impact on: the integrity and resilience of the biophysical, ecological and hydrological environment, including surface and groundwater; coastal environmental values and processes; water quality of any sensitive coastal lakes; marine vegetation, native vegetation and fauna and their habitats; existing public open space and access to and along the foreshore; and Aboriginal cultural heritage.

The site is located within a well-established urban setting, with development existing on the site for many years, there are no likely impacts to this environment, particularly in relation to the biophysical environment and coastal processes and maintaining public access to the foreshore.

The proposal would have no material impact on environmental, coastal, native vegetation, surf zone or access issues listed above. Similarly, the long historic usage of the site, and its highly disturbed nature, means that it is highly unlikely that any evidence of Aboriginal cultural heritage, practices and places would remain on the site.

Clause 15 - Development in coastal zone generally – development not to increase risk of coastal hazards: Clause 15 specifies that development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. The proposed development is located within the city centre and as a result of its siting is not considered likely to cause increased risk of coastal hazards.

Clause 16 - Development in coastal zone generally – coastal management programs to be considered: Clause 16 prescribes that development consent must not be granted to development on land within the coastal zone unless the consent authority 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 subject site.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) works together with the Biodiversity Conservation Act 2016 and the Local Land Services Amendment Act 2016 to create a framework for the regulation of clearing of native vegetation in NSW.

Clause 7 of the Vegetation SEPP provides that a person must not clear vegetation in any non-rural area of the State without the authority confirmed by a permit granted by the council. The application proposes tree removal and the granting of development consent subject to conditions would satisfy the provisions of this clause.

Part 3 of the Vegetation SEPP contains provisions similar to those contained in cl.5.9 of Newcastle Local Environmental Plan (cl.5.9 now repealed) and provides that Council's DCP can make declarations with regards to certain matters, and further that Council may issue a permit for tree removal.

The application involves the removal of two existing street trees along the King Street frontage of the site. The two trees comprise mature 'London Plane' trees (*Platanus xhybrida*) and are located within the road reserve. To compensate for the removal of the two existing street trees the Applicant proposes the planting of nine *Caesalpinia ferrea* street trees along King Street, three *Elaeocarpus eumundii* street trees along Ravenshaw Street, and 14 *Lophostemon confertus* street trees along Bull Street.

It is noted that whilst retention of street trees is preferred where possible, street tree removal has been supported in this instance as retention of the 'London Plane' trees near the proposed driveway, together with parked vehicles on King Street, would restrict sight lines for drivers exiting the proposed driveway.

The proposed tree removal has been considered in accordance with the DCP requirements (as detailed elsewhere within this report) and is satisfactory subject to recommended conditions of consent.

Regional Environmental Plan

There are no regional environmental plans that are relevant to this proposal.

Newcastle Local Environmental Plan 2012 (NLEP 2012)

An assessment of the proposal against the relevant provisions of NLEP 2012 is provided below:

Clause 1.3 – Land to which Plan applies

Newcastle Local Environmental Plan 2012 (LEP) applies to land identified upon the 'Land Application Map'. The subject development occurs within this area.

Clause 2.3 Land Use Table - Zoning

The site is zoned 'B4 Mixed Use' under the LEP. The proposed development comprises the following defined land uses: *seniors housing, residential flat building, medical centre, retail premises*, and *food and drink premises*, and all proposed land uses are permissible in the B4 zone. The development meets the objectives of the zone in that:

- The proposal has been designed and sited to be suitable in the context of the locality.
- The site is well located to main bus routes and the light rail line, providing access to transport options for residents and minimising reliance on private vehicle ownership.
- The proposed use of the building will not negatively impact on the viability of the Newcastle CBD.

Clause 2.7 Demolition

Clause 2.7 provides that demolition of a building or work may be carried out only with development consent. Development consent for demolition of the existing car parking building is proposed under the application.

Clause 4.3 Height of Buildings

The Height of Buildings Map has a maximum height limit for the site of 45m. The proposed development has a maximum height of 46.2m, resulting in a 1.2m variation. The applicant has submitted a clause 4.6 request to variation of the height standard which has been assessed under the clause 4.6 discussion below.

Clause 4.4 Floor Space Ratio

The maximum floor space ratio (FSR) for the site is 5:1. The proposed development has a floor space ratio of 5.45:1, resulting in a non-compliance with the standard. The applicant has submitted a clause 4.6 request to variation of the FSR which has been assessed under the clause 4.6 discussion below.

Clause 4.6 Exception to Development Standards

The objectives of clause 4.6 'exceptions to development standards', are (subclause (1):

- (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.*

Clause 4.3(2) of the LEP specifies that a 45m height applies to the subject site. The proposed development results in an overall building height of 46.2m, including the lift overrun, building parapets, pool balustrades and stairs to the communal open space. The extent of variation is 1.2m or 2.6%. In addition, clause 4.4(2) prescribes a FSR of 5:1 applies to the subject site. The development results in an overall FSR of 5.45:1. The extent of variation is 3,050m² or 9%.

However, it is noted that the subject site is located within the Newcastle City Centre and the proposed development is a type of development to which 'clause 7.5 – design excellence' applies (as detailed further below). Clause 7.5(6) specifies that:

'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.'

Clause 7.5(6) of the LEP operates to vary that building height development standard by up to 10% if the design has been reviewed by a 'design review panel', as prescribed under the LEP. In the circumstances applicable to this development, where the design has been so reviewed, the maximum building height is 49.5m. It is noted that clause 7.10 does not apply to the subject site. As such, a clause 4.6 variation request is not strictly required to facilitate the proposed variation as the overall height of the development is 46.2m.

Notwithstanding, the Applicant has submitted two 'Clause 4.6 Variation Request Reports' (**Appendix B**) (prepared by City Plan), seeking a variation to the standards set out in Clause 4.3 Height of buildings and Clause 4.4 Floor Space Ratio and the provisions of these clauses.

An assessment of the clause 4.6 variation requests has been undertaken below, in undertaking the assessment consideration has been given to both the provisions of clause 4.6 and the relevant Land and Environment Court judgements including: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (and appeal at NSWLEC 90)(*Four2Five*), *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ('Initial Action'), and *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*), namely that the objection is well founded, that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

Height of buildings – cl.4.6 variation assessment

As clause 7.5(6) provides that a 10% variation to the maximum prescribed height under cl.4.3 can be granted, a clause 4.6 variation request is not strictly necessary in this instance. However, the Applicant has submitted a clause 4.6 variation request to the maximum building height development standard, therefore an assessment of this request against the relevant provisions of clause. 4.6, has been provided below:

Height of buildings:

The applicable maximum building height development standard is 45m. The proposal has a maximum building height of 46.2m which represents a 2.6% variation to this development standard. Figure 1 below illustrates the extent of the height exceedances, which largely comprises the lift overrun.

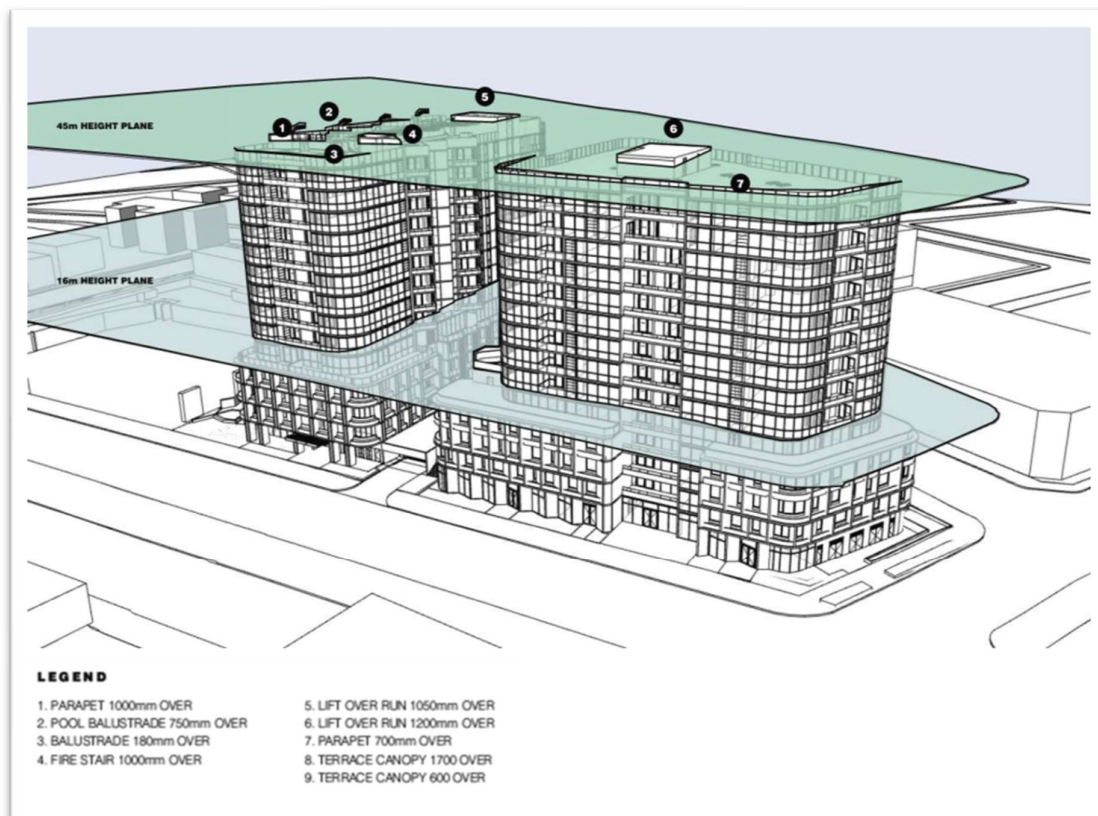


Image 8: *Extent of height exceedances – view from south*

Clause 4.6(2) - Is the provision to be varied a development standard? And is the development standard excluded from the operation of the clause.

The maximum building height development standard in NLEP 2012 is a development standard in that it is consistent with the definition of development standards under section 1.4 of the *Environmental Planning & Assessment Act 1979* ('EP&A Act').

The maximum building height development standard is not expressly excluded from the operation of Clause 4.6.

Clause 4.6(3)(a) – has the applicant submitted a written request that seeks to justify contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

The submitted 'Clause 4.6 Variation Request – Height of Buildings, Clause 4.3 Newcastle LEP 2012', prepared by City Plan (dated August 2019) constitutes a written request for the purposes of clause 4.6(3).

In *Wehbe* Chief Justice Preston outlined the rationale for varying development standards and the circumstances under which strict compliance with them may be considered unreasonable or unnecessary. Preston CJ established five circumstances in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary, as follows:

- 1) *"Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives?"*
- 2) *"Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary?"*
- 3) *"Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?"*
- 4) *"Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable?"*
- 5) *"Is the 'zoning of particular land' unreasonable or inappropriate so that a development standard appropriate for that zoning also unreasonable or unnecessary as it applied to that land. Consequently, compliance with that development standard is unnecessary and unreasonable."*

The Applicants 'Clause 4.6 Variation Request – Height of Buildings' written response seeks to rely on the first *Wehbe* consideration to demonstrate that compliance with the development standard is unreasonable or unnecessary, stating that the objectives of the development standard are achieved notwithstanding non-compliance.

The objectives of the maximum building height development standard are:

- (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.*

A summary of the justification provided within the applicant's written request is provided below:

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

- The site is strategically located between two key areas zoned B3 Commercial core and is identified as a 'Key Site' under NLEP.
- The site and surrounding land are within a transitional area between generally higher building height limits to the west (West End) and lower height limits to the north, east, and south-west.

- The site has three public street frontages and currently accommodates development which provides little activation to, or connectivity with, the surrounding area. However, the proposed development has been configured to provide visual separation and facilitate pedestrian links through the site.
- The variation relates to rooftop elements (lift overruns, pool balustrades, stairs) which are not easily visible from the streetscape and do not significantly alter the bulk or scale of the development.
- The proposed built form and massing is considered to positively contribute to the quality and transitioning identity of the area. It is considered that, overall, the proposal will deliver an appropriate built form that is consistent with the desired future character, while remaining compatible with the scale of nearby developments.

