

COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSHCC-220–MA2023-00175 - PAN-330384
PROPOSAL	Sec 4.55(2) Modification to DA2017/00701 - Concept Development Application - Staged development comprising of retail, commercial, residential and shop top housing - change to design (building height)
ADDRESS	<p>Lot 31-32 DP 864001</p> <p>Lot A & B DP 388647</p> <p>Lot 1 DP 77846</p> <p>Lot 96, 98 & 100 DP 1098095</p> <p>Lot 1 & 2 DP331535</p> <p>Lot 1 DP 723967</p> <p>Lot 1 DP 819134</p> <p>105, 109, 111 & 121 Hunter St Newcastle</p> <p>3 Morgan St Newcastle</p> <p>22 Newcomen St Newcastle</p> <p>66-74 King St Newcastle</p>
APPLICANT	Urbis
OWNER	East End Stage 3 Pty Ltd & East End Stage 4 Pty Ltd
MOD LODGEMENT DATE	1 June 2023
ORIGINAL DA DETERMINATION DATE	2 January 2018
APPLICATION TYPE	Modification Application under Section 4.55(2)
REGIONALLY SIGNIFICANT CRITERIA	The proposal involves a s4.55(2) application which triggers consideration by the Hunter Central Coast Regional Planning Panel via the s275(2) directions under the <i>Environmental Planning & Assessment Regulation 2021</i> .
CIV	\$145,140,650.00 (excluding GST) (value of the concurrent DA proposal the modification is facilitating).
CLAUSE 4.6 REQUESTS	N/A
KEY SEPP/LEP	<ul style="list-style-type: none"> State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development Newcastle Local Environmental Plan 2012 Newcastle Development Control Plan 2012.

TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	A total of 17 unique submissions have been received.
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Amended architectural plans (Concept DA) • Statement of modification • Architectural Design Report (East End Stages 3 & 4) • Justification for Reduced L1 Ceiling Heights East End Stage 3 & 4 • Applicants S4.55 submission • Conservation Management Plan • Designing with Country letter & report • Heritage reports • Landscape reports • Traffic & Parking Report • Visual Impacts Assessment Reports
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	N/A
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	N/A
SCHEDULED MEETING DATE	11 March 2024
PREPARED BY	Damian Jaeger, Principal Development Officer (Planning)
DATE OF REPORT	4 March 2024

EXECUTIVE SUMMARY

This report details the City of Newcastle's ('CN') assessment of a Modification Application (MA2023/00175) which seeks consent under s4.55(2) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') to modify the development consent (DA2017/00701) for a Concept DA comprising of retail, commercial, residential and shop top housing. The proposed modifications comprise changes to the design (i.e. building height) and the text of various conditions of consent. The proposed modifications are also intended to facilitate the concurrently lodged Development Application (DA2023/00419) which involves the construction of 195 dwellings and associated commercial premises, parking, and public domain areas.

The original development was approved by the then Joint Regional Planning Panel (JRPP) (now known as HCCRPP) as the consent authority (the previous criteria under the EP&A Act, being a proposal having a \$20 million capital investment value).

The proposed modification under s.4.55 is to be determined by the Panel as consent authority in accordance with the 'Instruction on Functions Exercisable by Council on behalf of Sydney District or Regional Planning Panels - Applications to Modify Development Consents' issued

pursuant to cl. 275(2) of the *Environmental Planning and Assessment (EP&A) Regulation 2021* (formerly cl.123BA of the Regulation 2000).

The proposed modification is considered to satisfy the 'substantially the same development test' required by s.4.55 of the EP&A Act.

Historically the site contains limited vegetation and was occupied by several buildings, the majority of which have been approved for demolition under a development consent (DA 2023/00336) granted in March 2023. Demolition of some of these buildings is currently being undertaken.

The subject site spans several street blocks being between Hunter, King, Thorn, and Newcomen Streets within the East End Character precinct of the Newcastle City Centre as identified in the Newcastle Development Control Plan 2012 (NDCP). The subject site is zoned Mixed Use - MU1 under the Newcastle Local Environmental Plan 2012 (NLEP) and the proposed development is permissible with consent within this zone.

The concurrently lodged DA proposal (DA2023/00419) has been the subject of an architectural design competition and its current design is consistent and the result of the evolution of the winning entry, as further developed via six Design Integrity Panel reviews and endorsement, and a review by CN's Urban Design Review Panel (UDRP). This proposed modification is required to amend the Concept DA to align with the development as proposed under the DA.

The MA was publicly notified between 13 June to 18 July 2023, and in response 17 submissions were received with raised issues in relation to:

- Modification - substantially the same test
- Height
- Overdevelopment
- Character and streetscape
- Heritage impacts
- Visual impacts
- Overshadowing
- Privacy
- Ventilation and breezes
- Views
- Acoustic impacts
- Traffic impacts
- Tree removal
- Underground spring
- Dilapidation reports

Briefings of the HCCRPP were held on 2 August and 11 December 2023 during which the key issues discussed included:

- Section 4.55 substantially the same test
- Public submissions
- View impacts - private views and public corridors
- Interaction between Concept DA s.4.55 application and the concurrently lodged development application for stages 3 & 4 (DA2023/00419)

Recommendation

Following consideration of the matters for consideration under s.4.15(1) and 4.55 of the EP&A Act, the provisions of the relevant State Environmental Planning Policies (SEPPs), the provisions of the NLEP and the NDCP the proposed modification is considered in the public interest and, on balance, should be supported.

Accordingly, pursuant to s. 4.16(1)(b) of the EP&A Act, MA2023/00175 is recommended for approval subject to the reasons contained at **Attachment A** of this report.

1. THE SITE AND LOCALITY

1.1 The Site

The site has an area of 6,450 m² with multiple street frontages to Hunter, Morgan, Laing, Thorn, Newcomen, and King Streets. The overall subject site is irregular in shape and consists of 12 separate allotments. Detailed within **Figure 1** below is the location of the proposal within the Hunter Street Mall. 'Block 3' is 'Stage 3' and Block 4 is 'Stage 4' within the current Concept DA (NB: Block 1 and 2 are the earlier Stages 1 and 2 and are either completed or under construction).

Figure 1 - Stage Locations - 121 Hunter St Newcastle - Source Urbis

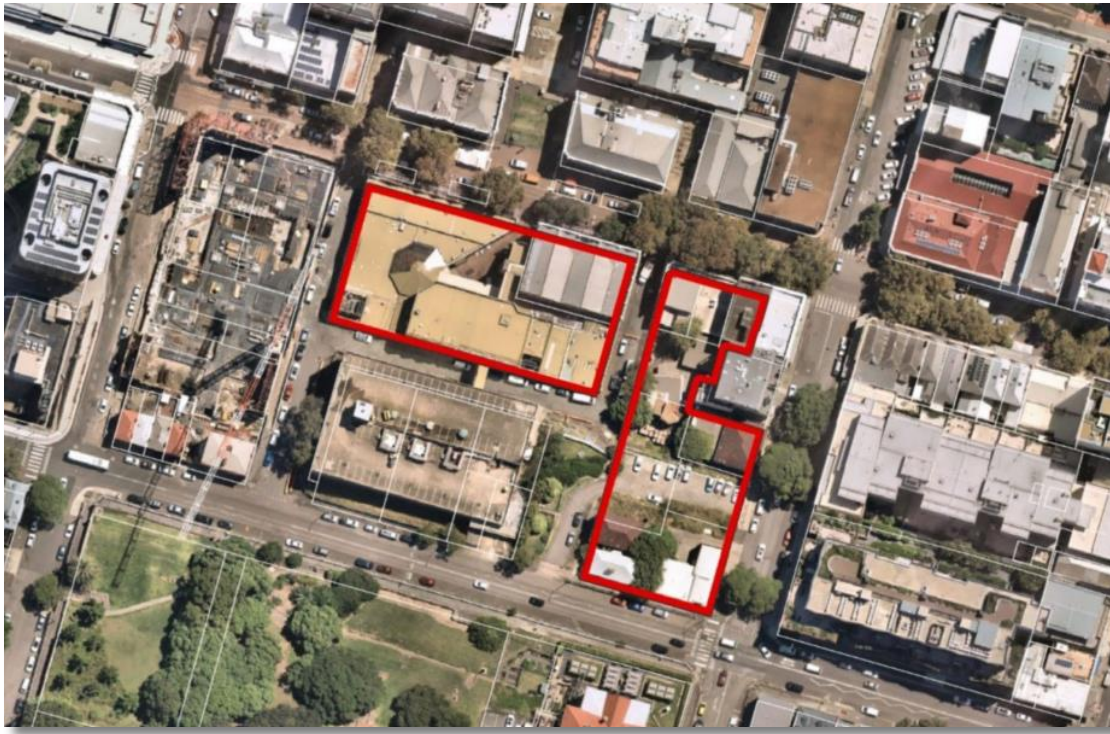


The proposal is located within a prime location of the Newcastle City Centre (see **Figure 2**).

The site has notable changes in level with the highest at the corner of King and Newcomen Streets and slopes down to the north along Newcomen Street, to the west along King Street and down towards the corner of Thorn and Hunter Streets which has a crossfall of almost 20 metres.

Under the NLEP, 121 Hunter Street is identified as having two local heritage items, 'Municipal Building'- I403 and "Retaining wall with sandstone steps- I477. The latter item is in the road reserve opposite the King Street frontage of the site, The site is affected by land contamination and mine subsidence.

Figure 2 - Location Aerial Stages 3 & 4, 121 Hunter St Newcastle - Source Urbis



Historically the site has had limited vegetation and is occupied by several buildings but the majority of which are approved for demolition under Development Consent (DA 2023/00336) granted in March 2023. The demolition of some of the buildings is currently being undertaken.

The areas shown in 'orange', as detailed within the plans included at **Attachment E** are approved for demolition.

1.2 The Locality

The surrounding area is a mix of commercial and residential apartments. The subject site is in a prime position within the heart of the Newcastle's East End Character Area as identified in the NDCP.

The area has been in a state of change for many years which is reflected in the differing age and nature of development (including several newer apartments (e.g. Iris's East End Stages 1 & 2 - See **Figures 3 & 4**, and Newcastle Herald site at the northeast corner of King and Newcomen Streets).

Additionally, the sites are within the Newcastle Heritage Conservation Area and there are heritage items on and in the vicinity of the site. The site is within a reasonable walking distance to the Newcastle Light Rail located in Hunter/Scott Streets.

Figure 3 - Stage1 Iris Development Perkins St looking north- Source CN Photo



Figure 4 - Stage1 Iris Development Hunter Street Mall looking west- Source CN Photo



2. BACKGROUND & SITE HISTORY

2.1 Site History

The proposal is the continuation of the Iris development at the East End of Newcastle which represents a major revitalisation of this area. Stage 1 has been completed and Stage 2 is under construction.

The key development applications relating to the East End are outlined below, it is noted there have been numerous applications, including Complying Development Certificates, and minor modification applications over the site.

- **DA2017/00701** - On 2 January 2018, development consent was granted by the then Joint Regional Planning Panel (now known as HCCRPP) for a staged concept approval (the 'Concept Approval'), for the East End development. The Staged Concept Approval set the floor space ratio, height, and building envelope parameters for four stages of development.
- **DA2017/00700** - On 4 January 2018, development consent was granted by the then Joint Regional Planning Panel (now known as HCCRPP) for Stage 1 consisting of a mixed use development incorporating retail premises, shop-top housing, car parking and associated works, for the East End development.
- **DA2018/00354** - On 15 March 2019, development consent was granted by the HCCRPP for Stage 2 of the East End development, Mixed-use development, residential (121 dwellings), retail and commercial, and associated demolition and site works. Stage 2 works are currently under construction and nearing completion.
- **DA2019/01150** - On 26 April 2020, development consent was granted by the now HCCRPP, for a tourist and visitor accommodation within the Stage 1 development of the East End.
- **DA2023/00336** - On 28 April 2023, development consent was granted by CN for the demolition of existing non heritage and non-contributory buildings and structures within Stages 3 & 4. Demolition works are currently being undertaken.

The former CN's parking station located to the south of the subject site with a frontage to King, Thorn, Laing and unformed portion of Morgan Street, has been demolished under DA2021/00059. No plans or further details are available at this time regarding the intended development of the former car park site.

A development application was approved on 28 April 2023 (DA2023/00336) for the demolition and removal of existing non-heritage and non-contributory buildings and structures at 137-145 Hunter Street, 3 Morgan Street, and 66-74 King Street, Newcastle. The locally significant heritage item 'Municipal Building' (No. 1403) and the contributory buildings at 105-111 Hunter Street and 22 Newcomen Street (Blackall Hall) were excluded from the proposed demolition and removal works.

The Concept DA (DA2017/00701) which covers Stages 1 to 4 across a larger site has been subject to the following modifications:

- DA2017/701.01 - Modified FSR, building envelopes, car parking and introduced hotel/motel and service apartments use within Stage 1 and 2.
- DA2017/701.02 - Modified FSR, building envelopes and reduced number of apartments.

- DA2017/701.03 - Modified the percentage of adaptable housing required within Stage 1.

A concurrent DA design under DA2023/00419 – Stage 3 & 4 has been lodged following a Design Excellence Competition and is subject to a separate HCCRPP determination and proposes variations to the Concept DA building envelopes and height.

This proposed modification under s4.55(2) has been submitted to address the fact that the winning design does not conform to the envelopes/height within the approved Concept DA (DA2017/00701) and no longer aligns with the intended strategic planning outcomes under the NDCP.

The application has been reviewed by CN's Urban Design Review Panel (UDRP) who support the application.

2.2 Background

Regionally Significant Criteria

The original development was approved by the HCCRPP as the consent authority (the previous criteria under the EP&A Act, being a proposal having a \$20 million capital investment value).

The proposed modification under s.4.55 is to be determined by the Panel as consent authority in accordance with the 'Instruction on Functions Exercisable by Council on behalf of Sydney District or Regional Planning Panels - Applications to Modify Development Consents' issued pursuant to cl.275(2) of the EP&A Regs (formerly cl.123BA of the Regulation 2000), which states as follows:

"...meets the criteria relating to conflict of interest, contentious development or departure from development standards set out in Schedule 1 to this instruction."

Schedule 1 providing:

"Departure from development standards Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards"

Architectural Design Competition & Design Integrity Panel (DIP)

The proposed concurrent development (DA2023/00419) for the Stages 3 & 4 was the subject of an architectural design competition under the provisions of cl7.5(4) of the NLEP 2012 concluding on 30 August 2022. This proposed modification has been submitted to facilitate the design of the development for Stages 3 & 4 (i.e. the winning design from the competition, which has been further developed via the DIP process).

The DIP undertook six rounds of review providing for further design refinement of the winning entry between 14 October 2022 to 24 February 2023. The DIP endorsed the resultant design and determined that it could achieve design excellence.

3. THE PROPOSAL

3.1 The Proposed Modification

The proposed modification seeks consent to modify the building heights approved under the concept plan DA2017/00701 (and subsequent modifications 2017/701.01, 2017/701.02 & 2017/701.03) and the schedule of conditions to facilitate the stages 3 & 4 development proposed under development application (DA2023/00419).

The Concept DA does not consent to physical works for Stages 3 & 4, and the undertaking of physical works on the site is dependent on approval being granted to the concurrently lodged development application.

The applicant describes the proposed modification as follows:

“The section 4.55 (2) is required to modify the approved building envelopes in order deliver the ‘winning’ architectural scheme. Specifically, the proposed modifications include:

- *Re-distribution of building massing out of the central view corridor towards other parts of Stage 3 and Stage 4 and toward the Christ Church Cathedral. This amendment will ensure the proposal remains in accordance with the NDCP 2012 and aligns with CN’s vision of the view corridor.*
- *Realignment of Market Square as per the Design Excellence Competition scheme. Market Square is aligned with CN’s desired public domain outcome and opens the view corridor to the Christ Church Cathedral.*
- *Amendment to the height of building envelope as a result of the redistributed mass and addition 10% design excellence provision, as per below (See **Figures 5 & 6** below):*
 - a) *Building 3 West: 34.30 RL*
 - b) *Municipal Building: 20.43 RL (also known as Building 3 East, and previously Building 3 North)*
 - c) *Building 3 East: 45.65 RL (previously known as Building 3 South)*
 - d) *Building 4 North: 36.92 RL*
 - e) *Building 4 South: 51.70 RL*
- *Amendment to the floor space ratio as a result of the redistributed mass and addition 10% design excellence provision, as per below:*
 - a) *Stage 3: 3.29:1*
 - b) *Stage 4: 4.42:1*
 - c) *Combined: 3.92:1*

Figure 5 - Approved Concept DA 'Envelope/height plan' noting Building '3 South' within the view corridor from Hunter St Mall to Christ Church cathedral Source- Urbis

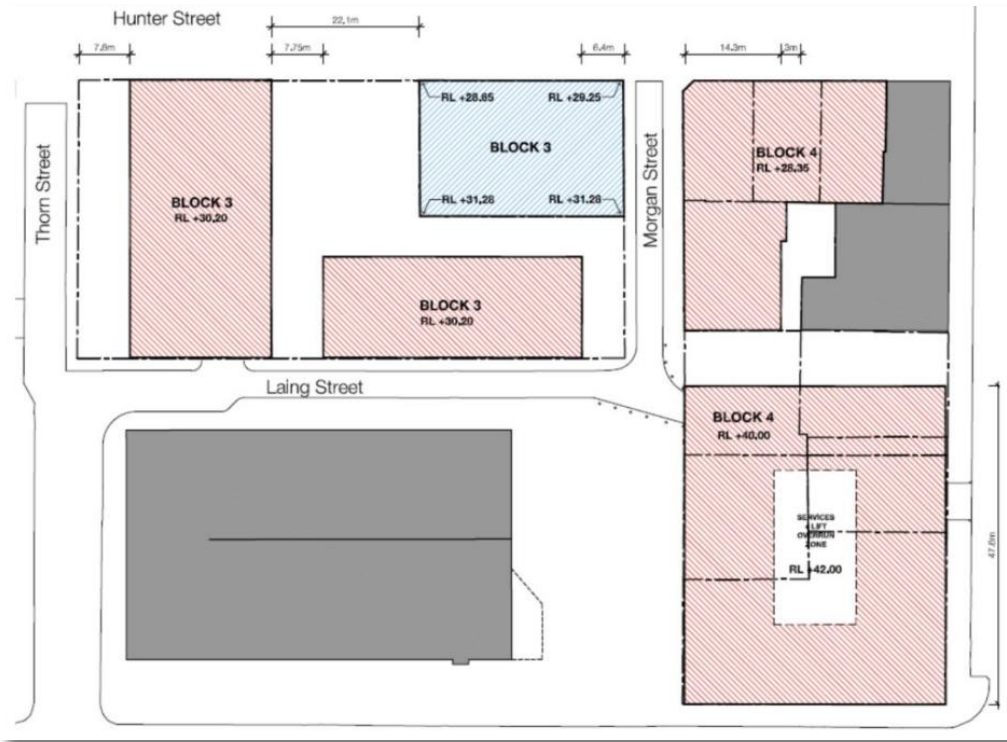
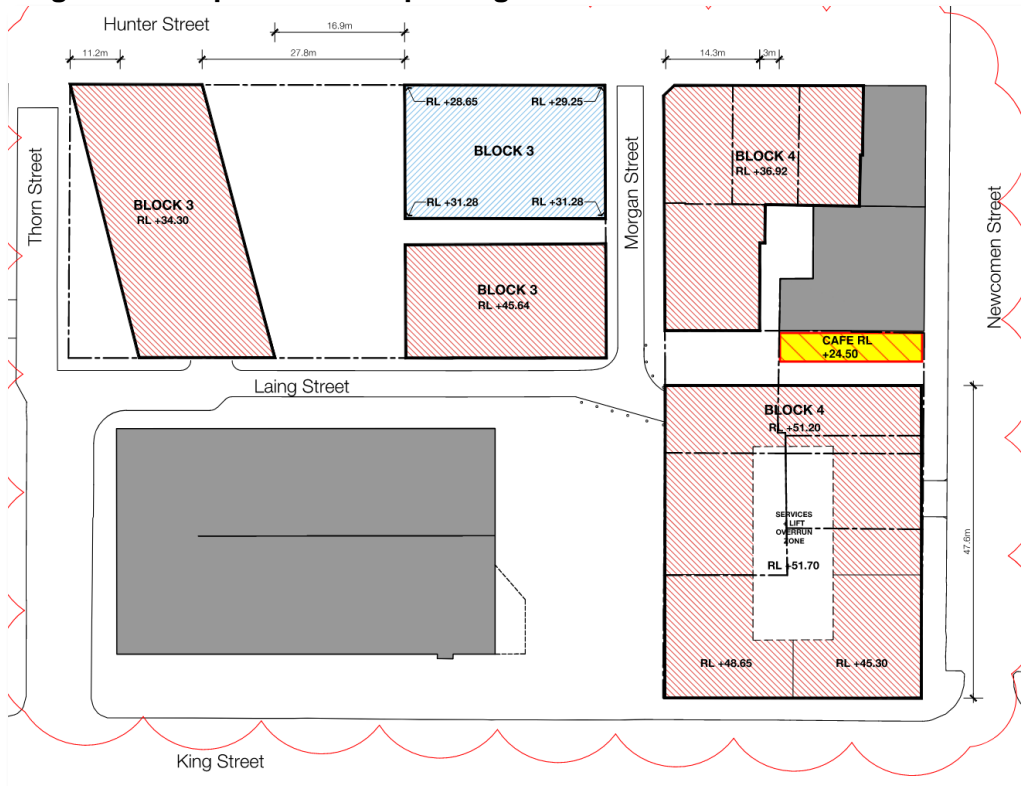


Figure 6 - Proposed Envelope/Height Plan Source Urbis



Proposed Changes to Conditions

The modification application results in the proposed amendments to the following conditions of consent as shown in **Table 1**.

Table 1: Proposed Changes to Conditions

Existing Condition	Change Proposed	Reason for Change
<p><i>Condition No. 1</i></p> <p>Approved plans and documents.</p>	<p>Modify description of approved architectural plans.</p>	<p>Modify to update plans to reflect proposed modification.</p>
<p><i>Condition No. 4</i></p> <p>This consent permits a maximum gross floor area of 63,617m² over all stages, calculated in accordance with the definition of gross floor area contained in Newcastle Local Environmental Plan 2012. Of the total gross floor area, not less than 8100m² shall comprise retail space and not less than 1160m² shall comprise business/office space which is generally apportioned to each stage as identified in the approved documentation and as depicted on Floor Plans (Job No. 5614) numbered DA-0200 (Basement 01), DA-0201 (Level 1), DA-0202 (Level 2), DA-0203 (Level 3), DA-0204 (Level 4), DA-0205 (Level 5), DA-0206 (Level Typical), Revision 03 dated 19.09.2019, prepared by SJB Architects.</p> <p>Allocation of gross floor area across the site shall generally be:</p> <ul style="list-style-type: none"> • Block 1: 27,466m² • Block 2: 12,954 m² • Block 3: 11,034 m² • Block 4: 12,163 m² 	<p>This consent permits a maximum gross floor area of <u>65,134m²</u> over all stages, calculated in accordance with the definition of gross floor area contained in Newcastle Local Environmental Plan 2012. Of the total gross floor area, not less than 8100m² shall comprise retail space and not less than 1160m² shall comprise business/office space which is generally apportioned to each stage as identified in the approved documentation and as depicted on Floor Plans (Job No. 5614) numbered DA-0200 (<u>Basement 01 Rev 3 19/9/19</u>), DA-0201 (<u>Level 1 Rev 5 23/2/24</u>), DA-0202 (<u>Level 2 Rev 5 23/2/24</u>), DA-0203 (<u>Level 3 Rev 5 23/2/24</u>), DA-0204 (<u>Level 4 Rev 5 23/2/24</u>), DA-0205 (<u>Level 5 Rev 05 23/2/24</u>), DA-0206 (<u>Level Typical Rev 05 23/2/24</u>) prepared by SJB Architects.</p> <p>Allocation of gross floor area across the site shall generally be:</p> <ul style="list-style-type: none"> • Block 1: 27,466 m² • Block 2: 12,954 m² • Block 3: <u>11,099 m²</u> • Block 4: <u>13,635 m²</u> 	<p>These proposed modifications are to reflect the rebalancing of Stages 3 and 4 based on the intended design (as proposed by DA 2023/00419) which addresses the required 'Harbour to Cathedral Park' view corridor and the outcome of an associated architectural design competition.</p>
<p><i>Condition No. 5</i></p> <p>This consent permits a maximum floor space ratio on</p>	<p>This consent permits a maximum floor space ratio on the total site of <u>3.92:1</u>, with the maximum floor</p>	<p>These proposed modifications are to reflect the rebalancing</p>

<p>the total site of 3.83:1, with the maximum floor space ratio for each stage to be in accordance with the 'FSR Plan' prepared by SJB Architects (Job No. 5614, Drawing No. DA-2904, Revision 03, dated 19.09.2019) and is generally apportioned to each stage as identified in the approved documentation and is summarised below:</p> <p>Stage 1: 4.19:1 Stage 2: 3.55:1 Stage 3: 3.3:1 Stage 4: 4.0:1</p>	<p>space ratio for each stage to be in accordance with the 'FSR Plan' prepared by SJB Architects (Job No. 5614, Drawing No. DA-2904, <u>Revision 05, dated 23/2/24</u>) and is generally apportioned to each stage as identified in the approved documentation and is summarised below:</p> <p>Stage 1: 4.19:1 Stage 2: 3.55:1 Stage 3: <u>3.29:1</u> Stage 4: <u>4.42:1</u></p>	<p>of Stages 3 and 4 based on the intended design (as proposed by DA 2023/00419) which addresses the required 'Harbour to Cathedral Park' view corridor and the outcome of an associated architectural design competition.</p>
<p><i>Condition No. 6</i></p> <p>This consent permits maximum building heights as shown and referenced as 'Staged DA Building Envelope' on the Building Envelope Plans prepared by SJB Architects (Job No. 5614, dated 19.09.2019) including:</p> <p>a) Drawing No. DA-0501, Revision 03, Elevation North and East; b) Drawing No. DA-0502, Revision 03, Elevation South and West; c) Drawing No. DA-0503, Revision 03, Elevation Wolfe Street East + West; d) Drawing No. DA-0504, Revision 03, Elevation South and West</p>	<p>This consent permits maximum building heights as shown and referenced as 'Staged DA Building Envelope' on the Building Envelope Plans prepared by SJB Architects (Job No. 5614, including: <u>DA2901 (Envelope Plan Rev 05 23/2/24)</u>, <u>DA-0501 (Elevation North/East Rev 07 23/2/24)</u>, <u>DA-0502 (Elevation South/West Rev 07 23/2/24)</u>, <u>DA-0601 (Section C&D Rev 06 23/2/24)</u> & <u>DA-0604 (Section J Rev 05 23/2/24)</u>, and Drawing No. <u>DA-0503, Revision 03 19/9/19, Elevation Wolfe Street East + West</u>; Drawing No. <u>DA-0504, Revision 03 19/9/19, Elevation South and West</u>.</p>	<p>These proposed modifications are to reflect the rebalancing of Stages 3 and 4 based on the intended design (as proposed by DA 2023/00419) which addresses the required 'Harbour to Cathedral Park' view corridor and undertaking the outcome of an associated architectural design competition.</p>
<p><i>Condition. 6A</i></p> <p>New condition</p>	<p><u>This consent permits maximum building height of +24.50m RL for the 'Laing Lane Café' site as marked in red and yellow highlight on the plans by SJB Architects (Job No. 5614, dated 23/2/24) DA2901 (Envelope Plan Rev 05 23/2/24).</u></p>	<p>An additional condition is imposed to address maximum building height of the development on the Laing Street to Newcomen Street portion of the site which was previously intended to be dedicated to CN.</p>
<p><i>Condition No. 10</i></p> <p>Elevations submitted with Blocks 2, 3 and 4 shall confirm the provision of minimum 4m</p>	<p>Elevations submitted with Blocks 2, 3 and 4 shall confirm the provision of minimum 4m floor to ceiling heights at ground floor level with the remainder being deleted (i.e.</p>	<p>Following a detailed assessment of the proposed modification under SEPP65/Apartment</p>

<p>floor to ceiling heights at ground floor level and minimum 3.3m at first floor level for all new buildings.</p>	<p><i>and minimum 3.3m at first floor level for all new buildings).</i></p>	<p>Design Guide and Section 6.01 of the Newcastle DCP, it is considered most appropriate to delete this condition from the Concept DA (See further details within the SEPP 65 assessment below).</p>
<p><i>Condition No. 18</i></p> <p>On-site car parking is to be provided for a minimum of 616 vehicles across the four (4) stages of the development and shall be generally in accordance with the details indicated on the submitted plans and documentation, except as otherwise provided by the conditions of consent.</p>	<p>On-site car parking is to be provided for a minimum of <u>735</u> vehicles across the four (4) stages of the development and shall be generally in accordance with the details indicated on the submitted plans and documentation, except as otherwise provided by the conditions of consent.</p>	<p>Parking numbers have been revised during the assessment of the development application (DA 2023/00419) resulting in a total parking provision of 735 spaces comprising:-</p> <ul style="list-style-type: none"> • 273 spaces for Stg 1 • 158 spaces for Stg 2 • 168 spaces for Stg 3 • 136 spaces for Stg 4. <p>Accordingly, the text of the proposed conditions requires further modifications.</p>
<p><i>Condition No. 19</i></p> <p>The number of car parking spaces shall be provided within each stage in accordance the requirements of Section 7.03 of Newcastle Development Control Plan 2012 (NDCP 2012) or the applicable standard at the date of lodgement of the application for each stage. The submitted plans and Traffic and Parking Impact Assessment for each stage shall detail the number and location of spaces required in accordance with this condition:</p> <p>a) 100% of car spaces required for residents are to be provided on site.</p>	<p>The number of car parking spaces shall be provided within each stage in accordance the requirements of Section 7.03 of Newcastle Development Control Plan 2012 (NDCP 2012) or the applicable standard at the date of lodgement of the application for each stage. The submitted plans and Traffic and Parking Impact Assessment for each stage shall detail the number and location of spaces required in accordance with this condition:</p> <p>a) 100% of car spaces required for residents are to be provided on site.</p> <p>b) A minimum of 25% of the required number of residential visitor parking spaces shall be provided for residential visitor parking in each of the car parks for</p>	<p>In addition to the revision spread of parking required by each stage, the split of parking by uses is revised.</p>