Objective: (b) to allow reasonable daylight access to all developments in the public domain:

- The non-compliant components of the proposed development are dispersed across the roof forms of Towers A and B, and are set back a minimum of 6m from the site's boundaries.
- Shadows cast by the non-compliant roof top elements during the winter solstice will generally be confined to the roof area of each tower and do not extend beyond the site boundaries.
- The non-compliant components of the development will not result in any overshadowing to surrounding development or the public domain, ensuring that reasonable daylight access to neighbouring development and the public domain is maintained.

Comment

It is agreed that the built form of the development will make a positive contribution to the city centre streetscape, consistent with the scale of development envisaged by the applicable planning provisions. The UDCG have considered the proposed development and determined that the thoroughness of the design that was presented, combined with input from the UDCG would result in a high-quality design outcome.

Further, the non-compliant portions of the development are located within the rooftop levels of the proposed buildings and setback a minimum of 6m from the site boundaries. The non-compliance is minor and the shadow diagrams submitted with the application demonstrate that the overshadowing impact of the development on adjoining and the public domain would not be greatly impacted as a result of the additional height. The development does not result in any overshadowing of key public domain areas.

As such, the Applicant's written request is considered to satisfy the requirements of clause 4.6(3)(a) in demonstrating that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

Clause 4.6(3)(b) – that there are sufficient environmental planning grounds to justify contravening the development standard.

In *Initial Action*, Preston CJ identified that for there to be 'sufficient' environmental planning grounds to justify a written request under cl.4.6, focus must be on the element of the development that contravenes the development standard and that the environmental planning grounds provided in the written request must justify contravening the development, rather than promoting the benefits of the development as a whole.

The Applicant's response to clause 4.6(3)(b) is addressed in Section 4 of the written request (pg.15), and provides the following specific environmental planning grounds to justify the breach of the standard:

- *'The subject site is identified as a "Key Site" under the NLEP 2012 and benefits from three street frontages. The site is also identified as being within the "Parry Street" character area under the*

DCP. A key principle applying to development in the Parry Street character area is that 'public domain spaces are improved to support the evolving character of the area into a high-density residential and mixed-use precinct.' The proposal responds to this prominent and unique setting and Council's strategic vision for the locality by providing accessible landscaped public open space and important pedestrian links through the site. As a result, the opportunity to provide high amenity to communal open space areas is primarily limited to the podium and rooftop.

- The proposed exceedances are primarily proposed to facilitate high-quality outdoor communal space, including disability access to this space and shade, rather than to achieve additional living area. The rooftop communal open space would achieve excellent solar access and benefit from views over the area. It would also limit privacy and acoustic impacts rather than if it were to be located at a lower level.
- The building height exceedances are limited to minor rooftop elements of the overall built form of each tower. The majority of each tower's built form is below the 45m building height limit.
- The exceedances will not result in any additional amenity, overshadowing, streetscape or heritage impacts. The non-compliant rooftop elements will not be visible from the adjacent streets, nor easily noticeable from any nearby development.
- Pursuant to Clause 7.5(5) of the NLEP 2012, the Government Architect NSW (delegate of the Director-General) has certified in writing that a design competition is not required for the proposed development on the site. This exemption was granted on the basis that the proposed development exhibits design excellence, notwithstanding the non-compliant building height. This finding was further confirmed via the support of the Newcastle Urban Design Consultative Group, which considered that 'the proposed building and landscaping are potentially of high quality and should substantially enhance the area.' Accordingly, pursuant to Clause 7.5(6) of the NLEP 2012, it is submitted that the proposed variation, being less than 10% of the 45m building height limit, is warranted on design excellence grounds.'

Comment

The written request outlines environmental planning grounds which adequately justify the contravention. In particular, the design excellence process requirements through which the proposal has been considered and assessed against to reach its current design qualities, provides sufficient justification to contravene the development standard.

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

As outlined above the Applicant's written request has adequately addressed the matters required to be demonstrated by cl.4.6(3) of the LEP. It follows that the test of cl.4.6(a)(i) is satisfied.

Clause 4.6(4)(a)(ii) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objects for development within the zone in which the development is proposed to be carried out.

The Applicant's response to the satisfaction of the objectives of the height of building standard was considered under the cl.4.6(3)(a) discussion above. However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, 'the proposed development will be in the public interest because it is consistent', with the relevant objectives.

Objectives of cl.4.3 'height of buildings'

The development is considered to be consistent with the objectives of cl.4.3 'height of buildings' as the scale of the development makes a positive contribution to towards the desired built form, consistent with the established centres hierarchy, as demonstrated by

the design excellence process that the application has been through. The development also allows reasonable daylight access to all developments and the public domain.

Objectives of the B4 Mixed Use Zone

The objectives of the B4 Mixed Use Zone are as follows:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.*

The development proposal is consistent with objectives of the B4 Mixed Use Zone because the proposal:

- Comprises a mixture of compatible land uses, having a range of retail, food and drink premises, and medical centre, in conjunction with apartments and seniors housing (independent living units and residential aged care). The services and housing proposed will serve the need of the local and wider community.
- The development is located in an accessible location which will assist in maximising public transport patronage and encouraging walking and cycling. Further, the proposed public domain improvements and pedestrian laneway will enhance accessibility and permeability through the site and surrounding areas. The provision of services and retail within the development will service the day to day needs of future residents which will also encourage walking.
- The additional housing proposed within the development will support nearby and adjacent commercial centres. The proposed retail, food and drink premises and medical centre will not adversely impact the viability of the centre.

As such, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the relevant zone. Therefore, the test of cl.4.6(4)(a)(ii) of the LEP is satisfied.

Clause 4.6(4)(b) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained.

The Department of Planning & Environment advised via Planning Circular PS20-002 (05 May 2020) that concurrence of the Secretary could be assumed for a variation to a maximum building height development standard that is not greater than 10%. Concurrence is therefore assumed in this case.

Comment

Whilst it is noted that a cl.4.6 variation is not technically required for the proposed development due to the operation of cl.7.5(6), it is noted that the states of satisfaction required by cl 4.6 of the LEP have been reached and had it been required there is power to grant development consent to the proposed development notwithstanding the breach of the building height control.

Floor space ratio cl.4.6 variation assessment

The Applicant has submitted a cl.4.6 variation request to the floor space ratio development standard, an assessment of this request against the relevant provisions of clause 4.6 is provided below:

Floor space ratio (FSR)

The applicable maximum FSR development standard is 5:1. The proposed development has a floor space ratio of 5.45:1, the extent of variation is 3,050m² or 9%.

Clause 4.6(2) - Is the provision to be varied a development standard? And is the development standard excluded from the operation of the clause.

The FSR development standard in NLEP 2012 is a development standard in that it is consistent with the definition of development standards under section 1.4 of the *Environmental Planning & Assessment Act 1979* ('EP&A Act').

The FSR development standard is not expressly excluded from the operation of Clause 4.6.

Clause 4.6(3)(a) – has the applicant submitted a written request that seeks to justify contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

The submitted 'Clause 4.6 Variation Request – Floor Space Ratio, Clause 4.4 Newcastle LEP 2012', prepared by City Plan (dated August 2019) constitutes a written request for the purposes of clause 4.6(3).

The five circumstances established in *Wehbe* in which it could be reasonably argued that the strict application of a development standard would be unreasonable and/or unnecessary were outlined within the cl.4.6 variation assessment to building height above.

The Applicants 'Clause 4.6 Variation Request – Floor Space Ratio' written response seeks to rely on the first *Wehbe* consideration to demonstrate that compliance with the development standard is unreasonable or unnecessary, stating that that the objectives of the development standard are achieved notwithstanding non-compliance.

The objectives of the FSR development standard are:

- (a) *To provide an appropriate density of development consistent with the established centres hierarchy.*
- (b) *To ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.*

A summary of the justification provided within the applicant's written request is provided below:

Objective: (a) to provide an appropriate density of development consistent with the established centres hierarchy:

- The site is strategically located between to key B3 Commercial Core zones (King and Hunter Streets) and is a 'Key Site' under the NLEP. Further, the site is located within the 'Parry Street' character area under s.6.01 of the DCP. The DPC encourages higher density residential development in this area due to its highly accessible and well-serviced city centre location.
- The development is consistent with the strategic vision for the site and DCP character area. The proposed density will facilitate additional housing opportunities and low intensity commercial uses in a well-serviced location to support the nearby commercial core.
- As identified by the UDCG the proposed variation allows for an '*exceptional variation of unit types catering for studios, 1, 2, 2 bedroom plus study, and 3 bedroom units. The addition of Independent living units and a Residential Aged Care Facility extends this further providing an opportunity for a rich mix of occupants.*'
- The development has been designed to the anticipated density and to ensure that the additional FSR does not have adverse environmental, amenity, or social impacts on the surrounding natural and building environment. In this respect, the applicant's written request identifies that:

- *'Over 35% of the site area is proposed as communal open space, well in excess of the 25% stipulated within the Apartment Design Guide (ADG). This is in addition to the 28% site area dedicated as 'publicly-accessible' open space (e.g. laneway, building forecourts). Accordingly, residential amenity is enhanced and there is capacity for generous site landscaping.*
- *Adequate essential services and infrastructure are available to the site (e.g. water, sewer, telephone, stormwater, etc.)*
- *Overshadowing impacts on surrounding development are predominantly limited to commercial development and considered reasonable and acceptable, as outlined within the SEE.*
- *Proposed on-site services would mitigate additional demands on social infrastructure arising from the FSR exceedance e.g. proposed nursing and care services for seniors, on-site medical centre open to the public.*
- *The building's bulk and scale do not unreasonably affect views for surrounding development, as outlined within the SEE.*
- *Proposed off-street carparking meets the stipulated requirements for all combined landuses, and traffic modelling indicates that the surrounding road network has spare capacity to cater for the proposed development. Regardless, future residents of the building would have excellent access to nearby public transport options, supported and reinforced by the development's strong 'green travel' initiatives, outlined within the Green Travel Plan submitted with the DA.*
- *The Statement of Heritage Impact prepared for the development concludes the proposal, inclusive of the proposed FSR, would have 'minimal impact on the heritage significance of the Newcastle City Centre Heritage Conservation Area and nearby heritage items' (p53).*
- *The building continues to display 'design excellence', with its bulk and scale fully supported by the Urban Design Consultative Group, as outlined below in this Table.'*

Objective (b) - To ensure building density, bulk and scale makes a positive contribution towards the desired built form as identified by the established centres hierarchy.

- The proposed development is consistent with the desired built form of the area and its design is the result of an extensive and collaborative design process, which sought to achieve a balanced response to competing outcomes. In this respect the applicant's written request identifies:

'...the triangular shape and large size of the land competed with a desire to achieve consistent building heights and setbacks across the site for maximum amenity outcomes, resulting in an increase in floorplate sizes and subsequently, FSR. Early alternative design options, such as multiple narrower towers, were considered but were found to result in an overall poorer amenity outcome. As confirmed by the UDCG, the resultant proposal 'presents a well-considered built form which responds to its context and takes into account the existing controls for the site.'

- The proposed development achieves 'design excellence', an architectural design competition waiver has been issued by the NSW Government Architect, and the UDCG are supportive of the design.
- The proposed development is generally compliance with relevant planning controls. The podium and tower levels have been designed and sited to achieve compliance with ADG requirements to reduce the bulk and scale of the building's appearance at street level. Further, the proposal maintains adequate visual privacy and solar access and facilitates extensive landscaping and pedestrian connectivity, including by way of the proposed laneway.
- The increased density is appropriate in the circumstances, in particular the sites 'key' corner location and evolving character of the 'Parry Street' local character area.