<p>b) A minimum of 25% of the required number of residential visitor parking spaces shall be provided for residential visitor parking in each of the car parks for each Block contained in Stages 1-4 inclusive. These spaces are not to be subdivided, leased or controlled by or on behalf of particular unit owners or residents. Spaces cannot be allocated or deferred to different Blocks/stages unless there is a specific condition that allows this and has formed part of a separate development consent. The remaining 75% is to be accommodated by the existing Council carpark at the Corner of King and Thorn Streets and on-street parking.</p> <p>c) Stages 1 to 4 of the development shall each provide on-site car parking for the parking for commercial and retail staff at the rate of 50% required by Council's DCP for commercial and retail use unless there is a specific condition that allows this and has formed part of a separate development consent. The remaining 50% is to be accommodated by the existing Council carpark at the Corner of King and Thorn Streets and on- street parking.</p> <p>d) 37 carparking spaces are to be provided for the hotel located within Stage 1 of the development, comprising 29 guest and 8 staff spaces which may otherwise be reduced if justified or approved through a separate development consent or modification after a minimum of two (2) years operations.</p>	<p>each Block contained in Stages 1-4 inclusive. These spaces are not to be subdivided, leased or controlled by or on behalf of particular unit owners or residents. Spaces cannot be allocated or deferred to different Blocks/stages unless there is a specific condition that allows this and has formed part of a separate development consent. The remaining 75% is to be accommodated by the existing Council carpark at the Corner of King and Thorn Streets and on-street parking.</p> <p>c) Stages 1 to 4 of the development shall each provide on-site car parking for the parking for commercial and retail staff at the rate of 50% required by Council's DCP for commercial and retail use unless there is a specific condition that allows this and has formed part of a separate development consent. The remaining 50% is to be accommodated by the existing Council carpark at the Corner of King and Thorn Streets and on-street parking.</p> <p>d) <u>42</u> carparking spaces are to be provided for the hotel located within Stage 1 of the development, comprising <u>34</u> guest and 8 staff spaces which may otherwise be reduced if justified or approved through a separate development consent or modification after a minimum of two (2) years operations.</p> <p>e) an additional <u>5</u> parking spaces and 11 residential visitor parking spaces are to be included in Stage 3, in addition to compliance with Section 7.03 of Newcastle Development Control Plan 2012 (NDCP 2012) or the applicable standard at the date of lodgement of the application for this stage. <u>These additional 5</u> parking spaces are not to be</p>	
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<p>e) an additional 10 parking spaces and 11 residential visitor parking spaces are to be included in Stage 3, in addition to compliance with Section 7.03 of Newcastle Development Control Plan 2012 (NDCP 2012) or the applicable standard at the date of lodgement of the application for this stage. This additional 10 parking spaces are not to be allocated to residential uses and the allocation is to be approved by Council. This term applies unless otherwise justified or approved through separate development consent that demonstrates it is not warranted based on traffic and parking analysis of Stage 1 including specific information from a minimum of two (2) years hotel operations.</p>	<p>allocated to residential uses and the allocation is to be approved by Council. This term applies unless otherwise justified or approved through separate development consent that demonstrates it is not warranted based on traffic and parking analysis of Stage 1 including specific information from a minimum of two (2) years hotel operations.</p>	
<p><i>Condition No. 42</i></p> <p>The development application for Stage 4 identified on the 'Indicative Staging Plan' prepared by SJB Architects (DA-2903, Revision 00, dated 15.5.17) shall include the dedication of land to Newcastle City Council which comprises 'Market Square', as shown on Floor Plan Level 01 prepared by SJB Architects (Drawing DA-0201 Revision 00, dated 15.5.17). Prior to dedication the land is to be constructed to finished levels to Council's satisfaction and at no cost to Council.</p>	<p><u>A public right of carriageway is to be created over the publicly accessible private land, as detailed within the plans by SJB Architects dated 23/2/24 (Job No 5614 Dwg NO DA-2902 Rev 04) and inclusive of an associated public lift located between Newcomen and Laing Streets. A detailed survey plan is to be submitted with an accompanying Subdivision Certificate Application for Council certification and such plan is to be registered with the NSW Government Land Registry Service (LRS) prior to issue of any Occupation Certificate or Subdivision Certificate, whichever occurs first.</u></p>	<p>A public right of carriageway is considered to be a more appropriate legal mechanism to ensure public access to those areas intended to be freely available for use by the general public. The dedication of the land in these instances is not considered to be in the general public interest and potentially results in unnecessary additional legal conflicts (e.g. as publicly owned lands it may then be subject to an extensive number of private easements). CN would not generally be supportive of taking dedication of these parcels of land.</p>
<p><i>Condition No. 42A</i></p> <p>New condition</p>	<p>Section 88B Instrument</p> <p>Before the issue of the first occupation certificate for the</p>	<p>This additional condition is imposed to ensure that easements are addressed by an</p>

	<p>development (i.e., whether for part or whole of a building), a notation is to be made on a survey plan and accompanying instrument under Section 88B of the <i>Conveyancing Act 1919</i> setting out the terms of the required public right of carriageway to be created over the publicly accessible private land, and inclusive of an associated public lift located between Newcomen and Laing Streets, and such is to be lodged with the Newcastle City Council for certification and be subsequently registered with NSW Land Registry Services.</p> <p>Note: The instrument is to provide that the required public right of carriageway to be created over the publicly accessible private land is unable to be released, varied or modified without the concurrence of Newcastle City Council.</p>	<p>appropriate 88B instrument, and these cannot be varied without the future consent of Council.</p>
<p><i>Condition No. 43</i></p> <p>The development application for each stage must address the principles and design requirements of the following documents:</p> <p>a) 'Indicative Public Domain Strategy' (Aspect Studios). b) 'Hunter Street Plan' prepared for Newcastle City Council, (Aspect Studios) (as adopted); and c) 'City of Newcastle's Technical Manual City Centre Public Domain' (September 2014)</p>	<p>The development application for each stage must address the principles and design requirements of the following documents:</p> <p>a) 'Indicative Public Domain Strategy' (Aspect Studios). b) 'Hunter Street Plan' prepared for Newcastle City Council, (Aspect Studios) (as adopted). c) 'City of Newcastle's Technical Manual City Centre Public Domain' (September 2014). d) <u>Stage 3 & 4 Landscape Public Domain Plans prepared by Cola Studio dated January 2023.</u></p>	<p>Text of condition modified to include the further detailed design intended in association with DA2023-00419.</p>
<p><i>Condition No. 44</i></p> <p>Through-site connections on privately owned land shall be a minimum of 5m in width and shall be clear of obstructions, except for the pedestrian only link between Newcomen and</p>	<p>Through-site connections on privately owned land shall be a minimum of 5m in width and shall be clear of obstructions. Except for the pedestrian only link between Newcomen and Laing Streets, which shall be a minimum of 3m in width, <u>and inclusive of an associated public lift located</u></p>	<p>The proposed changes to the text of the condition are required to address the design response in achieving pedestrian access from Newcomen Street to Laing Street which</p>

<p>Laing Streets, which shall be a minimum of 3m in width, clear of obstructions. Such through-site links shall be located as shown on the 'Privately Owned Public Access Plan' prepared by SJB Architects (Drawing No. DA-2902 Revision 03 dated 19.09.19).</p>	<p><u>between Newcomen and Laing Streets and is permitted to have Laing Street Café in the location shown on 'Floor Plan – Level 04' prepared by SJB Architects (Drawing No. DA-2904 Revision 04 dated 23.02.2024). The through-site links shall be located as shown on aforementioned plans. All through site connection links, and inclusive of an associated public lift located between Newcomen and Laing Streets, must have public right of carriageway to be created over the publicly accessible private land and this be registered on title with NSW Land Registry Services.</u></p>	<p>involves a notable change in levels.</p>
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The key development data is provided in **Table 2**.

Table 2: Key Development Data

Control	Proposal				
Site area	6,450 m²				
GFA					
	DA2017/00701	DA2017/00701.03 (latest approval)	Proposed Modification	Variation (%)	
Total	61,130 m²	63,617 m²	65, 134 m²	6.5% from original 2.38% from latest approval	
FSR					
Total	3.68:1	3.83:1	3.92:1	4.7%	
MAXIMUM HEIGHT (RL) - Concept DA					
Variable	30.20-42.00	30.20-42.00	34.30-51.70	Variable refer to cl.4.3 discussion.	
MAXIMUM HEIGHT (M) - NLEP					
	NLEP Height (M)	NLEP Height +10%	Proposed Height (m)	Variation (m)	Variation %
Variable	24	26.4	30.45-38.28	4.05-11.88	Variable refer to cl.4.4 discussion.

The existing approved FSR under the Concept DA as modification is 3.83:1. The proposed increase in FSR, when compared to the latest approval is 2.35% or 0.09:1 (i.e. an additional 580.5 m²). A detailed outline of the proposed modifications to the GFA/FSR is include within **Table 9** below.

Processing chronology

The proposed modification under s.4.55 was lodged on 1 June 2023. A chronology of the modification application since lodgement is outlined in **Table 3**.

Table 3: Chronology of the MA

Date	Event
1 June 2023	Modification application lodged
13 June 2023	Public exhibition of the application

5 July 2023	Proposal reviewed by UDRP
2 August 2023	HCCRPP preliminary briefing
21 November 2023	Request for Information from Council to applicant
11 December 2023	HCCRPP assessment update
15 December 2023	Applicants' response to Request for Information
6 February 2024	Applicant's response to Request for Information
13 February 2024	Request for Information from Council to applicant
20-26 February 2024	Applicant's responses to Request for Information

4. STATUTORY CONSIDERATIONS

When determining a modification application, the consent authority must take into consideration the matters outlined in s.4.55(2) of the EP&A Act in relation to modification of consents provisions, s.4.15(1) of the EP&A Act in relation to matters for consideration for applications and Part 5 of the EP&A Regulation 2021 in relation to information requirements and notification. These matters are considered below.

4.1 Section 4.55 of the EP&A Act

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if several matters are satisfactorily addressed pursuant to s.4.55(2) of the EP&A Act, as outlined below:

- (a) *'It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all) (s4.55(2)(a)),'*

The proposed changes are such that the modification application submitted is considered to constitute substantially the same development as the originally approved development. The Land and Environment Court has established that the consideration of 'substantially the same' under s.4.55 is not to be limited to a quantitative exercise alone but is to incorporate a qualitative analysis and, the assessment needs to be undertaken having regard to overall context of the approved development. These considerations are essential to determining in this instance that the proposed modification is substantially the same.

The Concept DA (DA2017/0701 as modified) the subject of this application, covers several street blocks from Perkins to Newcomen Streets and Hunter to King Streets (see **Figure 1** above) which represents a significant redevelopment of the Newcastle City Centre.

The applicant's detailed submission which argues that the proposal meets the provisions of s.4.55 is included at **Attachment D**. CNs assessment has determined that the applicant's detailed assessment has satisfactorily demonstrated that the proposed modification meets the 'substantially the same test' under the provisions of s.4.55(2).

Height

The proposed changes in the building height of the development has two interrelated aspects being; a) direct changes to the Concept DA heights, and b) the changes to where that height is proposed due to the modified envelope layout.

The proposed changes in the height and the layout of the building envelopes are to facilitate an improved view corridor from the harbour to Christ Church Cathedral (see **Figure 7** for a perspective of the intended outcome) and have arisen as a result for the Design Excellence Competition, in which CN identify the corridor as being of public interest.

These amendments to the approved Concept DA height, when considered across the overall development, while notable, are considered still to be within the scope of substantially the same development.

The proposed changes to FSR are considered to be largely consistent with the original approval and are substantially the same development.

Figure 7 - View corridor from Market St to Christ Church Cathedral. Source SBJ Architects



In addition to the proposed increases in the allowable heights under the Concept DA, it is also proposed to alter the approved layout of the building envelopes to align with those proposed in DA2023/00419 and facilitate an improved view corridor from the harbour to Christ Church Cathedral as discussed above (see **Figure 5, 6 & 7**).

The proposed modifications to parking and design (such floor to ceiling heights) are minor changes and can be supported.

Having regard to the quantitative and qualitative analysis in the applicant's submission the proposed modifications to height, FSR, building envelopes, parking and design are considered, when assessed in context to the originally approved development, to meet the provisions of s4.55(2)(a).

- (b) *'it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent (s4.55(2)(b)),'*

No referrals were required under this subclause as part of this s4.55(2) application.

- (c) *'it has notified the application in accordance with—*
(i) *the regulations, if the regulations so require, or*
(ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent (s4.55(2)(c)),'*

The proposed modification was publicly notified in accordance with CN's Community Participation Plan between 13 June to 18 July 2023.

- (d) *'it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be (Section 4.55(2)(d)).'*

In response to the public exhibition of the application 17 submissions were received. The issues raised in these submissions are considered in Section 4 of this report.

- (e) *'In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified (Section 4.55(3)).'*

The matters required to be considered include:

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

Reasons for Grant of Consent

The HCCRPP granted consent to the Concept DA in a notice of determination dated 2 January 2018. The reasons outlined in the Statement of reasons for this decision included the following:

- The proposal had been subject to a design excellence process via CN's Urban Design Consultative Group (now known as the Urban Design Review Panel).
- The proposal was acceptable in terms of amenity impacts notwithstanding the associated height variation.
- Heritage issues had been appropriately addressed in context of the area and the retention/re-use of heritage buildings/facades.
- Issues raised within community concerns could be addressed through conditions of consent.
- The proposed design is acceptable having regard to the application being for a Concept DA.
- The Panel considered that the traffic and parking assessment demonstrated the proposal would have acceptable impacts.
- That land contamination has been satisfactorily addressed.

The proposed modification is consistent with these reasons in that the proposed development is entirely consistent with the planning controls and expectations for the site given the zoning and other planning controls for the site. Aspects such as land contamination, traffic, and parking are addressed in detail within the associated DA (i.e. DA2023-00419) and do not need a further detailed assessment under this s.4.55 modification to the Concept DA.

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

Section 4.15(1) of the EP&A Act contains matters which the consent authority must take into consideration in determining a development application and modification applications pursuant to s.4.55(3), which are of relevance to the application. An assessment against the relevant matters is provided below.

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

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

The following Environmental Planning Instruments are relevant to this application:

- State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP)
- State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65)
- Newcastle Local Environmental Plan 2012 (NLEP)
- Newcastle Development Control Plan 2012 (NDCP)

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 4** and considered in more detail below.

Table 2: Summary of Applicable Environmental Planning Policies (Preconditions in bold)

EPI	Matters for Consideration	Comply (Y/N)
SEPP 65	<ul style="list-style-type: none"> • Clause 29(2) - Consideration of modifications - The Policy requires that the Design Review Panel consider the impacts of the proposed modification on the design intent and outcomes, the design principles and the requirements of the Apartment Design Guide. • Clause 30(2) - Design Quality Principles - The proposal demonstrates adequate regard has been given to the design quality principles and the Apartment Design Guidelines (ADG) requirements. NB: SEPP 65 and associated ADG are only applicable to a limited extent such as building envelope separation/setbacks and conditions regarding floor to ceiling heights. The remaining detailed ADG requirements form part of the assessment of the concurrent development application (DA2023-00419). <p>NB: It is advised that the SEPP 65 provisions have now been repealed and replaced with very similar provisions under the 'Housing SEPP'. Notwithstanding this, savings provisions apply such that the proposed modification continues to be assessed under the applicable provisions at the time of lodgement.</p>	Y
Planning Systems SEPP	<p>Chapter 2: State and Regional Development</p> <ul style="list-style-type: none"> • Section 2.19(1) declares the proposal regionally significant development pursuant to cl2 of Schedule 6 as it comprises '<i>General development over \$30 million</i>' (previously \$20 million). The s4.55(2) is required to be determined by the HCCRPP as addressed within the detailed assessment under Section 2.2 above. 	Y
NLEP	<ul style="list-style-type: none"> • Clause 2.3 – Zone Objectives and Land Use Table • Clause 4.3 – Height of buildings • Clause 4.4 – Floor space ratio • Clause 4.6 - Exceptions to development standards • Clause 5.10 – consideration of Aboriginal and non-aboriginal heritage • Clause 7.1 - Objectives Newcastle City Centre • Clause 7.5 - Design Excellence 	Y
NDCP	<ul style="list-style-type: none"> • Section 3.10 – Commercial Development • Section 6.01 – Newcastle City Centre • Section 6.02 – Heritage Conservation Areas • Section 7.03 – Traffic, Parking and Access 	Y

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

Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to s. 2.19(1) as it satisfies the criteria in cl.2 of Schedule 6 of the Planning Systems SEPP as the proposal is development for *'General development over \$30 million'*.

The proposed modification under s.4.55 is to be determined by the Panel as consent authority in accordance with the 'Instruction on Functions Exercisable by Council on behalf of Sydney District or Regional Planning Panels - Applications to Modify Development Consents' issued pursuant to cl.275(2) of the EP&A Regs (formerly cl.123BA of the Regulation 2000).

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

SEPP 65 aims to improve the quality of residential apartment development by establishing a consistent approach to the design and assessment of new apartment development across the State. The policy establishes nine design quality principles to be applied in the design and assessment of residential apartment development.

It is noted that on 14 December 2023, the NSW Government consolidated the provisions of SEPP 65 into the *State Environmental Planning Policy (Housing) 2021* ('Housing SEPP') and the EP&A Regs. The process of consolidation does not affect the operations of the provisions or the Apartment Design Guide (ADG). In particular, the saving provisions provide that an application lodged, but not finally determined, prior to the consolidation are to be assessed under the provisions which applied at the time of lodgement. In this respect the current application has continued to be assessed under SEPP 65.

Section 4(1) of SEPP 65 sets out development for which this policy applies. The Concept DA comprises development for the purposes of mixed use development with a residential accommodation component comprising a total of 528 dwellings (i.e. the current portion for Stages 3 and 4 being 195 dwellings) which involves the erection of a new building of at least three or more storeys and containing at least four or more dwellings. As such, the provisions of SEPP 65 are applicable in accordance with s.4(1) of the policy.

As the proposed modification pertains to a Concept DA, the application of SEPP 65 is limited to the provisions set out below, noting the detailed assessment against SEPP65 and the ADG will be undertaken in respect to the development applications for the relevant stages.

Section 29-Determination of development consent modifications

Section 29(1) of SEPP 65 requires the consent authority to refer a modification application to which this policy applies to the relevant design review panel for advice “...as to whether the modifications diminish or detract from the design quality, or compromise the design intent of the development for which the consent was granted.”

Furthermore, s.29(2) of the policy requires the consent authority in determining an application to which this clause applies to take into consideration:

“(a) the advice (if any) obtained from the design review panel, and

(b) the design quality of the development (as modified) when evaluated in accordance with the design quality principles, and

(c) the Apartment Design Guide .”

The proposed modification has been considered by CN's UDRP and the Panel considers that the proposed modification does not "...diminish or detract from the design quality or compromise the design intent of the development for which the consent was granted.". Further, the UDRP assessment has considered the 'design quality principles' and the ADG as they apply to this proposed modification and that they are acceptable.

Schedule 1 Design Quality Principles

An assessment of the proposed modification has been undertaken in relation to the Design Quality Principles, as detailed in **Table 5** below. The UDRP concurrently considered this application (MA2023/00175) and the associated DA (DA2023/00419). Commentary relevant to this application has been extracted and is provided below and it is noted that the references to the 'Approved Master Plan' by the UDRP are relating to the Concept DA (DA2017/0701).

It is considered that the amendments to the design of the development proposed under DA2023/00419 and the additional information submitted has adequately demonstrated that the modifications to the Concept DA can be supported.

Table 5: Consideration of the UDRP advise in relation to the design quality principles under SEPP 65

Design Quality Principles	
1.	Context and Neighbourhood Character
2.	Built Form and Scale
3.	Density
UDRP Comment	
1. Context and Neighbourhood Character	
<p><i>The context of the area changed significantly with the decision of CN to demolish the King Street Car Park, due to serious structural issues. The structure extended between Thorn Street in the west and Morgan Street in the east, and its northern face was onto Laing St. This demolition of the car park structure enabled the opening up of views including views to the northern face of the Cathedral transept. Pedestrian access is available from the Harbour-front, up Market Street, to Laing Street. Council has indicated that as per the DCP, the corridor is intended to continue across its former car park site to King Street and potentially to Cathedral Park. The Approved Master Plan included a building in Stage 3 that had been sited deliberately to screen the unsightly car park as viewed from the north. However, the existing DCP plan for the area had taken into account the possibility that the car park may eventually be demolished, thereby offering the possibility of a public space and vista that extends from the waterfront up to King Street and the Cathedral Park. The design brief for the competition reflected the opportunity for a public space with visual connection and physical access to King Street and Cathedral Park...</i></p> <p><i>...The design brief for the architectural design competition included the requirement for the approved stage 3 building to be removed from the corridor, with the expectation that space would be located elsewhere in Stages 3 and 4, in comparably amenable locations.</i></p>	

2. Built Form and Scale

The UDRP noted that the master planning of Stages 3 and 4 demonstrated a strong and clear resolution of the proposed public spaces and siting of built form. Good building separations are provided between buildings with residential spaces appropriately distanced from public domain areas. A positive variation in apartment typology has been achieved.

Several heritage structures in Stages 3 and 4 were identified in the Approved Master Plan as being partially retained. The single heritage-listed building within Stages 3 and 4 is the Municipal building, at 113 -121 Hunter Street, a locally listed heritage item I403. Also retained are the street facades of contributory buildings at 105 and 111 Hunter Street in Stage 4. A timber cottage at 74 King Street whilst exhibiting aspects of Federation period design is not heritage listed and has been designated of low significance in Heritage Impact Statements and Conservation Plans throughout the development of the Approved Master Plan. The building is noted as being in poor condition, with signs of deterioration and dampness. It was proposed to be demolished under the Approved Master Plan and building 4 South was approved to occupy this component of the site. The proposed Modification to the Master Plan retains essentially the same footprint for Building 4 South.

The urban response to the design competition brief involved the creation of a generously proportioned public space as an extension of Market Street through to Laing Street. It is assumed that any future development on the former CN car park site will adhere to the intent of the DCP and continue a generous opening and pedestrian access through to King Street. The gesture of rotating building 3W towards the west, to create a trapezoidal plan form, has allowed the wider opening of the public plaza to its junction with Hunter Street. This is considered to be a very positive move in creating an invitation into the public space, and to allowing it greater volume. A continuous, landscape-capped awning wraps around three sides of the plaza space, defining it and providing shelter to the adjacent building frontages...

...The proposed Master Plan revision was considered by the Panel to have achieved the two key objectives identified since the outset of proposals for the overall site, more than a decade ago. That is to retain the legibility of the remarkable terrain of the Hill, seen from both nearby and distant locations, including Fort Scratchley and Stockton, and to retain views to Cathedral Park and the Cathedral from key locations on the Harbour-front. The latter has been considerably enhanced by the opportunity of continuing the Market Street corridor across Hunter Street, Laing Street, and King Street to the Heritage listed sandstone wall and the Cathedral Park. Views to the Cathedral are currently filtered from close quarters by trees within the Cathedral Park, but the upper form of the building remains visible from both mid-distance and further afield. Excellent views from Stockton and Fort Scratchley to the Cathedral and the Hill remain, with the Hill's topography remaining undiminished an essential element. Multiple closer views to the Cathedral Park are retained and are attractively framed by the proposed streetscape treatments, including those in Morgan Street and Thorn Street.

The proposal is considered to have been successful in terms of balancing the legibility of the Hill's topography and retention of the existing buildings, while sleeving in high quality new built form and streetscapes. To the extent that moderate exceedances of the LEP height controls are proposed, these are considered can be achieved without significant adverse impact. The UDRP agreed with the architects that some variety in heights was preferable to a homogenous form and allowed smaller footprints of buildings and more generous public spaces. It also permitted a continuation of Newcastle's established heritage precedent of producing visually interesting building profiles and rooftops. The limitation of height above the Municipal building was also considered to be a worthwhile move that assisted in offsetting the greater height of the adjacent Building 4S.

3. Density

The Panel noted that the CityPlan Heritage report reinforced the understanding that Newcastle has never had a uniformity of buildings in age and scale – there has always been a contrasting variety. The current proposal mirrors this approach in its development, with differing but compatible designs. The avoidance of overly uniform heights and relatively slender buildings separated by generous public spaces are considered by the UDRP to be a positive urban outcome that is consistent with the topographic form of the Hill and the built form character of the original heart of the City.

The numeric FSR is noted in the Statement of Environmental Effects as being 3.79:1 for the proposal. The Modification to the Master Plan seeks additional floor space in Stage 4 and a reduced floor space in stage 3. This move is a consequence of the creation of the open space Market Street corridor in Stage 3. The SoEE indicates that the GFA of the overall Stage 1 to Stage 4 development represents some 1800m² less than the maximum potential under the LEP, excluding bonuses for design excellence. Stages 1 and 2 were granted design excellence bonuses for FSR, while a design excellence for Stages 3 and 4 seeks extra height. Thus the SoEE indicates that the density of the proposal for Stages 3 and 4 is consistent with both the Approved Master Plan and the LEP.

Officer Comment

It is noted that 74 King Street, and various associated sites, were approved to be demolished under a separate DA 2023/00336 as previously mentioned in this report.

While the majority of the UDRP advice relates to DA2023/00419, it is clear that the Panel are supportive of the proposed changes under the modification in terms of building height, urban design and the view corridors impacts. Notably, the Panel have strongly supported the improvement of the view corridor from the harbour to the Christ Church cathedral.

4.	Sustainability
5	Landscape
6.	Amenity

UDRP Comment

Views

The Panel considered the Visual Impact Assessment prepared by Urbis to be a comprehensive and well researched document that provided a balanced assessment of visual impacts of the proposal.

Public views are particularly important given the significance of the Hill and the area's Indigenous and Colonial heritage, and the Panel found these views to be considered appropriately.

Key views, such as that illustrated from the Stockton foreshore in Figure 13 of the Urbis analysis, demonstrated the legibility of the Hill and surrounding terrain, and the retention of views to the Cathedral Park and the full length of the Cathedral. Similarly, closer views from Fort Scratchley as modelled in Figure 16, illustrate the retention of visual access to the crest of the Hill and the Norfolk Pines in Wolfe Street. Close views from Market Street as seen in Figure 22, which were previously largely obscured by the now-demolished car park, and which would have been somewhat further obscured by the Approved Master Plan design, will become dramatic views to Cathedral Park and the Eastern transept of the Cathedral. It is noted that proposed demolition of former retail premises on the western side of the Municipal building in Hunter Street will further open up the foreground view directly to the heritage stone wall of King Street and the Cathedral Park. Figure 28 illustrates a view towards the north east from the lower level of Cathedral Park. Both the existing Herald apartment

building on the eastern side of Newcomen Street and the Approved Master Plan for Stages 3 and 4 obstruct any potential water view from this point, and there is not a significant difference in respect to degree of impact between the Approved design and the proposed Modification.

Locations of private properties likely to be impacted by the development were also considered. These include The Newcastle Club, Segenhoe Apartments and The Herald Apartments. The Approved Master Plan would have had an impact upon the views obtained from the Newcastle Club that is not dissimilar in its impacts to that of the proposed Modification. Given the relatively low scale of the club as compared to the permissible heights on the subject site, views to the Harbour from the Club would inevitably have been impacted by development on the site. The additional impacts arising from the proposed height increases sought, are sky views and are not significant, given that the Approved Master Plan had already accepted water view losses from the Club.

View losses to The Herald residences arising from the proposed Master Plan as opposed to the Approved Master plan are not considered to be significant, given the Herald's location at a similar ground level, and with similar exposure to a northerly aspect to that achieved from the adjacent Building 4S.

Apartments in Segenhoe Flats are more distant from the subject site, which is at a higher ground level than the site. Higher levels within the Segenhoe building enjoy panoramic views, in some instances taking in Nobbys Headland and the Harbour mouth. View loss towards the north east is likely in some instances to include some obstruction of views to valued locations such as Nobbys, however the proposed development will not be overbearing or visually dominant because of the natural elevation of the Segenhoe ground plane, and the distance of the site from it. The panoramic nature of views will remain available, if not some elements currently enjoyed. Further accurate modelling of the views from private locations may be considered warranted by CN, but the principles outlined in the VIA are accepted by the UDRP, and private view impacts are not likely to be higher than "moderate" at most.