Comment

As specified within the cl.4.6 building height discussion, it is agreed that the built form of the development will make a positive contribution to the city centre streetscape, consistent with the scale of development envisaged by the applicable planning provisions. As noted by the UDCG the thoroughness of the design will result in a high-quality design outcome on the site.

The additional gross floor area has been accommodated within the proposed design to ensure that the density and bulk and scale of the development make positive contribution towards the built form in the locality. The non-compliance does not result in any additional unreasonable impacts to adjoining properties compared to a compliant design as the proposal is generally compliant with the relevant planning controls, including the ADG.

As such, the Applicant's written request is considered to satisfy the requirements of clause 4.6(3)(a) in demonstrating that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

Clause 4.6(3)(b) – that there are sufficient environmental planning grounds to justify contravening the development standard.

As outlined above in *Initial Action*, Preston CJ identified that for there to be 'sufficient' environmental planning grounds to justify a written request under cl.4.6, focus must be on the element of the development that contravenes the development standard and that the environmental planning grounds provided in the written request must justify contravening the development.

The Applicant's response to clause 4.6(3)(b) is addressed in Section 4 of the written request (pg.11), and provides the following specific environmental planning grounds to justify the breach of the standard:

- *'Consistent with Council's strategic vision for the DCP character area, the proposed density will facilitate additional and diverse housing opportunities and low intensity commercial uses in a well-serviced location to support the nearby commercial core. Importantly, this increased density is supported by a range of services and facilities proposed within the site itself, as well as improved pedestrian connectivity through the site to existing established shops, services and facilities throughout the nearby CBD.'*
- *The proposed density, bulk and scape is appropriate on this large corner site. Notably, the proposed built form generally conforms with height, setback and separation distance controls contained in the NLEP, NDCP and ADG. The increased density and proposed built form is considered appropriate in the circumstances, providing a positive contribution to the site's prominent corner location and the evolving character of the DCP character area.*
- *The NSW Government Architect has confirmed through its design competition waiver that the building delivers 'design excellence', having regard to the design excellence considerations provided in Clause 7.5(3) of the NLEP. This finding was further confirmed via the support of the Newcastle Urban Design Consultative Group who provided full support for the building's built form and scale. Importantly, all matters outlined in Clause 7.5(3) of the NLEP are addressed in detail throughout the SEE. As required by the NSW Government Architect, the design review panel will remain in place through the development assessment, certification and construction phases to ensure the design excellence considerations provided in Clause 7.5(3) of the NLEP are maintained.*
- *The proposed variation is minor and will not result in any unreasonable environmental or social impacts on the surrounding natural and built environment. In particular, the additional built form avoids unreasonable overshadowing, privacy and view loss impacts for residents living in nearby apartment buildings.*
- *The proposed exceedance is partly a result of the inclusion within the GFA calculation of 19 car parking spaces proposed in excess of DCP requirements. The 19 additional car spaces result in an additional GFA of approximately 247sqm. Importantly, the additional*

car spaces are located at basement level and therefore do not contribute to the overall bulk or scale of the proposed two towers.'

Comment

The written request outlines environmental planning grounds which adequately justify the contravention. In particular, the design excellence process requirements through which the proposal has been considered and assessed against to reach its current design qualities, and the fact that the additional FSR does not result in any inconsistency with the desired built form of the locality, provide sufficient justification to contravene the development standard.

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

As outlined above the Applicant's written request has adequately addressed the matters required to be demonstrated by cl.4.6(3) of the LEP. It follows that the test of cl.4.6(a)(i) is satisfied.

Clause 4.6(4)(a)(ii) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objects for development within the zone in which the development is proposed to be carried out.

The Applicant's response to the satisfaction of the objectives of the FSR standard was considered under the cl.4.6(3)(a) discussion above. However, this provision does not require consideration of whether the objectives have been adequately addressed, rather that, 'the proposed development will be in the public interest because it is consistent', with the relevant objectives.

Objectives of cl.4.4 'floor space ratio'

The development is consistent with the objectives of cl.4.4 'floor space ratio' as the proposed development is of an appropriate density which is consistent with the established centres hierarchy. Further, the application has been subject to a design excellence process and as a result the building density, bulk and scale are considered to make a positive contribution to the designed built form as identified by the centres hierarchy.

Objectives of the B4 Mixed Use Zone

The objectives of the B4 Mixed Use Zone and an assessment which concluded that the development was consistent with the zone objectives, has been outlined earlier within the cl.4.6 variation to the height of building standard above and is applicable to the cl.4.6 variation assessment for the floor space ratio request.

Based on the above, the proposed development is in the public interest because it is consistent with the objectives of the relevant standard and the objectives for development within the relevant zone. Therefore, the test of cl.4.6(4)(a)(ii) of the LEP is satisfied.

Clause 4.6(4)(b) – Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained.

The Department of Planning & Environment advised via Planning Circular PS20-002 (05 May 2020) that concurrence of the Secretary could be assumed for a variation to a maximum building height development standard that is not greater than 10%. Concurrence is therefore assumed in this case.

Comment

The states of satisfaction required by cl 4.6 of the LEP have been reached and had it been required there is power to grant development consent to the proposed development notwithstanding the breach of the floor space ratio development standard.

Clause 5.10 Heritage Conservation

Clause 5.10 specifies, amongst other things, that development consent is required to erect a building on land on which a heritage item is located or that is within a heritage conservation area (cl.5.10(2)(e)(i)). Further, cl.5.10(4) specifies that the consent authority must, before granting consent, consider the effect of the proposed development on the heritage significance of the heritage item or heritage conservation area concerned.

The subject site is located within the Newcastle City Heritage Conservation Area (HCA), which is listed as Conservation Area C4 in sch. 5 NLEP. The site is identified as a non-contributory building within the HCA. The Newcastle City Centre HCA stretches from Hamilton to Newcastle East and contains a wide variety of built forms and does not have a single cohesive character. The statement of significance for the HCA is focused on the character of the Newcastle CBD, centred around Hunter, Thorn, Perkins, Brown and Wolfe Streets, but also describes the significance of the conservation area associated with the early development of Newcastle as a town with potential in resources for trade and its expansion into a industrial regional centre.

The site is not a listed heritage item and is not identified as an archaeological site. An AHIMS search did not identify any Aboriginal sites or listed Aboriginal Places within 50 metres of the site. There are four heritage items within proximity to the subject site which have been identified below:

Item	Address	Significance	Listing
Cooks Hill Special School	102 Laman Street	Local	NLEP (I92)
Fire Station	44 Union Street	Local	NLEP (I108)
Hunter Water Board Building	599 Hunter Street	Local	NLEP (I497)
Miss Porter's Residence	434 King Street	Local	NLEP (I506)

The site is identified as a non-contributory building within the HCA. Within the King Street streetscape, it is located within a 700m stretch of non-contributory sites. Within the Bull Street streetscape, it is adjacent to a contributory building at 42 Union Street, and across the road from contributory and neutral commercial developments.

A Statement of Heritage Impact (SoHI) prepared by AMAC Group and John Carr Heritage Design was submitted with the application and identified that the existing garage building located on the site is of little heritage significance. Further, that the proposed development will have minimal effect on the heritage significance of the Newcastle City Centre HCA and nearby individual heritage items due to the design emphasising the four-storey podium as the dominant element of its overall design and the screening and distance of nearby heritage items.

The findings of the SoHI are supported. The proposed development is located a sufficient distance away from nearby heritage items that it will not directly impact upon their setting or interpretation. The closest heritage item, 'Miss Potters Residence', will not be viewed in the same viewline as the development site. The width of King Street and the existing median strip also contribute to soften views between the two sites and maintain a visual separation.

Subject to conditions of consent requiring that the applicant ensure that unexpected archaeological deposits or relics not identified and considered in submitted documents are documented appropriately, and that an archival photographic record is to be undertaken of the building to be removed, the proposal is satisfactory in regards of heritage conservation.

Clause 6.1 Acid Sulfate Soils

Clause 6.1 seeks to ensure that development does not disturb, expose or drain acid sulfate soils (ASS) and cause environmental damage. Certain works outlined within cl.6.1(2) is noted as requiring development consent when carried out on land shown on the Acid Sulfate Soils Map. The subject site is identified as containing Class 4 Acid Sulfate Soils (ASS), according to cl.6.1(2) works more than 2 metres below the natural ground surface, such as the proposed basement parking levels, require development consent.

Clause 6.1(3) specifies that development consent must not be granted for the carrying out of works under the clause unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority. However, cl.6.1(4) provides that despite subclause (2) where consent under the clause is not required if: (a) a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and (b) the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.

A Acid Sulfate Soil Assessment (prepared by Douglas Partners, dated June 2019) was submitted with the application, the ASS Assessment was undertaken to assess the potential presence of ASS within the footprint of the proposed two-level basement to confirm (if any) treatments were required as part of the excavations. The ASS testing undertaken as part of the ASS Assessment indicated that the soil samples tested were acidic soils and not ASS. On this basis the soil samples tested could be considered for classification as virgin excavated natural material (VENM) from an ASS perspective.

The ASS Assessment indicates the absence of actual or potential ASS and confirms that the preparation of an ASS Management Plan is not required. It is recommended that the consent authority provide written notice to the Applicant by way of its recommendations to the effect that the findings of the preliminary assessment are confirmed and that a ASS Management Plan is not required.

Clause 6.2 Earthworks

Clause 6.2 aims to ensure that earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. The clause specifies that consent is required for earthworks unless the works are exempt development, or ancillary to other development for which development consent has been granted.

The proposed development involves extensive bulk earthworks, inclusive of the excavation to works required to facilitate the basement car parking. It is estimated that up to 60,000m³ of material will be excavated from the site with approximately 5,000m³ to remain on site as fill.

Clause 6.3(3) provides several matters that the consent authority must consider prior to granting development consent as outlined below.

Matter	Comment
Disruption/detrimental effect on drainage patterns and soil stability.	Detailed stormwater management plans have been provided with the development application. An Acid Sulfate Soils Management Plan has also been provided. Subject to conditions of consent the proposed earthworks will not adversely impact drainage patterns and soil stability.
Effect on future use or redevelopment of the land.	The proposed earthworks do not adversely impact the future use or redevelopment of the land and will facilitate the development proposed under the subject application.
The quality of fill and/or soil to be excavated.	The site is identified as contaminated land. A remediation action plan has been submitted with the application. Further the preliminary Acid Sulfate Assessment identifies the soil as

	VENEM and subject to appropriate segregation of upper filling and subsequent validation, could be classified as VENM. Subject to conditions of consent the soil to be excavated from the site can be appropriately managed. Conditions of consent in respect to use of fill material are also recommended.
The effect of the development on the existing and likely amenity of adjoining properties.	Detailed assessment of the effect of the development on existing and likely amenity of adjoining properties has been provided elsewhere in this report. The proposed development does not result in unreasonable impacts to the amenity of adjoining properties.
The source and any fill material and destination of any excavated material	The source of fill material and destination of excavated material will be addressed by conditions of consent.
The likelihood of disturbing relics.	The subject site is not identified as an archeological site. Conditions of consent will be imposed in respect to any unexpected finds discovered during construction.
Impact to any watercourse, drinking water catchment or environmentally sensitive area.	The development will not adversely impact any watercourse, drinking water catchment or environmentally sensitive area.
Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.	Conditions of consent have been recommended to avoid, minimise or mitigate the impacts of the development.

Consideration has been given to the matters prescribed under cl.6.3(3) and the proposed earthworks are acceptable.

Part 7 Newcastle City Centre

Clause 7.1 Objectives of Part

The site is located within the Newcastle City Centre and is identified as a key site. There are a number of requirements and objectives for development within the City Centre, which includes promoting the economic revitalisation of the City Centre, facilitating design excellence and protecting the natural and cultural heritage. The proposed development is considered against the relevant clauses of Part 7 below.

Clause 7.3 Minimum Building Street Frontage

Clause 7.3 applies to buildings erected on land zoned B3 Commercial Core and is not applicable to the proposed development which is located on land zoned B4 Mixed Use.