Officer Comment

The Panel are supportive of the changes under the proposed modification in terms of the building height, views and amenity impacts. It is noted that the development at 16-18 Newcomen Street was approved prior to the ADG setbacks applying and, as such, does not have typical setbacks required today and has effectively 'borrowed' some of its setbacks from the undeveloped/underdeveloped neighbouring sites. It is advised that the detailed design submitted within concurrent DA2023/00419 will demonstrate that an acceptable design response can be achieved to provide adequate amenity outcomes between the sites.

7.	Safety
8.	Housing Diversity and Social interaction

UDRP Comment

The master planning and detailed layout of the site demonstrates consideration of CPTED consideration, with places of concealment being minimised and provision for good casual surveillance of ground plane spaces from the apartments above...

Officer Comment

A detailed assessment of housing diversity and social interaction has been undertaken as part of DA2023/00419. The master planning of the site allows for consideration of these issues at a broad level.

9.	Aesthetics
<p>UDRP Comment</p> <p>Aesthetics</p> <p><i>The Laing Lane Café has brick finishes to its façade and roof – which are visually appealing. The question was raised as to whether this roofing material will likely change in the future due to cost considerations, and if so, what the roof finish might be.</i></p> <p><i>Building 4N: The pre-coloured concrete panels used in juxtaposition with the nearby Newcastle Bricks need to have a strong colour relationship. The strength of visual statement arising from the colour/material palette needs to be durable and robust. This is particularly so in the context of the deep terracotta of the original bricks in the Municipal Building (3N). The exposed eastern side of Building 4N in particular requires a robust expression of colour and depth that relates to the Municipal Building’s face brickwork.</i></p> <p><i>A clear approach is required in respect to the degree of cleaning applied to the heritage facades, considering the streetscape relationship between the different elements in the East End. The heritage elements should be able to be interpreted, and should not be made to look “new”. Protection during demolition and construction of the heritage facades needs to be sensitive.</i></p> <p><i>The Panel agreed that the strength in the proposal is that the new work in the overall East End has been developed at the same time, yet maintains a positive level of variety and difference.</i></p> <p><i>The heritage Standard-Waygood Elevator car in the building at 105 Hunter Street, and the lift motor are both proposed to be displayed. In the case of the lift car, which is an attractive timber structure with open basket-weave inlaid panels, this is proposed to be suspended in the high void space of the entry to the building and treated as a sculptural element. This proposal was supported by the Panel.</i></p> <p>Officer Comment</p> <p>UDRP advice related to DA2023/00419 details, no further comments in relation to MA2023/00175 is required.</p>	
UDRP Recommendation	
<p>UDRP Comment</p> <p><i>The UDRP noted the process that the development has been through has been quite remarkable. It is considered to have been an excellent process to date, especially in terms of Connection to Country which has been a meaningful and valuable process, resulting real expressed outcomes.</i></p> <p><i>The Modification to the Master Plan and the Development Application for Stages 3 and 4 are supported, subject to provision of information as noted under the headings above.</i></p> <p>Officer Comment</p> <p>The UDRP support both the DA and MA applications. In terms of the MA, the proposed changes to height, building envelopes/separations, FSR and design are supported having regard to the proposals overall impacts including views and amenity elements.</p>	

Apartment Design Guidelines

To ensure that the proposed modification has been prepared having regard to the principles of SEPP 65 and the ADG, the modification application is accompanied by an '*East End Stages 3 & 4 - DA Design Report*' prepared by SJB Architects and dated March 2023. This report contains a site and context analysis specific to Stage 3 and Stage 4, identifies the design principles of the proposed modified Concept DA, provides scheme analysis and confirms that the detailed design for Stage 3 and Stage 4 will satisfy the ADG. A comprehensive assessment of ADG will be separately undertaken for the concurrently lodged development application (DA2023/00419).

The ADG provides greater detail on how residential development proposals can meet the design quality principles set out in SEPP 65 through good design and planning practice. Each topic area within the ADG is structured to provide; (1) objectives that describe the desired design outcomes; (2) design criteria that provide the measurable requirements for how an objective can be achieved; and (3) design guidance that provides advice on how the objectives and design criteria can be achieved through appropriate design responses, or in cases where design criteria cannot be met.

Whilst the detailed design of Stage 3 and Stage 4 of the overall development are not the subject of the proposed modification of the Concept DA, the following provides an assessment of the application having consideration for only those parts of the ADG which are relevant to the Concept DA, and this proposed modification. **Table 6** below addresses compliance with the objective and design criteria of the relative topic areas in accordance with cl6A of SEPP 65, however is limited only to those aspects of relevance in the context of a Concept DA where no physical works are proposed.

With respect to the other topic areas of the policy which are not addressed within the table below (such as common circulation and spaces, apartment size and layout, private open space and balconies, and storage etc.) it should be noted that consideration of these design aspects will form part of the assessment of the individual development application(s) seeking development consent for the physical works. No major concerns regarding the ability to generally comply have been identified within the proposed modification.

In summary, it is considered that the proposed modification to the approved Concept DA is generally consistent with the design quality principles within SEPP 65 and the objectives of the ADG subject to the lodgement of detailed design documentation in conjunction with the individual development application(s) seeking development consent for the physical works.

Table 6: Compliance with relevant topic areas of ADG

3D Communal and public open space
Objective 3D-1 An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping
Comment: The design criteria requires that communal open space have a minimum area equal to 25% of the site, and 50% of the principal usable part of that communal open space should receive 2 hours of sunlight between 9am and 3pm on June 21. The Stage 3 + Stage 4 site area equals 6450sqm. 25% of which equals 1612.5sqm.

According to the '*East End Stages 3 & 4 DA Design Report*' prepared by SJB Architects (dated March 2023), the proposed modification has been designed to provide future occupants of Stage 3 and Stage 4 three areas of communal open space across those stages;

- Building 3 North rooftop = 473sqm
- Building 4 North Level 4 terrace = 112sqm
- Building 4 South rooftop = 199sqm

The total communal open space provided is 784 sqm, or 12% of the Stage 3 + Stage 4 site area.

Thus, a variation to the minimum communal open space requirements described in this part of the ADG (minimum area equal to 25% of the site area) is proposed.

It is accepted that a variation may be warranted given the site's inner-city location. This is consistent with the approved Concept DA, assessment of which acknowledges the above and further notes that full detail will be required to accompany individual development application(s) seeking development consent for the physical works to enable a thorough assessment of the appropriate level of communal open space required and the level of solar access achieved.

As a result of recommendations from the then Urban Design Consultative Group ('UDCG') who reviewed the approved Concept DA during the assessment process, Condition 7 was imposed on the Concept DA requiring roof gardens communal areas (both enclosed and open) be incorporated within new buildings and their prospective sites for each stage. This condition remains unchanged under the proposed modification.

A detailed assessment of these requirements will be completed as part of the assessment of the development application (DA2023/00419).

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.

Comment:

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

The applicant indicates that the required minimum distances can be achieved between individual buildings on the subject site or where not achieved, acoustic and visual privacy impacts can be managed with detailed building design.

An analysis of the three-dimensional building envelopes within the proposed modification indicates that there is capacity for variation to building separation in a number of instances, given the integration between buildings within each stage and the ability to address this matter in a comprehensive manner.

According to the '*East End Stages 3 & 4 DA Design Report*' prepared by SJB Architects (dated March 2023), indicates where separation distances between side or rear boundaries and buildings within the development site are numerically less than the separation distances described in this part of the ADG, strategies can be applied that give good potential for minimising any adverse impacts. Nevertheless, it is noted that individual development application(s) seeking development consent for the physical works will need to be assessed on a performance basis, and particularly where separation the distances are short of the ADG recommendations, good design development will need to continue to be demonstrated to achieve acceptable amenity.

This is particularly important where new buildings are to be constructed adjacent to existing buildings which do not form part of the development site. This particularly applies to proposed Building 4 North which immediately adjoins an existing apartment building at 16-18 Newcomen Street that is primarily built to all boundaries - including balconies and windows to its north and west elevations. It is acknowledged that this existing situation does not allow equitable shared separation distances between neighbouring sites and thus, the constraints of the site will limit the ability to achieve compliant building separation to Building 4 North's non-compliant neighbour. Furthermore, these boundary setbacks for the building envelope relating to Building 4 North are already approved under the Concept DA and this issue is pre-existing and the currently proposed modification does not alter the circumstances.

Nevertheless, a detailed assessment of these requirements will be completed as part of the assessment of DA2023/00419. This development will need to demonstrate sufficient design measures to resolve any privacy interface issues arising.

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.

Comment:

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

According to the '*East End Stages 3 & 4 DA Design Report*' prepared by SJB Architects (dated March 2023), indicates the solar and daylight access provisions described in this part of the ADG are likely to be achieved having regard to the general configuration and orientation of apartments and the proposed building depths.

Furthermore, the submitted design report indicates there will only be a limited number of single aspect south facing apartments. It is acknowledged that a percentage of these will be necessary to ensure the development presents appropriately where the south elevation addresses public domain (Laing and King Streets for example).

A detailed assessment of these requirements will be completed as part of the assessment of DA2023/00419.

4B Natural ventilation

Objective 4B-3

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

Comment:

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

According to the '*East End Stages 3 & 4 DA Design Report*' prepared by SJB Architects (dated March 2023), indicate many apartments have dual orientation to the street and/or to a central courtyard and accordingly, it is anticipated that the natural ventilation provisions described in this part of the ADG can be met. The building footprints and apartment configuration shown in the design report accompanying the proposed modification also suggest that apartment depths will also meet the recommended 18m.

A detailed assessment of these requirements will be completed as part of the assessment of the DA2023/00419.

4C Ceiling heights

Objective 4C-1

Ceiling height achieves sufficient natural ventilation and daylight access.

Comment:

The design criteria describes a minimum ceiling height for apartments of 2.7m to habitable rooms, and 2.4m to non-habitable rooms. From analysis of the submitted elevations and sections it is understood that all storeys containing apartments within Stage 3 and Stage 4 are intended to have a floor to floor height of at least 3.15m. As such, a minimum ceiling height measured from finished floor level to finished ceiling level of 2.7m to habitable rooms, and 2.4m to non-habitable rooms, can be achieved for all apartments as required.

Furthermore, under the NLEP 2012 the site is located within the MU1 Mixed Use zone and as such the increased ceiling heights for ground and first floor described in this part of the ADG are also applicable (a minimum ceiling height of 3.3m measured from finished floor level to finished ceiling level).

Of relevance, Condition 10 was imposed on the approved Concept DA requiring a minimum 4m floor to ceiling height at ground floor, and a minimum 3.3m at first floor, for all new buildings. The proposed modification seeks to change to the wording of Condition 10, specifically to remove the requirement for a minimum 3.3m ceiling height for the first floor of all new buildings.

However, the applicant's original justification of this change lacked sufficient detail beyond indicating that the detailed design for Stage 3 and Stage 4 is *'not able to achieve a minimum floor to ceiling height of 3.3m at first floor level'*.

In particular, the application did not assess the reason the condition was included as part of the approved Concept DA and further did not establish why the proposed modification was satisfactory.

In this regard, it is understood the requirement for a minimum 3.3m ceiling height for the first floor of new buildings was imposed on the Concept DA to reflect the increased ceiling height for the ground and first floor of mixed-use developments described in the ADG (a minimum ceiling height of 3.3m measured from finished floor level to finished ceiling level).

In response to a request from CN a more detailed response (*'Justification for Reduced L1 Ceiling Heights East End Stage 3 & 4'*) was provided by the applicant which focused on identifying why the ceiling height design criteria cannot be met and addressing how the ADG objective has been achieved notwithstanding a ceiling height less than 3.3m is provided to the first floor. A dot-point summary of which is provided below:

Stage 3

- The approach to ceiling heights in Stage 3 is strongly informed by the concept to create a 'market plaza' bounded by three buildings and united by a fourth structure - the awning.
- The 'market plaza' was a key concept for the masterplan of the winning competition design.
- The awning wraps the three buildings which comprise Stage 3, having to navigate the variation in topography from Hunter Street to Laing Street and how the three buildings site within.
- The heritage listed Municipal building (Building 3 North) sets the datum for the contiguous awning which ties the Stage 3 buildings together - the awning is set to align with the pre-existing horizontal banding within the fenestration of the heritage facade.
- The awning is a key driver in establishing the height of the first floor slab - aligning the apartment openings with the edge of the awning to allow future residents to look out over the planted roof top of the awning and beyond to the plaza.

- The applicant acknowledged that the historical nature of Municipal building (Building 3 North) results in large floor to floor heights for the ground floor of buildings where adjacent Hunter Street (in excess of the minimum 3.3m described under the ADG).
- As such, alternatives to increase the first floor ceiling heights without increasing the over height of buildings, by reducing the height of the first floor slab were explored but ultimately discounted as this would:
 - Reduce window opening size above the awning and result in unacceptable amenity impacts for apartments.
 - Reduce ceiling heights to the ground floor below which are needed to navigate the level changes over 'Market Plaza'.
- Increased ceiling heights to the ground floors of Stage 3 were prioritised as part of the overall activation strategy for 'Market Plaza', which was an important outcome to be achieved from the design competition.
- In addition to facilitating adaptability over time, the decision to provide additional ceiling height to the ground floor was critical to facilitate a loading dock on the eastern side of Building 3 South at the higher street level of Laing Street - sufficient height clearances to receive a heavy ridge vehicle are achieved without introducing further complexities of a split floor slab at the first floor slab over the ground floor.

Stage 4

- The existing timber floor and ceilings of the existing heritage contributory buildings which form part of Building 4 North, are not suitable for a safe and compliant new residential flat building.
- However, in an attempt to maintain the existing relationship of the contributory facades, the existing interior volumes, and the integrity and function of the existing openings - the floor and ceiling levels of Building 4 North within these facades have been retained. This minimises the appearance of facadism and promotes greater integrity of the existing streetscape.
- The result of maintaining the existing floor levels has limited the opportunity for increased ceiling heights within the first floor of Building 4 North.
- The approved Concept DA shows Building 4 South comprising a residential flat building only and this remains unchanged under the proposed modification.
- It is acknowledged that the design of Building 4 South responds to the significant slope of the site, which is an average of approximately 10 metres from north to south within the footprint of the building. As such, there is no consistent 'first floor' across the footprint of the building when considering the built form with respect to the ground plane.
- The extremely steep level changes across Newcomen Street make pedestrian amenity challenging for active retail use. It is highly unlikely the first floor would be adapted due to this site constraint, and it would also go against the precinct wide masterplan strategy for distribution of building use for the East End development in its entirety (comprising Stage 1, Stage 2, Stage 3 and Stage 4).

Through the assessment of the proposed modification, it has been identified that ceiling heights of less than those stipulated by Condition 10 for the first floors of new building in Stage 3 and Stage 4 can be accepted on a balanced view having regard to the intent of SEPP 65 and the ADG.

While a request to vary the 3.3m ceiling height requirement for first floors can be supported, the exercise of examining this requirement more deeply in context of the ADG has questioned the value of such a condition and its appropriateness given the nature of a Concept DA. In this regard, it is also considered equally questionable that the requirement for a 4m ceiling height at ground floor is necessary to impose under the Concept DA. Especially having regard for the wide-ranging and often conflicting factors which impact the floor-to-floor heights of a building (site topography, building orientation, heritage conservation, street activation, overall building height, etc.). Finally, it is noted in any respect that the requirement to consider the

4m and 3.3m minimum floor to ceiling heights as part of the assessment of the separate DA2023/00419 are already contained within the provisions of the NDCP 2012 and ADG respectively.

The assessment above supports a view that Condition 10 is unnecessarily prescriptive in the context of a Concept DA and that minimum ceiling heights for the ground and first floor are more appropriately considered in the assessment of individual DA (s) seeking development consent for the physical works where full details will be required.

Therefore, Condition 10 is recommended to be deleted as indicated within the schedule of draft conditions included at **Attachment A**.

The proposed modification to the Concept DA development application is considered to demonstrate good design and planning practice as detailed within the above assessment.

Newcastle Local Environmental Plan 2012

The relevant local environmental plan applying to the site is the NLEP, cl.1.2(2) specifies the aims include:

- ‘(aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) to respect, protect and complement the natural and cultural heritage, the identity and image, and the sense of place of the City of Newcastle,*
- (b) to conserve and manage the natural and built resources of the City of Newcastle for present and future generations, and to apply the principles of ecologically sustainable development in the City of Newcastle,*
- (c) to contribute to the economic well being of the community in a socially and environmentally responsible manner and to strengthen the regional position of the Newcastle city centre as a multi-functional and innovative centre that encourages employment and economic growth,*
- (d) to facilitate a diverse and compatible mix of land uses in and adjacent to the urban centres of the City of Newcastle, to support increased patronage of public transport and help reduce travel demand and private motor vehicle dependency,*
- (e) to encourage a diversity of housing types in locations that improve access to employment opportunities, public transport, community facilities and services, retail and commercial services,*
- (f) to facilitate the development of building design excellence appropriate to a regional city.’*

The proposed modification is consistent with these aims.

Zoning and Permissibility (Part 2)

The site is located within the MU1 - Mixed Use zone pursuant to cl2.3 of the NLEP 2023 (See **Figure 8**). The proposal is characterised as a mixed use development consisting of *commercial premises, shop top housing and residential flat building* (as defined below). Such uses are permitted with consent in the MU1 zone.

commercial premises means any of the following—

- (a) business premises,
- (b) office premises,
- (c) retail premises.

residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing.

Note—

Residential flat buildings are a type of **residential accommodation**—see the definition of that term in this Dictionary.

shop top housing means one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities.

Note—

Shop top housing is a type of **residential accommodation**—see the definition of that term in this Dictionary.

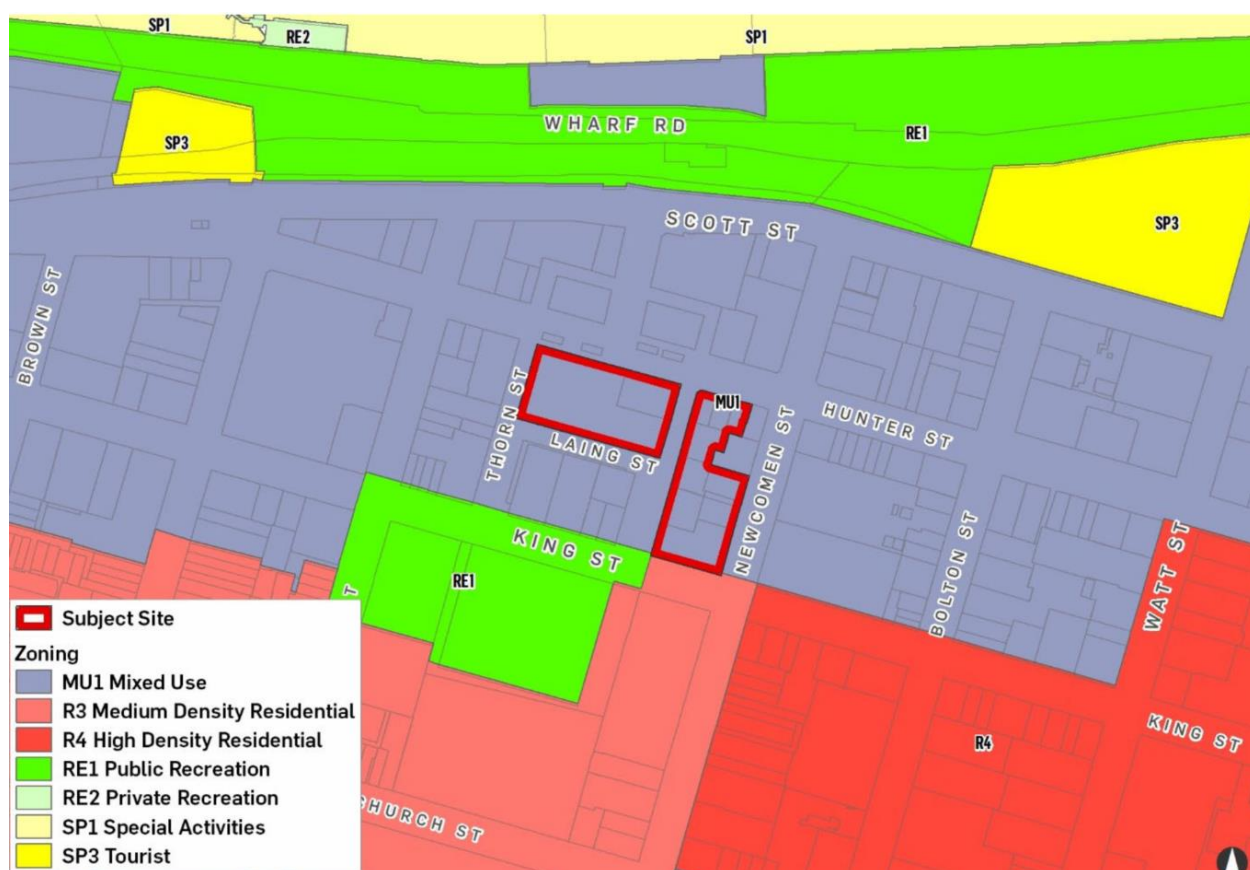
The MU1 zone objectives include the following (pursuant to the Land Use Table in CI 2.3):

- “ To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.
- To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.”

The modified development is consistent with these zone objectives for the following reasons:

- i. The modified development will be for an integrated mix of apartments and retail premises, including opportunities for food and drink premises, that will serve the needs of the community and the future residents.
- ii. The design and layout for the modified development allows for a multiple active street frontages and increases the potential for diverse and vibrant public spaces.
- iii. The modified development is considered to have a satisfactory interaction between zones and adjoining land uses.
- iv. The design and layout proposed under the modified Concept DA is aimed at facilitating a broad range of retail premises and spaces with good pedestrian access. This will encourage a mixture of retail premises and the like on the ground floor of the development.
- v. The modified Concept DA represents a major redevelopment and revitalisation of the Newcastle City Centre at the eastern end. The introduction of new retail/commercial development combined with over 500 new dwellings will be a significant contribution to the viability of the centre.

Figure 8 - Zoning Map 121 Hunter Street Newcastle West - Source Urbis



General Controls and Development Standards (Part 2, 4, 5 and 6)

The NLEP also contains controls relating to development standards, miscellaneous provisions, and local provisions. The controls relevant to the proposal are considered in **Table 7** below.

Table 7: Consideration of the NLEP Controls

Control	Requirement	Proposal	Comply
Minimum subdivision Lot size (CI 4.1)	N/A		N/A
Height of buildings (CI 4.3(2))	Variable	Variable - See discussion below.	Yes
FSR (CI 4.4(2))	4.0:1 (NLEP) 3.68:1 (Concept DA)	3.92:1 - See discussion below	Yes
Exceptions to development standards (CI4.6)	N/A - CI4.6 does not apply to s4.55 modifications		N/A

Land acquisition (CI 5.1/5.1A)	N/A		N/A
Heritage (CI 5.10)	<ul style="list-style-type: none"> 121 Hunter Street is a local heritage item (i.e. 'Municipal Building' I403), The existing retaining wall to King Street, near the corner with Newcomen Street, is also a local item heritage item (i.e. I477). The proposal is also within the Newcastle Heritage Conservation Area (HCA). 	<p>Both heritage items are retained as part of the proposal.</p> <p>The proposed modification to the Concept DA is considered acceptable in terms of the Newcastle HCA noting there is limited details to address in this application.</p>	Yes
Newcastle City Centre objectives (CI7.1)	That development demonstrates it meets the Newcastle City Centre objectives.	The proposal is consistent with the intended strategic planning outcomes for the Newcastle City Centre.	Yes
Design Excellence (CI 7.5)	<p>The associated DA2023-00419 development was the subject of a Design Excellence Competitions under cl.7.5(4) of the NLEP.</p> <p>A comprehensive architectural design competition was undertaken for development on the site. The proposal is the resultant winning entry following further design development, including six reviews by the Design Integrity Panel (and associated endorsement) and reviews by CN's UDRP. The modification application has been submitted to facilitate the intended design outcomes within DA2023/00419.</p>	<p>An assessment of the proposed modification development by the UDRP and CN, considers it consistent with the outcomes associated with the respective architectural design competition cl.7.5(4).</p> <p>The proposed modification of Concept DA2017/00701 exhibits design excellence, in accordance with the provisions of cl.7.5(3), to the extent possible noting that the Concept DA, as it applies to Stages 3 and 4, facilitates an approval 'framework' but does not include any detailed design.</p> <p>The proposed modification is acceptable having regard to: public domain, views, heritage, separation, setbacks, amenity, urban form, bulk, massing and modulation of buildings and overshadowing.</p>	Yes

The proposed modification to the Concept DA is consistent with the NLEP and is supported.

Clause 4.3 Height of Buildings

The proposed modification seeks to alter the allowable building height of the overall development under the Concept DA. It is noted that the existing allowable heights under the NLEP are also inconsistent with the approved Concept DA heights as the allowable envelopes do not align (see **Figure 5 & 6**).

A detailed outline of the proposed modifications to the height is include within **Table 8** below. It is noted that the Concept DA was approved on the basis on reduced levels (RLs) to Australian Height Datum (AHD in metres) whereas the NLEP is measures in metres from existing ground level to the highest point.

It is advised that the adjoining 'Herald Apartments' at 60 Newcomen Street, have very similar heights to the proposed 4S heights, with the roof top plants being RL 51.6 and 51.7 respectively and southern parapet heights of RL 48.1 and RL 45.3-48.65 respectively.

Table 8 - Proposed increases in height (Concept DA/NLEP)

MAXIMUM HEIGHT (RL) - Concept DA					
	DA2017/00701	DA2017/00701.03 (latest approval)	Proposed Modification	Variation (%)	
'3 West'	30.20	30.20	34.30	13.5%	
'3 North'	31.28	31.28	20.43	-34.7%	
'3 East'	30.20	30.20	45.65	51.2%	
'4 North'	28.35	28.35	36.92	30.2%	
'4 South'	42.00	42.00	51.70	23.1%	
MAXIMUM HEIGHT (M) - NLEP					
	NLEP Height (M)	NLEP Height +10%	Proposed Height (m)	Variation (m)	Variation %
'3 West' (NW Cnr)	24	26.4	30.45	4.05	15.34
'3 West' (SE Cnr)	24	26.4	27.88	1.48	5.6
'3 South' (S Cnr)	24	26.4	35.295	8.895	33.69
'3 South' (Northern midpoint)	24	26.4	38.28	11.88	45

The s.4.55 is submitted to facilitate the design outcomes required under the NDCP - Section 6.01-Newcastle City Centre, especially in terms of the view corridor from the harbour to Christ Church Cathedral. The associated design has been developed as a result of the Design Excellence Competition, six reviews undertaken by the DIP and review by UDRP. The applicant has proposed that the re-massing of heights is a reasonable outcome in this instance achieving an acceptable balance of height, urban design and heritage aspects while having reasonable impacts in terms of views, overshadowing and privacy.

As discussed under Section 2.2 and throughout the report, the DIP has endorsed the underlying design, to which the modifications to the Concept DA relate, as being capable of achieving design excellence. Similarly, the UDRP have been strongly supportive of the urban design outcomes achieved for the site and area.

The proposed modified building heights are acceptable having regard to the desired outcomes for the East End Character Area of the Newcastle City Centre and reflect the continuing revitalisation of this part of the city. As the UDRP has noted, this area of the City Centre has historically been typified by an eclectic mix heights and ages of buildings.

The assessment of shadowing impacts has identified that the increased building height results in an increased impact, however the impacts are not to the extent that the proposal would be considered unreasonable. The redevelopment of major sites in the City Centre, where multi-storey apartments are involved, do typically have resultant shadowing impacts which cannot be avoided, especially where the site is undeveloped or underdeveloped.

The greatest level of impact is due to the interrelationship between the proposed modification and the approved development at 16-18 Newcomen Street due to the limited setbacks of that development to the proposal. The building envelopes, that is the layouts and separations as they relate to 16-18 Newcomen Street, are not proposed to be modified under this application. The impact arising from the increased building height is reasonable in this context and do not warrant further amendment or refusal of the proposal.

The separations provided by the layouts within the Concept DA can achieve acceptable privacy outcomes (i.e. this will be subject to a detailed assessment under DA2023/00419). Noting, the greatest impact is again due to the interrelationship between the proposal and the existing development at 16-18 Newcomen Street.

A detailed assessment of the view impacts, both public and private is addressed under the NDCP, Section 6.01 below, and on balance, that the view impacts are acceptable.

Overall, the amended heights are acceptable, will achieve significantly improved view corridors through to the Cathedral and facilitate an important and significant redevelopment within the East End Character Area of the Newcastle City Centre. The proposal meets the strategic planning intent of achieving major revitalisation of the City Centre and the proposed modifications should be supported.

Clause 4.4 - Floor Space Ratio

The proposed modification seeks to increase the floor space ratio (FSR) over the entire site from 3.68:1 to 3.92:1 which is an increase of 6.5% compared to the Concept DA when originally approved. The existing approved FSR under the Concept DA as modification is 3.83:1. The proposed increase in FSR, when compared to the latest approval is 2.35% or 0.09:1 (i.e. an additional 580.5 m²). A detailed outline of the proposed modifications to the GFA/FSR is include within **Table 9** below.

Table 9: Proposed increases in GFA/FSR 6.