Clause 7.4 Building Separation

Clause 7.4 specifies that buildings must be erected so that the distance from the building to any other building is not less than 24 metres at 45 metres or higher above ground level. For the purposes of cl.7.4 a separate tower or other raised part of the same building is taken to be a separate building.

The proposed development exceeds the 45metre height limit at rooftop elements only, including lift overruns. Therefore, the building separation provisions under this clause are not applicable.

Clause 7.5 Design Excellence

Clause 7.5 applies to the erection of a new building or to significant alterations to an existing building and states that a consent authority must not grant consent to development within the Newcastle City Centre unless the development exhibits design excellence. As outlined within the SEPP 65 assessment and cl.4.6 assessment sections of this report the proposed development has been determined to have design excellence by the Newcastle Urban Design

Consultative Group. Conditions of consent are recommended to ensure that design excellence is maintained during construction.

Further to the above, subclause 7.5(4) provides that development consent must not be granted to certain types of development unless an architectural design competition has been held in relation to the proposed development, this includes 'development having a capital value of more than \$5M on a site identified as a 'key site'.

However, clause 7.5(5) specifies that subclause (4) does not apply if the Director-General certifies in writing that the development is one for which an architectural design competition is not required. The Government Architect NSW (delegate of the Director-General) has certified in writing that a design competition is not required in this case. Clause 7.5(5) applies to the subject development and as such a design competition is not required to be held prior to the granting of development consent.

Clause 7.9 Height of Buildings

Clause 7.9 provides objectives for the height of buildings within the City Centre including to allow sunlight access to key areas of public domain. Specific height controls apply to land mapped as 'Area A' or 'Area B' under the LEP. The subject site is not identified as being within 'Area A' or 'Area B' on the Height of Buildings Map. Accordingly, the provisions of this clause do not apply to the proposal.

Clause 7.10 Floor space ratio for certain development in Area A

Clause 7.10 provides specific floor space ratio controls to land mapped as 'Area A'. The subject site is not identified as being within 'Area A' on the Floor Space Ratio Map. Accordingly, the provisions of this clause do not apply to the proposal.

Clause 7.10A Floor space ratio for certain other development

Clause 7.10A provides specific floor space ratio controls to land with a site area of less than 1,500 square meters. The area of the subject site exceeds 1,500 square meters. Accordingly, the provisions of this clause do not apply to the proposal.

5.1.3.2 Any draft environmental planning instrument that is or has been placed on public exhibition

There are no exhibited draft environmental planning instruments relevant to the application.

5.1.3.3 Any development control plan (and section 94 plan)

The main planning requirements of relevance in the Newcastle Development Control Plan 2012 (DCP) are discussed in detail below.

Section 3.03 - Residential Accommodation

The objective of this section is to improve the quality of residential development. This can be achieved through a design that has a positive impact on the streetscape through its built form, maximising the amenity and safety on the site and creating a vibrant place for people to live in a compact and sustainable urban form. The controls contained in section 3.03 apply to both residential flat buildings and seniors housing

The following comments are made concerning the proposed development and the relevant provisions of Section 3.03:

*Principal controls (3.03.01)***A. Frontage widths**

Frontages: The proposal is required to have a minimum frontage of 15m. The proposal is satisfactory.

Isolated Lots: The proposal will not result in creation of isolated lots.

B. Front setbacks and C. Side and rear setbacks

The controls under Section 6.01 Newcastle City Centre (NDCP 2012) and the Apartment Design Guideline (ADG – SEPP 65) prevail over these controls. Discussion of the setbacks is included as part of the Section 6.01 Newcastle City Centre (NDCP 2012).

D. Landscape Area

The proposal requires 20% of site landscaped, with a minimum 10% deep soil zone.

The proposed landscaping is 33% of the site area (6,631m²) excluding private planters. Approximately 9.8% of the site area is deep soil. This exceeds the 7% deep soil requirement under the ADG.

In addition, the site will include a generous amount of street tree planting and soft landscaping features. The proposal is considered satisfactory.

*Siting the development (3.03.02)***A. Local character and context**

A site analysis was submitted with the development application. Further, the proposal satisfies the provisions within Section 6.01 Newcastle City Centre (NDCP 2012) for the Parry Street Character area and is acceptable.

B. Public domain Interface

Private open space is located behind the building line and windows/balconies overlook the public domain. Street access and building entries are clearly defined.

Further, the interface proposed by the development is consistent with the provisions Section 6.01 Newcastle City Centre (NDCP 2012).

C. Pedestrian and Vehicle access

Parking spaces, driveways and circulation spaces comply with AS2890.1. A detailed assessment is provided within section 7.03 Traffic, Parking and Access discussion below. Lighting to carpark areas and pedestrian pathways will be addressed by conditions of consent.

D. Orientation and Siting

Building types and layouts are required to respond to the streetscape and site while optimising solar access within the development and maximise street surveillance and connectivity. As outlined within the earlier SEPP 65 discussion, the proposed development has been designed and sited so as to adequately respond to the streetscape, results in minimal overshadowing impacts, and provides adequate opportunities for natural surveillance.

E. Building Separation

Adequate separation between buildings is required for landscape, daylight access, and to reduce visual bulk. The development exceeds the required DCP setbacks and has been designed in accordance with the requirements under the Apartment Design Guideline (ADG – SEPP 65).

3.03.03 Amenity

Many of the controls in 3.03.03 specify an acceptable solution is compliance with the relevant components for the the Apartment Design Guideline (ADG – SEPP 65). The application satisfies the relevant controls under the ADG as detailed elsewhere within this report. Accordingly, only the relevant additional controls contained within 3.03.03 have been discussed below:

G. Car and bicycle parking

The requirements for car and bicycle parking are detailed under section 7.03 Traffic, Parking and Access. The basement entry is appropriately setback and garage door widths acceptable.

I. Acoustic privacy

Noise transfer is required to be minimised through the siting of buildings and building layout, including mechanical plant. The application has been submitted with a Noise Impact Assessment (NIA) (prepared by Reverb Acoustics and dated August 2018). The NIA identifies that mechanical plant has not been selected, noise emissions were nominated for the purpose of the assessment. Based upon these nominated levels the proposal can achieve compliance with the required noise criteria. Conditions of consent have been recommended to ensure that the correct plant is selected and that any potential required acoustic treatments can be incorporated into the design.

I. Noise and pollution

Outside noise levels are required to be controlled to acceptable levels in living and bedrooms of dwellings. The submitted NIA (prepared by Reverb Acoustics) includes a theoretical assessment which calculated the project specific noise goals for the site based upon unattended monitory at the subject site. The dominate noise source in the area was road traffic. The NIA demonstrated that provided the recommended glazing are applied, compliance with internal noise level requirements under AS 2107:2000 will be achieved. Conditions of consent have been recommended to ensure compliance with this requirement.

3.03.01 Configuration

A. Universal design

The proposal is considered satisfactory in regard to *Liveable Housing Design Guidelines* (LHDG) 'silver level' universal design features. Ninety percent of proposed studio and one-bedroom dwellings comply with the LHDG 'silver level' universal design features. Further, 90% of two-bedroom and three-bedroom dwellings comply with the LHDG 'gold level' design features.

B. Communal area and open space

Over 35% of the site area is dedicated to communal open space, which has been located on the podium level for the seniors housing building and roof top level for residential building. Generally communal open spaces have a minimum dimension of 8m.

The communal open areas are considered to achieve adequate solar access, and whilst the proposed Level 14 rooftop is not adjacent to or overlooked by habitable rooms, access is restricted to use of residents by secure lifts. Generally clear sightlines through the site have been achieved. Required lighting to satisfy Crime Prevention Through Environmental Design (CPTED) requirements can be resolved through conditions of consent.

C. Architectural design and roof form

The proposed roof design integrates with the overall building. Plant and other systems can be adequately screened. Conditions of consent have been recommended to ensure plant and services are not visible from the public domain. The proposed development has also achieved 'design excellence' as discussed in detail elsewhere within this report.

D. Visual appearance and articulation

The performance criteria require that façade design is consistent with the desired character of the area and that development does not unreasonably impact on the amenity and privacy of adjoining dwellings. Further, building elements are to be integrated into the overall building form and facade design.

The proposed façade contains a balanced composition of elements including a mix of solid and void, a variety of materials and colours have been utilised. Appropriate setbacks to adjacent buildings and the public domain have been achieved. Building entries are clearly defined and services are well integrated within the overall façade. Furthermore, the development has been considered to achieve design excellence by the UDCG as detailed elsewhere within this report.

E. Pools and ancillary development

The proposed swimming pools on level 5 (Building A) and Level 14 (Building B) will be appropriately designed with pumps to be adequately soundproofed. Relevant conditions are recommended to ensure compliance.

3.03.05 Environment

A. Energy efficiency

The applicant has identified that the high-density living limits the ability to provide dedicated outdoor clothes drying areas. However, each apartments has access to private balconies/terrace to utilise if required. Given the nature of the proposal this is considered acceptable.

B. Water management and conservation

Each dwelling is proposed to be fitted with appropriate metres. Further, the proposed stormwater management is satisfactory subject to conditions of consent as detailed elsewhere within this report.

C. Waste management

The proposal includes a Waste Management Plan. The Applicant has identified that garbage will be collected via a private contractor. A clearance height of 2.08 and ceiling height of 3.5m to the basement levels and waste areas has been provided and Heavy Rigid Vehicles (HRV) cannot service the site.

City of Newcastle (CN) requires that the residential components of the development are capable of being serviced by CN, which requires access for waste collection HRV. In this regard, waste collection can be facilitated from the approved loading zone on

Bull Street. However, the residential waste area will need to be designed so as to be accessible from the ground floor level and Bull Street frontage. The waste area must also be within 10-15 travel distance from collection point to the loading. A condition of consent has been recommended to address this matter.

Section 3.10 - Commercial Uses

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

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

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

Section 3.11 – Community Services

Section 3.11 applies to the proposed 'medical centre' component of the development. The medical centre is located in the podium element of proposed 'Building A' and is fully integrated within the building. The medical centre is compatible with the surrounding environment and the adjacent proposed retail and residential uses are compatible with the medical centre use. The building design is satisfactory.

Section 4.03 - Mine Subsidence

The site is located within a proclaimed Mine Subsidence District and a conditional approval was granted by Subsidence Advisory NSW on 28 April 2020 as detailed earlier within this report.

Section 4.04 - Safety and Security

This section applies to the proposal given the nature and scale of development, with components of common space (pedestrian laneway, car parking, entry foyers, lift and stair wells and communal open space areas and roof top areas).

The development is acceptable in relation to aspects of safety and security providing for good natural surveillance from active frontages to balconies and maintains clear sightlines between private and public spaces. Lighting external areas and limiting places to hide are provided within the design. Access to the building and car parks is controlled and is safe for residents 24 hours per day. CCTV provides a level of additional security.

A Crime Risk Assessment (prepared by CHD partners, dated June 2018) has been submitted which identifies that the proposed development has the potential to positively contribute to the Newcastle West Area. Further, that there are generally no major pre-existing crime problems in the immediate area and the proposed development will increase activity, promote surveillance and provide good sightlines throughout the development. Recommendations of the Crime Risk Assessment have been considered and implemented within the overall development design. It is noted NSW Police provided a response and support of the proposal. Recommendations from NSW Police are included within the recommended conditions of consent.

Section 4.05 - Social Impact

The proposed development does not require the submission of a Social Impact Assessment pursuant to CN's *Social Impact Assessment Policy of Development Applications*. The proposed development is in keeping with the existing urban context and is not likely to result in any increase risks to public safety. Notwithstanding, the Applicant has provided commentary regarding social impact within the submitted Statement of Environmental Effects (prepared by City Plan). It is identified that the development will result in the provision of additional housing within a well-serviced area with access to public transport and the CBD. The co-location of independent seniors housing living units with the aged care facility allows for senior residence to 'age in place'. The development also provides a mix of residential apartment types (studio to three bedroom) with a range of affordability to cater for a large range of demographic groups.