GFA					
	DA2017/00701	DA2017/00701.03 (latest approval)	Proposed Modification	Variation (%) to original approval	Variation (%) to latest approval
Total	61,130 m²	63,617 m²	65, 134 m²	6.5%	2.38%
Stage 1	26,244 m ²	27, 466 m ²	27,466 m ²	4.7%	0%
Stage 2	11,709 m ²	12,954 m ²	12,954 m ²	10.7%	0%
Stage 3	11,034 m ²	11,034 m ²	11,099 m ²	0.6%	0.6%
Stage 4	12,163 m ²	12,163 m ²	13,635 m ²	12.1%	12.1%
FSR					
Total	3.68:1	3.83:1	3.92:1	6.5%	2.35%
Stage 1	4.0:1	4.19:1	4.19:1	4.75%	0%
Stage 2	3.2:1	3.55:1	3.55:1	10.94%	0%
Stage 3	3.3:1	3.3:1	3.29:1	-0.3%	-0.3%
Stage 4	4.0:1	4.0:1	4.42:1	10.5%	10.5%

The proposed modification facilitates a good urban design outcomes and has been supported by the DIP and the UDRP. The proposed increase in FSR is minor having regard to the overall development site and does not result in any unreasonable impacts. The modification therefore satisfies the relevant provisions of cl.4.4 NLEP.

Clause 4.6 - Exceptions to Development Standards

The provisions of cl.4.6 do not apply to s.4.55, as such, the proposed modification is not required to submit any cl.4.6 variation requests to justify the proposed departures to cl.4.3 Height of Buildings or cl.4.4 Floor Space Ratio of NLEP. The proposed departures have been considered on merit and the proposed modification has been found to be acceptable.

(b) Provisions of any Proposed Instruments (s4.15 (1)(a)(ii))

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

Draft Newcastle Development Control Plan 2023

The Draft Newcastle Development Control Plan 2023 (DCP) provides updated guidelines and development controls for new development in the Newcastle Local Government Area. The

Draft DCP was publicly exhibited from Thursday, 28th September to Friday 27th October 2023. The Development Control Plan 2023 has been formally adopted by Council and will be operational from 1 March 2024. Notwithstanding, the Draft DCP requires consideration in accordance with Section 4.15(1)(a)(ii) of the *Environmental Planning & Assessment Act 1979*.

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

'DCP 2023 does not apply to any development application lodged but not finally determined before its commencement. Any development application lodged before its commencement will be assessed in accordance with any previous development control Plan (DCP).'

As such, the proposed development remains subject to the provisions of the Newcastle Development Control Plan 2012.

(c) Provisions of any Development Control Plan (s4.15(1)(a)(iii))

The following sections of the Newcastle Development Control Plan 2012 are relevant to the assessment of this application:

Section 3.10 – Commercial Development

The proposed modification has been assessed against Section 3.10 and is consistent with the relevant controls noting that the application has been assessed against the ADG, SEPP 65, and Section 6.01 (below) which contain controls of greater relevance.

With respect to Section 3.10 it has been determined that the proposed modification will be able to facilitate an integrated retail/residential precinct and likely to be capable of supporting a number and variety of food and drink premises.

Section 6.01 – Newcastle City Centre

The proposal falls within the Newcastle City Centre map under Section 6.01 of the NDCP 2012 and, as such, has been assessed against the associated controls where applicable.

Character Area & Precinct

The proposal is located within the 'East End' character area under this section and specifically within the 'Hunter Street Mall' precinct. The area is a *"..mix of heritage listed and historic buildings give this part of Newcastle a unique character and offer interesting and eclectic streetscapes."*

The proposal on the subject site will form a significant redevelopment within the 'East End' character area especially as the site extends across the street blocks from Hunter to King Street and Thorn to Newcomen Street. The proposal also represents a significant urban design element which facilitates the improved view corridor from the harbour to Christ Church cathedral, one of the design principles within this section of the DCP.

Street Wall Height, Building Setbacks & Building Separation

Street wall heights would be considered as part of the assessment of the detailed design under DA2023-00419. The building setbacks and separations are considered in detail under the ADG assessment above.

The proposal has been the subject of a Design Excellence Competition, six DIP reviews and endorsement, and review by the UDRP. The proposal is satisfactory in terms of urban design outcomes and this aspect of the DCP.

Views, Vistas and Tenacity

A comprehensive assessment of the views and vistas has been submitted by the applicants having regard to the Land and Environment Court (LEC) planning principle established within *Tenacity Consulting v Waringah [2004] NSWLEC 140* ('*Tenacity*') refer to **Attachment F**.

A detailed assessment of the proposed changes in heights, particularly in regard to the envelopes related to the intended buildings '3S' and '4S', has been undertaken in terms of impacts on views and vistas.

It is firstly noted that under Section 6.01 the acceptable solutions within performance criteria of B2.2 (i.e.(2) (a-d) effectively adopt a simplified version of the *Tenacity* planning principle. For the purposes of a detailed assessment of impacts on private views, the full *Tenacity* planning principle as detailed by the LEC decision is addressed.

Tenacity forms the basis for the LEC planning principle regarding views and outlines four steps to follow in the consideration of view impact assessment as extracted below, noting not all four steps are necessary where the extent of view impact is resolved at an earlier step. *Tenacity* has been consistently applied by the LEC to assess the impact of new developments on views of other properties and forms the basis for the view impact assessment of this application.

1. Assessment of views to be affected and weighting of impacted views.
2. Consideration of where views are obtained and weighting of viewing locations.
3. Assess extent of impact for the whole of the property, being a qualitative assessment of negligible, minor, moderate, severe or devastating.
4. Assess the reasonableness of the proposal causing the impact.

The applicant's view impact assessment (VIA) provides a detailed examination of the view impacts having regard to the planning principles under *Tenacity*. CN's assessment below is to be considered in conjunction with this VIA and does not repeat areas of common agreement (e.g. descriptions of the views involved) and the assessment of the steps under *Tenacity*. CN's assessment is also based on the combined view outcome for the properties as a whole notwithstanding the applicant's VIA consideration of each individual 'view place'.

The applicant's VIA discusses the 'existing view' and 'proposed view'. The 'existing view' referred to in this instance is effectively the 'as is' view achieved but ignoring any existing planning controls or the approved Concept DA heights which would otherwise impact the view considering the allowable development. In these instances, where the view only exists due to the underdevelopment of an adjacent sites in terms of allowable height, it is agreed that those views would otherwise already be impacted.

The discussion of the "proposed view" is a combination of two aspects: -

- i) initially the impact resulting from the approved Concept DA heights and NLEP allowable height plus 10% and
- ii) the additionally height sought under this proposed modification.

The applicants VIA also claims, at points, that the views enjoyed by surrounding sites is via 'side boundaries' which is not agreed having regard to the principles in *Tenacity*. The VIA has taken the street address of corner sites, such the Newcastle Club at 40 Newcomen Street, as

strictly the 'front' boundary and demoted the King Street frontage to a 'side boundary'. This approach is not accepted considering that King Street frontage does not constitute private property, being roadway, with the same characteristics and development potential of private land. Similarly, the applicant's VIA assesses the Segenhoe's residential apartments in Wolfe Street impacted views to the north-east as being via a side boundary which is not correct as these views are via the extended front boundary to Wolfe Street.

Tenacity's reference to side boundaries is in context of a view through a common side boundary between two private properties, where there is an expectation of achieving a view via another private property, especially where this expectation impacts the reasonable development of that adjoining site. Conversely, in effect, the Newcastle Club for example, is considered to have two front boundaries in terms of *Tenacity*.

Tenacity identifies that in terms of views via side boundaries "... *protection of views across side boundaries is **more difficult** than the protection of views from front and rear boundaries. The expectation to retain side views and sitting views **is often unrealistic**."* (emphasis added). Furthermore, within *Furlong v Northern Beaches Council [2022] NSWLEC 1208* Walsh C provided (50), regarding the second step of *Tenacity*, that in terms of side boundaries:-

- (1) *To say "the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries", does not mean the protection of views across side boundaries is not appropriate in some circumstances, and*
- (2) *For the retention of side views to be "often unrealistic", does not mean it is always unrealistic.*

In this respect, *Tenacity* is more subtle when considering views via side boundaries and care needs to be taken regarding the overall context in which the views occur both in quantitative and qualitative respects as confirm within *Haindl v Daisch [2011] NSWLEC 1145* (Haindl).

It is noted, notwithstanding these of points of difference in terms of the view assessment, the submitted VIA is sufficiently robust and detailed to ensure that a comprehensive assessment of view impact could be undertaken, and an assessment of the key impacted sites is detailed below.

Newcastle Club - 40 Newcomen Street Newcastle

The current existing views are largely impacted by the combination of the allowable height envelope/planes under the Concept DA and the maximum building heights plus 10% permitted under the design excellence provisions contained within cl.7.5(6) of the NLEP. These views would be considered high or scenic value. Notwithstanding, the already approved Concept DA heights remove most of the view.

The applicant suggests that the Club enjoys views to the east and the west/ south-east. It is questioned the extent of views that the Club has to the east and southeast due to existing development and topography and while the Club would enjoy an outlook to the west across Cathedral Park this would be of low-medium value involving an outlook of over the western portions of the city.

The very limited 'gaps' in the Concept DA envelopes are considered not to offer any material views to the Club. The Concept DA already removes the view towards the north-east and north which includes the portions of the Newcastle harbour and Stockton beyond. The 'Newcastle

Herald apartments' at 60 King Street impacts the remainder of the views towards the north-east.

The remaining views to the north to north-west and the western-most change in the proposed height of the Concept DA (proposed building '3W'), removes a small portion of the view of the Newcastle Harbour in the midground of the view above the approved Concept DA height and is considered acceptable.

The most notable change in the view impacts is in relation to the view to the north/north-west towards Stockton. The current view that is enjoyed includes portions of the Newcastle Harbour and Stockton beyond. This view would still be predominately enjoyed even with the impact of the approved Concept DA envelopes. The proposed modification to the Concept DA height (proposed building '3S') impacts this portion of the view and would block the harbour with only glimpses of Stockton remaining.

The proposal modification does not however remove the view with the western portion of the harbour and limited parts of Stockton.

The resultant overall view loss therefore, based on the scale given by *Tenacity* is moderate and is considered acceptable.

Segenhoe - 50 Wolfe Street Newcastle

The applicant's VIA has undertaken detailed assessments from various residential apartments within the Segenhoe building, being apartments 17, 20 and 21. The layout of Segenhoe building has an 'eastern' and 'western' tower, which influences the different view impacts across the building. Apartments 17 and 21 are located within the 'eastern' tower and apartment 20 is located within the 'western' tower. These apartments are located on levels five and six, being the top two floors which is considered to enjoy the greatest amenity from views.

The overall views enjoyed by the Segenhoe apartments are to the east, north and west and would be considered panoramic in nature but the current proposal, due to the relative positions of Segenhoe and the proposal, only affects views to the north-east. The views impacted are towards the middle of these overall panoramic views enjoyed.

All the north-east views are achieved via the front boundary to Wolfe Street over both initially Cathedral Park (CN owned land) and then private land with the City Centre including the subject site. The views within the 'eastern' tower are not obstructed towards the east and highly valuable views of the Christ Church Cathedral and associated surrounds. It is unlikely that this view could be impacted into the future considering directly to the east is Wolfe Street and the grounds of the Cathedral. The views across the rest of the City Centre to the north to west is unlikely to be able to be impacted due the combination of the existing planning controls and relative height of the existing topography.

The applicant's VIA specifies that:

"The majority of view loss is caused by complying built form including below the LEP + 10% bonus and within the existing Approved Concept. The majority of the extent of view loss of scenic features such as Fort Scratchley is therefore contemplated by the Approved Concept and LEP controls."

However, while a large area of the midground views to the north/north-east quantitatively are impacted (e.g. Newcastle City Centre, southern portions of the harbour and Fort Scratchley), this impact is not affecting the highly valuable portions of the existing views, and are considered reasonable. *Tenacity* requires that a qualitative assessment of view impact be

undertaken such that the impacts be considered having regard to the extent of impact, the value rating of the views and the associated reasonableness.

It is not agreed that the view impacts (apartments 17 & 21) would be characterised minor/moderate. Whilst the proposed modification (and associated development proposal) results in an impact on views from the 'eastern tower' apartments to 'Nobby's headland' and its adjacent land/water by the proposed changes in height, there are still city, ocean and harbour views available from these units. Similarly, while the impact on the 'western' tower apartment 20 is lesser, as they will retain Nobby's eastern headland and partial surrounds, it will not include the full length of Nobby's headland.

The overall panoramic views enjoyed by apartments within Segenhoe are considered to be 'highly valued' due to the broad views of Cathedral, distance ocean, Nobbys headland, Newcastle harbour and CBD generally when considering the varying views enjoyed by both the 'eastern' and 'western' towers.

A robust assessment of the value of Nobbys headland has been undertaken to reach this position. The Newcastle DCP, under Section 6.01, refers to it being 'landmark' as extracted below.

"B2. Views and vistas Preserving significant views around the city is critical to place-making, wayfinding and for retaining the unique character of Newcastle. Significant views include views from public places towards specific landmarks, heritage items or areas of natural beauty. The most important views in Newcastle tend to be along streets leading to the water or landmark buildings, including Christ Church Cathedral and Nobby's Head."

An 'iconic view' under step one of *Tenacity*, are valued higher than even panoramic water views and is limited to recognised icons such as "...the Opera House, the Harbour Bridge or North Head". Later judgements relying on *Tenacity* have further qualified that an "iconic view" has a contextual element and does not automatically achieve this iconic status. For example, *"the view of the Opera House, though of an icon, is not a truly iconic view, as the sails are seen against a background of buildings and not the sky or water..(Gordon & Valich v Sydney City Council [2008] NSWLEC 1192)*. There are very limited circumstances where a view would be considered to reach the status of an 'iconic view' even where an iconic feature is visible.

Nobby's headland, while locally considered to be an important and impressive feature, does not reach the threshold to be categorised as an 'iconic view' under *Tenacity* when viewed from the Segenhoe Apartments, and is best categorised as highly valued.

In assessing the reasonableness under the fourth step *Tenacity*, the consideration needs to be given to i) extent to which a proposal complies with planning controls and ii) whether a more skilled design would reduce the view impact.

The proposal does not comply with the existing height standards under NLEP however the proposed modification is seeking consent to increase the allowable heights under the Concept DA in any respect.

In considering whether a more skilled design could be achieved, consideration has been given to the existing planning framework outcomes required and the broad public interest. The proposed modification aims to achieve an improved overall planning outcome in terms of views, public domain and broader public interest.

Section 6.01 of NDCP has multiple criteria aimed at protecting and/or improving existing view corridors/view with a strong emphasis on the view corridor from the harbour via Market Street

to the Christ Church Cathedral including control A6.1 'Heritage Buildings', B1.2 'Access Network', and B3 'Views and Vistas'.

These DCP criteria effectively limit the intended massing proposed for future design. The proposed modification, and the Iris development generally, forms an integral part of the Hunter Mall Precinct. Under these precinct controls, the current proposal is required to meet a significant view corridor from Hunter Street, and from Newcastle harbour to Christ Church Cathedral.