The development will increase the CBD population and lead to the activation of the existing site. The publicly accessible laneway and associate public domain improvements also contribute positively to the existing locality.

As detailed within the SEPP SH discussion, the development site is located adjacent a registered club (West's, also known as NEX). Following approval of the proposed subdivision of the land the development site will be located on a separated land holding. Further, the proposed seniors housing component of the development is adequately separated from the registered club.

Whilst the development does result in an increase in aging population in the area, the development specifically caters for the needs of this population through provision of independent living units and the aged care facility. Operators of the facility will provide nursing, laundry and cleaning services. The medical centre provides opportunity to access health services on site. Overall, the development is likely to result in a positive social contribution.

Section 5.01 - Soil Management

A Soil and Erosion Management Plan (prepared by GHD) has been submitted with the application and details prevention and sediment control measures which are proposed to be implemented during the construction stage. Conditions of consent are also proposed with respect to soil and erosion management.

The development proposes significant earthworks to facilitate basement level carparking and other services below ground. A Geotechnical Assessment and Targeted Site Investigation (Contamination) (prepared by Douglas Partners, dated June 2019) has been submitted with the application. The Geotechnical Assessment identifies that dewatering will be required for the basement construction. A condition of consent has been recommended requiring that necessary approvals are obtained from Water NSW prior to issue of any Construction Certificate. Conditions of consent are also recommended in respect to stormwater management (as detailed elsewhere within this report) and soil management.

Section 5.02 - Land Contamination

The subject site is mapped as contaminated land on CN GIS system. A Preliminary Site Investigation (PSI) was carried out in 2015 which, as discussed within the SEPP 55 section above, identified several sources of potential contamination as being located on the site. These sources included imported fill material, fuel/chemical storage (associated with the Hunter Water depot) and possible motor parts/automotive dealer.

Subsequent to a further targeted site investigation, Douglas Partners prepared and submitted a Remediation Action Plan (RAP) (dated June 2019) which stated, that given the excavations required for construction of the proposed residential/aged care development (i.e. the proposed two-level basement), off-site disposal of heavy metal and asbestos impacts was considered to be the most appropriate remediation option for the site. As such, the remediation strategy nominated for the RAP is off-site disposal of impacted. Conditions of consent have been recommended in respect to the required remediation works (refer to Attachment A).

Section 5.03 - Tree Management

The application involves the removal of two existing street trees along the King Street frontage of the site. The two trees comprise mature 'London Plane' trees (*Platanus xhybrida*) and are located within the road reserve (tree IDs 46382 and 46383). As outlined within the Vegetation SEPP discussion, to compensate for the removal of the two existing street trees the Applicant proposes the planting of nine *Caesalpinia ferrea* street trees along King Street, three *Elaeocarpus eumundii* street trees along Ravenshaw Street, and 14 *Lophostemon confertus* street trees along Bull Street.

It is noted that whilst retention of street trees is preferred where possible, street tree removal has been supported in this instance as retention of the 'London Plane' trees near the proposed driveway, together with parked vehicles on King Street, would restrict sight lines for drivers existing the proposed driveway. Furthermore, the Applicant submits that as King Street is identified within the Newcastle City Council Street Tree Selection Manual as a 'class F3 footpath' (based on a verge width of 4.3m) the existing 'London Plane' trees are not an appropriate species for planting in the locality due to their mature size.

The proposed tree removal has been considered in accordance with the DCP requirements and is satisfactory subject to recommended conditions of consent.

Section 5.04 - Aboriginal Heritage

The applicant provided an AHIMS search record which confirmed the absence of known aboriginal heritage recorded on the site. Appropriate conditions will be included relating to the event of any Aboriginal heritage is found on site.

Section 5.05 - Heritage Items

The subject site is located within the Newcastle City Heritage Conservation Area (HCA), which is listed as Conservation Area C4 in sch. 5 NLEP. As detailed within cl.5.10 discussion above, the site is identified as a non-contributory building. The site is not a listed heritage item and is not identified as an archaeological site. An AHIMS search did not identify any Aboriginal sites or listed Aboriginal Places within 50 metres of the site. There are four heritage items within proximity to the subject site which were identified elsewhere within this report.

A Statement of Heritage Impact (SoHI) prepared by AMAC Group and John Carr Heritage Design was submitted with the application and identified that the existing garage building located on the site is of little heritage significance. Further, that the proposed development will have minimal effect on the heritage significance of the Newcastle City Centre HCA and nearby individual heritage items due to the design emphasising the four-storey podium as the dominant element of its overall design and the screening and distance of nearby heritage items.

The findings of the SoHI are supported. The proposed development is located a sufficient distance away from nearby heritage items that it will not directly impact upon their setting or interpretation. The proposed development is satisfactory having regard to section 5.05 subject to conditions of consent.

Section 5.06 - Archaeological Management

The site is not specifically listed in the Newcastle Archaeological Management Plan 1997 or NLEP 2012 as an 'Archaeological Site'. However, conditions of consent have been recommended which require the applicant ensure that if unexpected archaeological deposits or relics are discovered, work must cease in the affected area(s) and the Heritage Council of NSW must be notified.

Section 6.01 – Newcastle City Centre

The site is located in the 'Parry Street' character area of the DCP and the application has been designed to respond to the principles for the area. The development provides for new areas of high-quality public domain, including the publicly accessible pedestrian laneway. The landscaping and public domain works proposed further enhance the public domain. The overall development aligns with the objectives to support the evolving character of the area into a high-density residential and mixed-use precinct.

6.01.03 - General controls

Criteria	Comment
A1 - Street Wall Heights	<p>A street wall height of 16m and a setback of 6m above the street wall height is required. The proposed tower levels are setback appropriately 6m above street wall heights and is compliant with the control.</p> <p>The proposed street wall heights proposed incorporate varying street wall heights all of which result in a minor variation to the 16m requirement as follows:</p> <ul style="list-style-type: none"> • King Street between 14.1m to 14.5m • Bull Street between 12.9m and 14.9m • Ravenshaw Street 13.1 and 14.3 m <p>The changes in street wall respond to the topography of the site and corner location. The variation is minor and the proposed development still achieves the objectives of the control.</p>
A2 - Building Setbacks	<p>DCP requires a zero front setback to the street. The proposal has a 3m setback to all streets with exception of 'Building B' presenting a 1m setback to Bull Street.</p> <p>The variation is supported as the setbacks provided are appropriate given the site's context and relationship with surrounding development. Further, the setback has provided opportunities for improvement to the public domain with use of soft landscaping to integrate particularly with the King Street median vegetation. It is noted that the UDCG determined that the design was a well-considered built form which responded well to its context.</p> <p>The DCP allows a zero setback to side and rear boundaries below the street wall height. The approved boundary between the development site and 'West City' (NEX) is the only side boundary given all other boundaries have primary road frontage. An approximate 12m setback is provided to this building to enable required separation under the ADG. The setback has been utilised to facilitate the landscaped public laneway providing access between Bull and Kind Street.</p>
A3 - Building Separation	<p>The proposal is separated 12m from levels 1-4 and 24m for the remaining. This is in line with ADG requirements and ensures a development which achieves adequate daylight ventilation, outlook, view sharing and privacy.</p>
A4 - Building Depth and Bulk	<p>Building depth and floorplate sizes are required to relate to the desired urban form and skyline of the city centre.</p> <p>The proposed building height results in a minor variation of cl.4.3 of the NLEP and is compliant with the bonus height provisions under cl.7.5. Accordingly, the development is considered to relate to the desired 'skyline' of the city centre.</p> <p>The building separation distances are compliant with the ADG requirements and residential solar access and natural ventilation outcomes have been determined to be satisfactory as detailed within the SEPP 65 assessment of this report.</p>

	<p>The proposed FSR exceedance and associated impacts to bulk and scale have been assessed in detailed under the cl.4.6 assessment sections of the report.</p> <p>Building depth requirements limit apartment depth to 18m, and whilst some elements of 'building A' have a depth in excess of the requirement, none of the proposed apartments exceed 18m. A maximum building length of 50 m is also prescribed, 'building A' is compliant with this requirement, however 'building B' has a length of 69.5m. The proposed building length is an appropriate response to the corner and irregular shape of the allotment. In addition, suitable articulation has been achieved within the design and given the proposal has been determined to achieve design excellence the variation is supported.</p>
A5 - Building Exteriors	The proposed materials used for the building exteriors compliment the character of the area and present a high-quality design and finish. As a result of the use of materials and high-quality design the building exterior makes a positive contribution to the streetscape, public domain and public spaces. Additionally, the building exterior responds appropriately to adjoining buildings.
A6 - Heritage Buildings	This section relates to the assessment or alteration work of heritage items listed in sch. 5 NLEP and does not apply to the subject development.
A7 - Awnings	<p>This section specifies that continuous street awnings are to be provided to provide shelter for public streets where most pedestrian activity occurs. The control applies to all new developments in areas requiring active street frontage (per figure 6.01-25). The development site does not require a continuous awning.</p> <p>The section also requires that development addresses the streetscape by providing a consistent street frontage in the city centre. Pedestrian shelter is provided through overhanging floor levels above most of the proposed pedestrian laneway and King Street frontage. The overhanging floor levels provide continuity to the overall building design.</p>
A8 – Design of parking structures	The subject site is not identified as flood prone land. The proposed basement car park is not required to be designed to provide protection against flooding.
A9 - Landscaping	New development is required to incorporate landscaping and communal open spaces that respects the desired character of the streetscape, adjoining land and public spaces. As detailed elsewhere within this report, the landscaping and communal open space proposed is satisfactory.
B1 - Access Network	Lanes, through-site links and pedestrian paths are required to be retained, safe and enhanced to promote access and public use. The development includes a proposed pedestrian pathway (laneway) which provides access between Bull and King Street. The laneway also provides linkages through the development site with the proposed food and drink premises adjacent the laneway activating the pedestrian space. The proposed memorial will also enhance the uses of the link through the site. Lighting to the laneway will be addressed by conditions of consent.
B2 - Views and Vistas	<p>The control requires that significant views around the city are preserved to achieve place-making, wayfinding and to retain the unique character of Newcastle. The closest identified view of vista in the DCP is from Wheeler Place west along King Street towards Newcastle Permanent and City West Club building (terminating at this point) – (vista '06 – King Street corner Wheeler Place).</p> <p>The proposed development will be visible beyond the Newcastle Permanent and Wests development. The vista is concerned with the views along King Street. The proposed development will not impact upon these views and will form part of the visual backdrop and is considered to contribute given the quality urban design and interest elements.</p>

	The proposed development is not considered to result in unreasonable view loss to neighbouring residential development. A detailed view loss analysis is provided elsewhere within this report (refer below to likely impacts discussion).
B3 - Active Street Frontage	The site is not identified within the applicable DCP maps as being required to contribute to active street frontages. Notwithstanding, the proposed development provides commercial uses and outdoor dining along the King Street frontage, offices and residential components of the development overlook Ravenshaw Street and residential lobbies and courtyards front Bull Street. The proposed public laneway is activated through associated restaurant/café uses and outdoor dining, memorial and residential accommodation. The proposal is considered create active street frontages.
B4 - Addressing the street	As outlined above the development satisfactorily contributes to active frontages including the proposed laneway. The development therefore positively addresses, streets, lands and other public spaces.
B5 - Public Art	<p>Significant development is required to incorporate public artwork. In respect to development on key sites 1% of the capital cost of the development is required to be allocated towards public artwork for the development. Council (through the Public Art Representative Group (PARG)) is required to be consulted on the location and design of public artworks associated with the development.</p> <p>The Applicant has proposed that the public laneway will incorporate various elements which they consider to be public artwork including a 'faceted wall element' which will host a public memorial for the 1989 Newcastle Earthquake victims.</p> <p>Whilst public artwork can be integrated with essential infrastructure, the infrastructure itself is not considered to satisfy the requirement of public art. The faceted wall is not considered public artwork. The Applicant has been advised that the public artwork requirements will be addressed via conditions of consent and that consultation with the PARG will be required with respect to concept designs prior to issue of Construction Certificate.</p>
B6 - Sun Access to Public Spaces	New development is required to be designed to ensure that reasonable sunlight access is provided to new and existing public spaces. As detailed elsewhere within this report, the overshadowing impacts of the proposed development have been assessed and the development does not result in unreasonable overshadowing to either existing or proposed public spaces.

Section 6.02 - Heritage Conservation Areas

Section 6.02 provides a framework for the conservation of the special qualities within each of Newcastle's Heritage Conservation Areas. Specific controls are specified within s.6.02 to ensure that development activity within each heritage conservation area is commensurate with heritage significance and produces good design and livable streetscapes. Section 6.02.07 outlines that all new development within the conservation area are to be treated as 'infill' and outlines controls which are determined acceptable for infill development within a heritage conservation area.

The site is located within the Newcastle City Centre Heritage Conservation Area (HCA). The proposal not strictly compliant with the provisions of section 6.02.07, however these controls are more relevant to HCAs that maintain cohesive streetscapes and consistent building

typologies. The Newcastle City Centre HCA stretches from Hamilton to Newcastle East and contains a wide variety of built forms. It does not have a single cohesive character across the entire HCA

The proposal is generally responding appropriately to its existing context and is meeting the objectives for the Parry Street Precinct contained in section 6.01, which encourages high-density residential development in this precinct without impacting on the existing contributory buildings in the precinct. Section 6.01 states that in the future, the Parry Street Precinct will be characterised by more high-density residential development taking advantage of the good amenity offered by proximity to the city centre and National Park, and available services such as retail, entertainment and employment opportunities.

The development will not compromise the heritage significance of the HCA or the streetscape. The development will activate and enhance the immediate area and have a flow on benefit to nearby streetscapes with heritage significance and integrity in the HCA. The demolition of the non-contributory building on the site and the construction of the multi-storey high-density mixed-use development is acceptable in this instance.

Section 7.02 - Landscape, Open Space and Visual Amenity

The proposal is identified as a 'category 3' development. In this regard, a suitably qualified Landscape Architect has prepared the submitted landscape plan. It is considered that the proposal is acceptable having regard to the requirements of this section. It is noted that these requirements overlap with criteria elsewhere within the Newcastle DCP 2012 and SEPP 65.

Section 7.03 - Traffic, Parking and Access

7.03.01 Traffic studies and plans

A. Traffic Impact Study and B. Construction Traffic Management Plan

A Traffic Impact Assessment (prepared by Intersect Traffic and dated May 2019) has been submitted with the development application. A construction traffic management plan will be required prior to issue of any Construction Certificate in accordance with the recommended conditions of consent.

7.03.02 Parking Provision

On-site parking demand and provision

Car parking is required to be provided in accordance with the rates set out in the DCP, or where applicable relevant SEPP controls. It is noted that due to consideration given to car parking rates under the relevant SEPPs the car parking rates adopted for the development are lower than the DCP required rate. The required car parking rates is detailed below.

Use	Control	Requirement
Aged Care (residential care) = 114 beds (Applicable rate - SEPP (Housing for seniors or people with a disability) 2004, Part 7 Division 2)	Visitor: 1 parking space for each 10 beds in the residential care facility (or 1 parking space for each 15 beds if the facility provides care only for persons with dementia), and	Car: 11 Spaces
	Staff Parking : 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and	Car :6 Spaces
	1 parking space suitable for an ambulance .	Ambulance :1
	Motorbike: None	0

	Bicycle: None	0
Independent Living = 212 beds Applicable Rate: SEPP (Housing for seniors or people with a disability) 2004, Part 7 Division 4	Car spaces: 0.5 for each bedroom where the development application is made by a person other than a social housing provider.	Car: 106
	Bicycle: None	Bicycle: 0
	Motorbike: None	Motorbike: 0
Commercial Uses (medical centre, salon, café & restaurant) = 562 sq.m Applicable Rate: CN DCP 2012	Car: 1 space per 60 sq.m gross floor area for developments except for residential development	Car:10 spaces
	Motorbike: 1 space per 20 car spaces for 10 respective car spaces	1 space
	Bicycle: Café/Restaurant = 1 space per 100 sqm GFA Medical Centre = 1 space per 10 practitioners (Class 2), 1 space for 10 staff (Class 3)	Bicycle:5
Residential 17 studios & 52 1-bedroom units 70 2-bedroom units 27 3-bedroom units Applicable Rate: RMS Guide Rates – Metropolitan Regional CBD	Car 0.4 spaces per 1-bedroom unit = 28 spaces 0.7 spaces per 2-bedroom unit = 49 spaces 1.2 spaces per 3-bedroom unit = 32 spaces	Car: 109 spaces Visitor: 24 spaces Total: 133 spaces
	Bicycle: 1 space per dwelling for residents (class 2) 1 space per 10 dwellings (Class 3) for visitors	Bicycle: 166 (Storage) 17 (Class 3)
	Motorbike: 1 space per 20 cars	Motorbike: 8
Loading	As per proposed Use	Light Vehicle: 1
		Small Rigid Vehicle: 1
Wash bay: Applicable Rate – Newcastle DCP Section 3.03.01 G point 5	As per the any residential development more than 20 dwelling need to provided car wash facilities within the property.	1 car Wash bay with car wash facilities.
Total Off-Street parking	Car:	266
	Bicycle:	166 (Class 2) 22 (Class 3)
	Motorbike:	9
	Ambulance	1
	Wash Bay	1

The total car parking requirement for the whole development is 266 car spaces, including 24 visitor car spaces, and 1 ambulance space. The proposed development provides car parking as follows:

Type of Parking	Location & No. of Parking			Total
	Basement 2	Basement 1	Ground Floor	
Cars R – Residential V – Visitor Re – Retail O – Office C – Commercial D- Disabled ILU- Independent living unit	ILU – 107 D- 11	R – 133	V-13 C- 13 Not allocated - 11	288
Bicycle	0	0	146 (Class 2) 22 (Class 3)	168
Motorbike	0	0	17	17
SRV			1	1

The development includes 288 car spaces, including 11 disabled parking spaces and provides an additional 22 spaces over the required car parking rates. However, the applicant has not allocated any car spaces to wash bay and to meet the compliance with Newcastle DCP Section 3.03.01 G point 5, it is recommended to allocate a parking space with car washing facilities. This matter can be addressed by conditions of consent.

The development provides 168 bike spaces located in the bike store on ground level which fall short by 22 (11.5%) bike spaces requirement. Considering the nature of the proposed development and proximity to the major transit services and location of the development within the walkable distance to the shopping centre (240m), the variation to the required bicycle parking spaces is acceptable.

Further, the development has provided 17 motorbike spaces and therefore exceeds the requirement by 8 motorbike spaces. However, the proposed motorbike spaces which seem to be 1m x 2m. Motorbike parking spaces are to be minimum 1.2m x 2.5m in accordance with Australian Standards. The development requires a minimum of 9 motorbike spaces. The recommended change in the length to 2.5m can generally be attained with the parking area.

The proposed car parking spaces a compliant with the relevant Australian Standards and is satisfactory subject to conditions of consent.

On-street parking demand and impact

Currently, the parking restriction on King Street fronting the development entails a bus zone and ticketed parking space. The bus stop fronting the development is a school bus stop and consultation with bus operator Keolis Downer has recommended that a proposal to formalise the bus stop has been presented to TfNSW pending approval in December 2020.

The proposed development will require the following changes to parking restrictions on King Street

1. The relocation of bus zone on King Street due to the new proposed driveway.
2. Inclusion of 6m no-stopping zone east of driveway to meet the sight distance requirements.
3. An ACF pick-up/drop-off zone on King Street to support the parking demand of Aged Care facility.

The relocation of bus zone can be achieved by moving the bus zone further south fronting the current driveway on King Street (noting that the current driveway will be redundant in future as per DA2019/01171).

The applicant submitted amended development plan which proposed 5 min parking restrictions on King Street east of the driveway. The parking proposal was not supported, as a pickup-drop off facility provided for aged care centre is within the reasonable walking distance for residents and therefore the residents can use that facility.

Bull Street currently has three ticket parking spaces the driveways providing access to the development site. The amended development plan proposes a loading/no-stopping zone on Bull Street. The proposal to provide a loading zone in Bull Street during early morning and after hours has been supported by the NCTC as detailed elsewhere in this report.

No changes to parking on Ravenshaw Street and Union Street as a part of the development has been recommended.

7.03.03 Travel demand management

Development is required to be designed to facilitate increased modal share to public transport and encourage consideration of alternatives to private vehicle ownership, use and parking.

The development site is located within 400m of a number of bus stops which are accessible by suitably graded pedestrian footpaths. A Green Travel Plan (prepared by Graph Property, undated) has been developed for the proposal to encourage adoption of sustainable forms of transport. Newcastle West End Public Domain Strategy also has identified cycleways in this growth precinct and the use of bicycles are encouraged as an alternative transport mode and for recreation purposes.

Given the proximity of the site to local services (including retail, food and drink premises and medical centre within the site) and transport the travel demand management proposed is satisfactory.

7.03.04 Design and layout of parking and access

Access driveway

The ground-level car park is accessed by a 7m wide driveway on King Street having 1.5m splays on both sides at the road entry. The applicants have stated that a small rigid vehicle (SRV) is the largest expected vehicle to access the development.

The submitted plans indicate kerb returns will be installed across the footpath, which would give a false sense of priority to drivers over the pedestrian using the footpath. As such, conditions of consent are recommended requiring that the kerb returns are removed, and footpath pavement is kept continuous across the driveway. This issue can be resolved at the construction certificate stage with the Section 138 Roads Act application.

The concept proposal for the access driveway entry/exit is generally supported. Modifications are required to the drive and access design generally along the eastern side to ensure SRV's can enter the site. These modifications can be addressed at detailed design stage and therefore conditions of consent have been recommended.

The proposed driveway access will provide a safe and efficient vehicular access to the development subject to the recommended conditions.

Sight Distance and Gradients

The vehicular sight distance requirements for the access driveway are adequate for a 60km/h speed limit. The proposed 6m of 'No Stopping' restrictions on King Street road reserve to the east of the proposed driveway will additionally improve sightlines and manoeuvrability for entering/exiting vehicles and is supported.

The minimum sightlines for pedestrian safety are available at the driveway due to the presence of 2.5m x 2.0m sight triangles at the property boundary.

The gradient of the footpath and in the first 5.7m into the property boundary is generally flat and the driveway access gradient for at least 6m prior to the control point (roller door) is approximately 4.3%. The average gradient along the 5.6m staged downward ramp is approximately 12.5%. The proposed access driveway generally complies with the relevant Australian Standards.

Location of vehicle control point

The applicant has proposed that the security gate to the car park will only be closed after hours between 9 pm and 7 am. A queue storage capacity of 26m during the peak hour of traffic flow is generally expected as a result. However, the gates are proposed to be closed during off-peak hours (9 PM-7 AM), however as King Street has two travel lanes the proposed vehicular access is expected not to impact the on-street traffic movement.

Furthermore, the proposed roller security gate for the car parking is located 10m within the site. The 10m setback to the gate can accommodate for queuing of at least 2 cars or one SRV. Thus, the gate access must be kept open during peak traffic hours and be only closed between 9 pm-7 am. Conditions are recommended to ensure that the gate operating hours are managed as proposed.

Height Clearance for service vehicles and Ambulances

The proposed entry height to the car park is 3m (refer drawing SK-018.1). The applicant has stated that the development will utilise small rigid vehicles (SRV) for deliveries and services requirements.

Further, it is anticipated that the site will also be accessed by ambulances as part of the aged care facility. The minimum height clearance needed for Specialist NSW Ambulance Service vehicles is 3.2m (per NSW Ambulance Guidelines – Stretcher and Vehicle Dimensions).

Table 4.1 of AS2890.2 prescribes the basic vertical height clearance of 3.5m for SRV. During the assessment, the Applicant was requested to provide amended plans to achieve a 3.5m height clearance. Amended plans addressing this request were not submitted and the Applicant's response in reply to the requested noted that Mercedes Benz Sprinter 519 Bariatric Specialist (Ambulance) vehicles will not access the site.

However, to ensure the health and safety of aged care residents is not compromised due to inadequate access and serviceability to the site for Ambulance vehicles, conditions of consent have been recommended which require the submission of amended plans prior to issue of Construction Certificate to ensure adequate height clearance for SRV in accordance with AS2890.2.

The Applicant has relied on the on-street loading zone for (medium rigid vehicles (MRV) delivering the site. The proposal to use the on-street parking is subject to Newcastle City Traffic Committee (NCTC) approval. The proposed on-street parking changes has been approved by NCTC at its meeting on 16 November 2020 (meeting item No. 5072) for provision of a timed loading zone on Bull Street. The loading zone will be time managed and can be used for servicing by MRV and Council waste collection purposes.

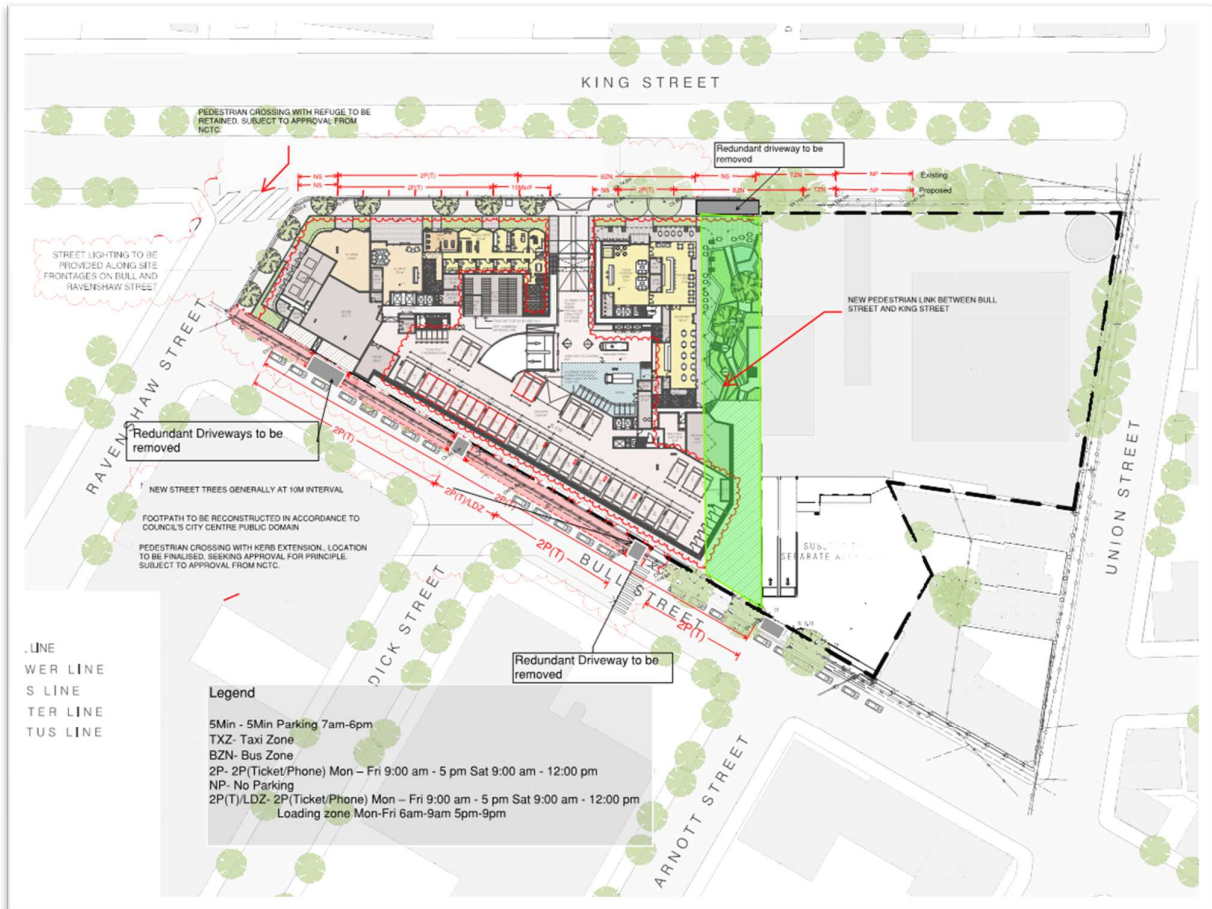


Image 9: Proposed public domain and on-street parking as approved by NCTC

Section 7.05 – Energy efficiency

Section 7.05.01 Business development

The proposed retail components (including food and drink premises) incorporate several measures to maximise energy efficiency such as awnings above building facades and use of energy efficacy lighting. Subject to recommended conditions for consent the development is satisfactory.

Section 7.06 - Stormwater

The Applicant has submitted a Services Report (prepared by GHD and dated June 2019) which includes stormwater management plans which detail stormwater devices. The Services Report indicates that a maintenance plan can be provided at detailed design stage if required. During the assessment, further information was submitted by GHD in respect to the proposed stormwater drainage system (report dated 26 August 2020) which was accompanied by an amended set of civil works drawings.

The proposed development site currently has 100% impervious area. The proposed development predominantly has impervious area with small pockets of landscaping on ground level and Levels 1, 4, 5 & 14. A landscaped area of 2,190 m², or 33% of the site area is provided. The total rainfall depth storage requirement for the development in accordance with the DCP equates to 16.75mm being 74.38m³ (or 74.38KL) to cater for the 4,441m² impervious area.

The proposed stormwater harvesting, and reuse scheme has a total storage of 75kL, including 5kL tanks on the roof tops for rooftop landscape watering and a 65kL tank on the ground floor

for toilet flushing, washing machine usage and landscape watering. The drainage system also includes a 60m³ detention tank located on the ground floor designed to reduce peak runoff from the site. Water quality discharge controls are proposed to remove site generated pollutants with the site discharge connected to the existing street drainage in King Street.

Lower basements stormwater will be collected in the pump out pit, with the provision to pump out to the ground level. Ground level drainage is proposed to be directed through a GPT and stormwater treatment system before being discharged into Council's drainage system on King Street near Ravenshaw Street.

A fully trafficable Humes Humegard GPT has been proposed on the access driveway at the ground level to remove gross pollutants and coarse sediments from the stormwater discharged through basements and ground level car parks and proposed laneway. The stormwater discharged from the GPT will then enter the 360 Jellyfish Tertiary Treatment System to achieve water quality targets before being discharged with a UPVC 150DN pipe into existing KIP on King Street east of Ravenshaw Street.

Subject to the recommended conditions of consent the proposed development is considered satisfactory with respect to stormwater and drainage requirements.

Section 7.08 - Waste Management

The proposal includes a Waste Management Plan. The Applicant has identified that garbage will be collected via a private contractor. A clearance height of 2.08 and ceiling height of 3.5m to the basement levels and waste areas has been provided and Heavy Rigid Vehicles (HRV) cannot service the site.

As detailed elsewhere within this report, CN requires that the residential components of the development are capable of being serviced by CN, which requires access for waste collection HRV. In this regard, waste collection can be facilitated from the approved loading zone on Bull Street. However, the residential waste area will need to be designed so as to be accessible from the ground floor level and Bull Street frontage. The waste area must also be within 10-15 travel distance from collection point to the loading. A condition of consent has been recommended to address this matter.

Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019

As the proposed development has an estimated cost of works over \$100,000 the application attracts a section 7.12 local infrastructure contribution pursuant to s.4.17 of the EP&A Act and the 'Section 7.12 Newcastle Local Infrastructure Contributions Plan 2019' (s.7.12 Plan). The subject site is located on land to which 'Part B (City Centre)' of the s.7.12 Plan applies.

In accordance with Part B of the s.7.12 Plan a local infrastructure contribution of 3% of the cost of development (\$4,826,976) is payable to City of Newcastle (subject to indexation). Payment of the required contribution will be imposed through recommended conditions of consent.

The payment deferral arrangements enabling payment prior to the issue of the first occupation certificate applies from the 8th July 2020 to when the COVID-19 prescribed period ends

5.1.3.4 Any draft development control plan

There are no draft development control plans applicable to the proposed development.

5.1.3.5 Planning agreements

No planning agreements are relevant to the proposal.

5.1.3.6 The regulations (and other plans and policies)

Environmental Planning and Assessment Regulation 2000 (EP&A Regs)

The application has been considered pursuant to the provisions of the *Environmental Planning and Assessment Act and Regulation 2000*, as follows:

- *Clause 92 Additional matters that consent authority must consider –*
 - *Cl.92(1)(b)* – The development proposes the demolition of the existing car park building. Accordingly, demolition of structures will be conditioned to ensure compliance with the provision of AS2601.

Hunter Regional Plan

The Hunter Regional Plan provides an overarching framework to guide land use plans, development proposals and infrastructure funding decisions. The NSW Government's vision for the Hunter is to be the leading regional economy in Australia with a vibrant new metropolitan city at its heart.

The proposed development provides an additional range of housing and aged care facilities, along with retail, food and drink and medical services, within a city centre location and is consistent with the objectives of the Hunter Regional Plan.

Lower Hunter Regional Strategy

The primary purpose of the Lower Hunter Regional Strategy is to ensure that adequate land is available and appropriately located to accommodate the projected housing and employment needs of the Region's population over the next 25 years

The proposal will contribute to both provision of increased housing within the Newcastle City Centre and the availability of seniors housing within the inner city. It is considered that the proposal meets the planning outcomes envisioned within the Lower Hunter Regional Strategy.

5.1.3.7 Coastal management plan

No coastal Management Plan applies to the site or the proposed development.

5.1.3.8 The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Impacts upon the natural and built environment have been discussed in this report in the context of relevant policy, including NLEP 2012 and NDCP 2012 considerations. The following additional matters are considered relevant and warrant further consideration:

Wind tunnelling

The Newcastle area is subject to strong winds, particularly during winter. As the proposed development incorporates tall buildings with a large surface area, there is a potential for the proposed development to influence wind movement, including through the creation of downward drafts from the façade impacting the ground plane below.

In response to these potential impacts, the development has been designed to include curved corners to enable wind movements to pass around the built form smoothly so as to result in a reduction of wind loads upon the development itself and the public domain below. Inclusion of a podium level to deflect tower wind downdraft from the ground plane at the street frontages will also assist in mitigating any potential impacts the public domain. Overhanging floor levels and use of awnings have been incorporated into the design to deflect downdrafts from outdoor dining areas and building entries. Level 14 has been designed with 1.5m high solid balustrades to assist in protecting communal open spaces from the approach of horizontal winds. Landscape treatment throughout the site is also considered to mitigate potential wind impacts.

A wind tunnelling report was not submitted with the application and conditions of consent have been recommended which require the submission of a wind tunnelling report prior to the issue of any construction certificate. Subject to the recommended conditions the development is considered acceptable.

View impacts

Whilst the site does not directly adjoin any existing residential development, given the height of the proposal, the potential impacts of the proposed development on the views of existing residential development within the vicinity to the subject site have been assessed. View sharing has been considered having regard to the planning principles contained within *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 at 25-29 (*Tenacity*).

There is currently limited high density residential development within the vicinity of the subject site, primarily being the seven storey 'Westcourt' building and eleven storey Marketown Shopping Centre development containing the 'Spire Apartments', both located to the south west of the subject site.

'Westcourt' Building - No. 4 Ravenshaw Street

The city block adjacent the site to the south west (bound by Bull, Arnott, Hall and Ravenshaw Streets) predominately consists of commercial development, with the exception of the 'Westcourt' building known as No. 4 Ravenshaw Street; a seven-storey mixed use development consisting of ground level commercial premises and car parking, with six levels of residential apartments above (Level 1 to Level 6).

Located on the corner of Ravenshaw and Hall Streets, No. 4 Ravenshaw Street is the third allotment, approximately 75 metres, south west from the subject site along Ravenshaw Street.

A total of 12 apartments have their living and primary balcony areas orientated towards the north east and the subject development site, being two apartments on each storey from Level 1 to Level 6 (refer to image 8 below). As such, the proposed development will inevitably have some limited impact on the existing views from these apartments. However, given the low scale of No 4 Ravenshaw, the apartments within do not have access to any significant views.

No. 4 Ravenshaw Street has an existing building height of approximately 20.5 metres above ground (RL 25.50 to lift overrun); well below the maximum building height of 35 metres envisioned under Clause 4.3 of NLEP2012 for all the allotments within the city block adjacent the subject site to the south west (bound by Bull, Arnott, Hall and Ravenshaw Streets).

As such, any view loss for the north east facing apartments of No. 4 Ravenshaw resulting from the proposed development is not considered unreasonable and is anticipated by the planning controls.

'Spire Apartments' - No. 23 Ravenshaw Street

Located on the opposite side of Ravenshaw Street and approximately 50 metres south west from the subject site is the Marketown Shopping Centre development; an eleven-storey mixed use development consisting of basement level carparking (Basement), four levels of commercial and carparking (Ground Level, Level 1, Level 2, Level 3), and seven levels of residential apartments above (Level 4 to Level 10).

The upper seven storeys containing the residential component is known as 'Spire Apartments' and arranged as three separate buildings. A total of 28 apartments (four apartments on each storey from Level 4 to level 10) within the most north east building, known as 23 Ravenshaw Street, have their living and primary balcony areas orientated towards the north east (refer image 8 below). As such, the proposed development will inevitably have some impact on the existing views from these apartments.

Compared with the low scale of the residential development at No. 4 Ravenshaw Street, the higher elevation of 'Spire Apartments' means these apartments currently have far-reaching views towards the distant mouth of the Hunter River. Whilst the proposed development will

impact this view, these apartments benefit from much wider views compassing the harbour to the north, and/ or National Park and the Pacific Ocean to the south. Furthermore, these views are dependent upon overlooking the subject site.

Conclusion

Overall, the loss of views is considered acceptable using the methodology outlined under the planning principles contained in *Tenacity*. The proposed development is considered reasonable for the site. It should also be noted that the proposed development is compliant with the building height and building separation controls contained within NLEP and the ADG. The land is also located within the Newcastle City Centre, which is subject to planning policies that seek to increase the density of development in close proximity to services.

In summary, whilst it is acknowledged that the development will result in some limited impacts to the views of the nearby residential apartments, following consideration of the impact of view sharing, the proposal is considered acceptable and should be supported.

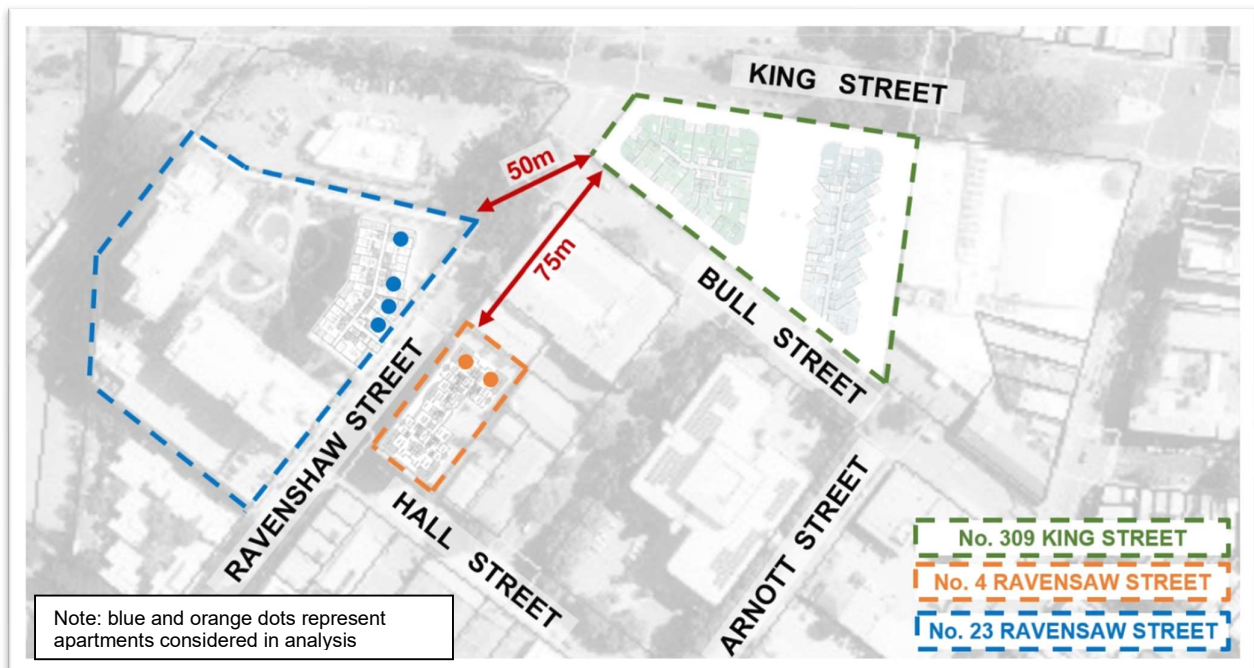


Image 10: View loss analysis

Pedestrian Management

The development has proposed the access to tower A and B for residents from Bull Street and it is anticipated that this will result in a considerable increase in the pedestrian movement in the area. The desired pedestrian link based on the major trip attractions such as the Marketown in Steel Street, Aldi in Arnott Street or recreational and community sports on the Southern side of the Parry Street has been depicted in image 11 below.

It is envisaged that new pedestrian link between Bull Street and King Street will be utilised to access the proposed bus stop in King Street improving the accessibility to the sustainable modes of transport. Due to increase in the vehicular movement in Bull Street and Ravenshaw street and a significant increase in walking-based trips due to the proposed development, would result in an upgrade of safe pedestrian crossing facilities in Bull Street and Ravenshaw Street as identified in image 11 below.

While on Bull Street a raised pedestrian crossing with kerb extension is recommended, together with a crossing designed to retain the pedestrian refuge at Ravenshaw Street. Recommended conditions of consent have been provided to address this matter.



Image 11: Expected desired pedestrian path

Public domain works

The following public domain works be required in connection with the development:

- Changes to the on-street parking traffic and scheme.
- Proposed pedestrian amenity including pedestrian crossings required due to expected high pedestrian movements in the vicinity of the development (as detailed further below).
- Upgrade to footpath amenity including pavement around the perimeter of the site, street trees and streetscape works.
- Provision of street lighting to achieve compliance with current standards and for the pedestrian links.
- Provision of new driveway access and removal of redundant driveway.
- Provision of additional facilities such as on-street cycleway to allow for safe use of alternative transport, and
- Infrastructure works such as stormwater connections, possible temporary ground and dewatering connections.

The public domain works will require separate approval under Section 138 of *Roads Act* and as follows:

- Construct new kerb and guttering on all three site frontages.
- Full footpath reconstruction on King Street fronting the site in accordance with Council's 'City Centre Public Domain - Technical Manual'. The footpath to be Pavement Type 5 (Asphalt with bluestone unit paving). Footpath reconstruction to be coordinated with CN's installation of Smart City infrastructure (smart poles, pits, conduits, etc.).

- Full footpath reconstruction on Bull Street and Ravenshaw Street along the site frontages in accordance with Council's 'City Centre Public Domain - Technical Manual'. The footpath to be Pavement Type 6 (Asphalt).
- Provision of street lighting (P3 category) along site frontages on Bull and Ravenshaw Streets.
- New street tree planting generally at 10m intervals on all site frontages. Tree planting to be undertaken with linearly connected tree vaults containing structural soil as per CN's standard drawing - A3003. Final tree locations, species and specifications to be determined by CN.
- Construct a mid-block raised threshold pedestrian crossing with compliant kerb extensions, ramps, drainage and lighting on Bull Street generally aligned with the proposed pedestrian link. The pedestrian crossing is subject to NCTC approval. If the pedestrian crossing is not supported, a refuge with compliant kerb extensions, ramps, drainage and lighting will need to be provided at this location.
- Construct a pedestrian crossing with compliant kerb extensions, ramps, drainage and lighting on Ravenshaw Street at King Street. Existing refuge to be retained with the new pedestrian crossing to reduce crossing distance. The pedestrian crossing is subject to NCTC approval. If the pedestrian crossing is not supported, the existing refuge will need to be upgraded with compliant kerb extensions, ramps, drainage and lighting.
- Upgrade existing bus stop on King Street with two shelters and seats in accordance with Council/DDA standards. The potential relocation of the bus stop near the existing driveway of the club to avoid trees. Relocation of bus stop subject to NCTC approval.

The above public domain requirements have been addressed within the recommended conditions of consent.

5.1.3.9 *The suitability of the site for the development*

The site is located within the Newcastle City Centre, which is well serviced by public transport and community facilities. The land is zoned B4 Mixed Use and the land uses proposed under the subject development application are permissible within the zone.

The environmental constraints associated with the site, including historic land contamination, can be adequately addressed through compliance with the recommended conditions of consent. As such, the site is considered suitable for the proposed development.

5.1.3.10 *Any submissions made in accordance with this act or the regulations*

The application was advertised and notified for a period of 14 days from 18 November 2019 to 2 December 2019 in accordance with the *EP&A Act*, *EP&A Regs* and City of Newcastle Community Participation Plan. There were no submissions received during the notification period.

5.1.3.11 *The public interest*

The development is in the public interest and will allow for the orderly and economic development of the site. The development is consistent with the zoning of the land facilitates a variety of additional housing types within a city centre location, including provision of seniors housing and a residential care facility. The inclusion of retail development, food and drink premises and associated medical centre, ensures services and facilities are provided on site.

Whilst the application proposes a variation to the floor space ratio development standard under NLEP2012 the development is consistent with the objectives of the floor space ratio standard and objectives of the B4 Mixed Use zone. The development is also generally consistent with the other relevant planning controls and is reflective of the anticipated development of the site.

Having achieved design excellence, the proposal will positively contribute to the streetscape and public domain.

The development does not result in any unreasonable impacts to adjoining properties or the public domain, and subject to the imposition and compliance with the recommended conditions of consent, the granting of development consent to the application is in the public interest.

6. CONCLUSION

The proposal is acceptable having been assessed against the relevant heads of consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*.

7. RECOMMENDATION

- A. That the Hunter and Central Coast Regional Planning Panel, as the consent authority, grant consent to Development Application No.DA2019/01169 for mixed use development comprising demolition of structures, erection of two 14 storey mixed-use buildings with shared basement carparking (286 spaces), comprising seniors housing (114 bed aged care facility and 82 independent living units), residential flat building (166 units), medical centre, food and drink premises (café and restaurant) and retail premises (salon), at 309 King Street Newcastle West, subject to the conditions attached at **Appendix A**, and
- B. That the Hunter and Central Coast Regional Planning Panel, as the consent authority, note the objection under Clause 4.6 Exceptions to Development Standards of NLEP 2012, against the development standard at Clause 4.4 Floor Space Ratio, and considers the objection to be justified in the circumstances and to be consistent with the objectives of Clause 4.4 and the objectives for development within the B4 Mixed Use zone in which the development is proposed to be carried out, and
- C. That the Hunter and Central Coast Regional Planning Panel, as the consent authority, note that the Acid Sulfate Soil Assessment (prepared by Douglas Partners, dated June 2019) submitted with the application, which indicates the absence of actual or potential ASS, is confirmed in accordance with cl.6.1(4)(b) NLEP2012.