The Concept DA as currently approved does not support these public view corridor outcomes and conversely allows for building height and bulk completely across the view corridor. CN has encouraged the applicants to pursue a design which meets the provisions of NDCP and opens the view to Christ Church Cathedral through the Design Excellence Competition.

The modified design achieves improved planning outcome and ensures the significant view corridor to the Cathedral is not only protected but enhanced. To facilitate this public view corridor and balance the loss of development potential, the design of the proposal has effectively relocated this potential as additional height to other portions of the overall site, (proposed buildings '3S' and '4S') which has necessitated this currently proposed modification to the Concept DA to allow for the height increase. In addition to ensuring this view corridor, this design approach was pursued to limit the impacts on the retained heritage fabric/item within the development towards the north-east of the site fronting Hunter Street.

The overall design outcome, having regard to the impacts to the Segenhoe site, results in a reasonable degree of private view impacts, as discussed further below, to ensure the protection and enhancement of public view outcomes. On balance, the impact on a limited number of private views is acceptable against the combined benefits of the public views achieved and the significant renewal proposed within the precinct.

Having regard to the site constraints, the approved Concept DA and the respective planning controls applicable to the subject site, it is not considered that a "*..more skilled design..*" could reasonably provide for a better outcome balancing the "*..same development potential and amenity..*" against a reduction in "*..the impact on the views of neighbours' per Tenacity*". The existing heights under the approved Concept DA already have a degree on impact on views to the City Centre.

The 'western tower' apartment view, while being partly interrupted by the proposed increased in height to the Concept DA, retains much of its panoramic view including the northern eastern end of the Nobby's headland. The 'eastern tower' apartments as mentioned above effectively lose views of Nobby's headland but retain the remainder of their panoramic views to the east (Christ Church Cathedral and surrounds) and to the north/northwest to Newcastle harbour, Stockton, and the CBD.

Overall, the view impacts on Segenhoe as a property would be categorised as 'moderate' under *Tenacity* and are reasonable given that there are still views available from the apartments, and the context of the development, the intended future character and the positive public benefits from the proposal.

Herald Apartments - 60 King Street Newcastle

The applicant's VIA assesses the impacts on unit 701 of the Herald Apartments at 60 King Street, an amalgamated unit on the western side of the site at the top floor. The views enjoyed by the site extend from the north-east though to the west. Part of these views from the north-

west to west are via the subject site with the remaining views to the Newcastle harbour and towards Nobby's are unaffected and are not via the subject site.

While the subject site is currently undeveloped/underdeveloped, the likely impact on views which would arise as a result of the approved Concept DA or a proposal relying on the NLEP bonus height provisions is largely limited due to the relative heights compared to the topography. Most of the subject site has limited impact obstructing views within the foreground of the nearby CBD (proposed building '4N').

The proposed modification results in increased impact on views to the north-west/west (i.e. through intended building '4S'). This impact affects views to the middle ground parts of the City Centre and its interface with the Newcastle Harbour plus a small portions of Carrington (i.e. 'Dykes Point').

It is not accepted that the views to the north-west through to the west, across Newcomen Street, as discussed within the general assessment above, would constitute a side boundary in terms of the principles of *Tenacity*.

Notwithstanding the distinguishing points above, the overall impact of the proposed modification is 'minor' and the impact is reasonable. The portion of the views lost due to proposed modification is limited to the increase in height at the south-eastern portion of the subject site (i.e. see intended building '4S') which impacts the north-west to west views of Herald Apartments. The remainder of the proposed modifications across the site, notably to the north side/Hunter Street portion, has minimal impacts with small increases in the loss of the foreground City Centre view which is already impacted by the Concept DA.

The increased impact to the north-western through to western views comes from increasing the proposed height under the Concept DA and results in the loss of the views of the southern portions Carrington in the north-west, the associated western portions of the Newcastle Harbour and the western portion of the City Centre. These overall impacts on views are minor and reasonable.

The upper level/s of the Herald Apartments that would be impacted from the increase height retain most of their views, although the previously panoramic view is partly broken. The views impacted, are 'moderate to highly valued', however the remaining views are 'highly valued' and these retained views are the more significant and valued aspects including views of the Newcastle harbour across to Stockton and towards Nobby's headland plus towards Christ Church Cathedral. It is considered that the overall view impacts are moderate and reasonable.

Newcomen Apartments - 16-18 Newcomen Street

The views that the Newcomen Apartments currently enjoy across the subject site are due to it being undeveloped/underdeveloped. The views enjoyed to the north-west/west consist of City Centre outlooks with glimpses of the Newcastle Harbour and Christ Church Cathedral/the Newcastle Club towards the south/south-west.

The existing relative levels of the subject site and the Newcomen Apartments, in combination with the allowable height outcomes under the approved Concept DA/NLEP height +10%, are already such that most views would be lost in any expected development of the subject site. In fact, the NLEP heights alone without the 10% bonus, have the effect of resulting in future development already blocking these existing views.

To retain these views towards the north-west and west would effectively require a development to be several storeys less than that allowable under the NLEP which would not be reasonable and would not be acceptable having regard to the strategic planning outcomes for the Newcastle City Centre or in the public interest. The views to the south/south-west could not be readily retained with any likely redevelopment of this site considering the relative heights of the southern portion of the site compared to the Newcomen Apartments. Even a relatively modest proposal, less than the allowable height would have notable impacts.

The proposed modification, while proposing to increase allowable heights under the Concept DA, has no additional impact on views and only results in a decrease in outlook of sky. The view impact of the proposed modification is 'minor' and the view impacts result from the already existing planning controls (i.e. combination of the currently approved Concept DA/NLEP +10%). Overall, the view impacts in this instance are reasonable.

Conclusion - Private Views

The proposed modification to the Concept DA, and associated future development of the site, will result in increased view impacts to several properties with the key impacts detailed above. It is advised that the existing heights approved under the Concept DA, in many instances, have an existing impact on views that would be achieved by neighbouring properties.

However, the above view impacts have been determined to be reasonable and the modification is found to be satisfactory having regard to the principals outlined in *Tenacity* and undertaking a balanced assessment of the proposal in its entirety. Further, the redevelopment and revitalisation of the Newcastle City Centre as detailed within CNs strategic planning framework cannot reasonably be constrained and limited based on impact to private views.

It is not considered that a "*..more skilled design..*" could reasonably provide for a better outcome balancing the "*..same development potential and amenity..*" against a reduction in "*..the impact on the views of neighbours..*" Conversely, the applicant's proposal (DA2023-00419) has undertaken a comprehensive design development process, as discussed above, to reach the considered balancing of various issues resulting in the design as proposed and would likely require the loss of development/amenity to the overall proposal to further decrease private view impacts.

Public Views

The applicants have provided a comprehensive assessment of the public view corridors associated with the site and in context of the NDCP. The applicants were also required to consider the impact on View 17 south along Morgan Street which has been subsequently addressed.

An assessment of the applicant's VIA finds that the impacts on most of the view corridors are acceptable, and height increases to the Concept DA proposed under this s4.55 modification (and the concurrent DA2023/00419) are satisfactory. As detailed within this report, the proposal will significantly enhance the view corridor from the harbour to the Christ Church Cathedral as detailed by Section 6.01 of the NDCP, where block three has been relocated further to the east, increasing the width of the corridor and achieving greater public domain benefits.

The approved Concept DA, and its associated height and envelope layout, conflict with this outcome which can be seen in **Figure 9** below. Further assessment of several individual corridors is provided below.

Overall, the proposal's impacts on the public view corridors is acceptable. In many instances, the impacts on the public view corridors already exists as a result of the approved Concept DA and the current s4.55 modification application has little real additional impact. Additionally, the proposed modification facilitates a significant enhancement to the view corridor from the harbour to the Christ Church Cathedral.

Figure 9 - View from Market Street, through subject site to the cathedral Source: Urbis



View 06 - Cathedral Park to the harbour mouth/harbour.

The approved Concept DA height already had a significant impact on these view corridors. The increase height in terms of the proposed Building '4S' only decreases the visible extent of sky as the view is already blocked by the building heights of the approved Concept DA.

The increase height in terms of the proposed Building '3S' would remove distant views beyond Stockton but the prime views of Stockton are predominantly already lost to the approved Concept DA heights.

View 09 - South toward the Cathedral from 'Station' public domain.

This view corridor currently includes views of the topmost portions of the cathedral. The approved Concept DA results in the cathedral not being visible in this location along this view corridor. The increases in height proposed by the modification will only further decrease the extent of skyline and is considered to be reasonable.

View 10 - North from Cathedral Park steps to harbour.

The approved Concept DA and NLEP +10% currently results in nearly all of the existing view towards Stockton being lost, with only the far ground view to some parts of Stockton and limited glimpses of the harbour remaining.

The current modification enhances and opens the view corridor from the Cathedral/Cathedral Park through the subject site to Market Street, the harbour and Stockton beyond in accordance with the adopted provisions of the NDCP. While the proposed modification has some impact on distant views of Stockton, on balance, the overall outcome is reasonable and in the greater public interest.

Conclusion- Public Views

In summary, the views located in the public domain have changed with the proposed modification. However, on balance the views within the public areas have been enhanced, in particularly the view corridor from the harbour to the Christ Church Cathedral.

Active Street Frontages

The layout and urban design outcomes proposed as part of the modified Concept DA (MA2023-00175) will facilitate active street frontages promote an interesting and safe pedestrian environment and the incorporation of a mix of commercial premises. Based on the general layout proposed, it is expected that the future development will exceed the requirements of the NDCP in terms of active street frontages.

Key Precincts - Hunter Street Mall

The subject site is located towards the middle of the 'Hunter Street Mall Precinct', being located between Hunter, King, Thorn and Newcomen Streets. The intended future character for this area is detailed as follows:

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

The proposed modification satisfies this intended outcome for future character, facilitates enhancing the '... Views to and from Christ Church Cathedral...' and meets the objectives of the associated precinct. The precinct plan shown at **Figure 15** above, clearly shows the required view corridor to the cathedral.

The proposed modification also facilitates the required pedestrian access through the precinct in both a north-south and east-west fashion. Overall, the proposed modification is considered acceptable in terms of the Hunter Street Mall Precinct.

Section 6.02 – Heritage Conservation Areas

As detailed above within the cl.5.10 NLEP assessment, the proposed modification is acceptable to the extent of details which are relevant to a Concept DA. The heritage items at 121 Hunter Street and the retaining wall at King Street are retained. Additionally, the facades of the existing 'Contributory 1 Buildings' at 105-111 Hunter Street have also been incorporated into the design. Overall, the proposed modification is satisfactory in terms of its impact on the heritage significance of the Newcastle Heritage Conservation Area.

Section 7.03 – Traffic, Parking & Access

The proposed modification involves amendments to the approved parking and its allocation across the various stages and the proposed uses of the overall development. It is noted that the parking elements approved under the Concept DA have been modified on multiple occasions in conjunction with changes in the design and uses involved in the overall development.

The proposed changes to the parking conditions are consistent with the approved Concept DA and this section of the NDCP.

Contribution Plans

No contributions plans are relevant to the proposed modification to the Concept DA pursuant to Section 7.18 of the EP&A Act. Contributions will apply to the subsequent development applications for physical works.

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

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

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

There are no provisions of the 2021 EP&A Regulation which are relevant to the consideration of the proposed modification.

4.2.2 Section 4.15(1)(b) - Likely Impacts of Development

The impacts of the proposed modification have been addressed in the body of the report and, are considered to be acceptable.

4.2.3 Section 4.15(1)(c) - Suitability of the site

The site is suitable for the proposed modification, subject to the recommended changes to the Schedule of Conditions of consent included at **Attachment A**, having had regard to the nature of the existing site and the locality, the character of the area and the intended strategic planning outcomes for the Newcastle City Centre.

4.2.4 Section 4.15(1)(d) - Public Submissions

These submissions are considered in Section 5.3 of this report.

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

The proposed modification is considered, on balance, to be in the public interest and consistent with the planning controls (i.e. relevant SEPPs, NLEP and NDCP), the controls under the ADG and the original Concept DA, as detailed within this report. Furthermore, the proposed modification is an expected outcome of CNs intended strategic planning goals for the Newcastle City Centre and the aims of Newcastle East End Character Area providing for a significant revitalisation with a focus on a mixture of commercial and residential redevelopment. The proposal will achieve a significant public benefit and outcome in terms of the NDCP (i.e. Section 6.01) by improving the view corridor from the harbour to the Cathedral by removing the conflict caused by the layout of the existing Concept DA approval.

4.3 Part 5 of the 2021 EP&A Regulation

There are a number of matters required to be addressed in an application for modification of development consent pursuant to Division 1, 2 and 3 of Part 5 of the 2021 EP&A Regulation. These matters are considered in **Table 10** below.

Table 10: Consideration of the Requirements under the Regulation

Matter	Comment	Comply
Clause 100 Application for modification of development consent		
May be made by— (a) the owner of the land to which it relates, or (b) another person, with the consent of the owner of the land (CI 98(1))	The application has been made by another person, with the consent of the owner of the land	Y
NSW Aboriginal Land Council consent required for land owned by a Local Aboriginal Land Council (CI 98(6)).	The land is not owned by a Local Aboriginal Land Council and consent is not required.	Y
Form approved by Planning Secretary and on portal (CI 99).	The application has been provided in accordance with the Regulation.	Y
Applicant details (CI 100(1)(a))	Provided on the NSW Planning Portal ('the Portal').	Y
Description of the development (CI 100(1)(b))	Provided on the Portal and outlined in Section 2 of this Report.	Y
Address and title details (CI 100(1)(c))	Provided on the Portal and outlined in Section 1 of this Report.	Y
Description of the proposed modification (CI 100(1)(d))	Provided on the Portal and outlined in Section 2 of this Report.	Y
Whether to correct a minor error, mis-description or miscalculation, or some other effect (CI 100(1)(e))	The proposed modification is to modify the original consent under s.4.55(2) and is not to correct a minor error, misdescription or miscalculation.	Y
Description of the expected impacts of the modification (CI 100(1)(f))	The applicants have submitted a comprehensive application addressing the impacts of the proposal.	Y
Undertaking that modified development will remain substantially same as development originally approved (CI 100(1)(g))	The applicants have made a detailed submission regarding the application being substantially same as development originally approved. Refer to Section 3.1 of this Report.	Y
If accompanied by a Biodiversity development assessment report, the biodiversity credits information (CI 100(1)(h))	No biodiversity elements are applicable to this application.	N/A
Owner's consent (CI 100(1)(i))	An undertaking has been provided on the Portal.	Y
Whether the application is being made to the Court (under s.4.55) or to the consent authority (under s.4.56) (CI 100(1)(j)).	This Application is made to the consent authority pursuant to s.4.55(2) of the EP&A Act.	Y

BASIX Certificate (CI 100(3))	No BASIX elements are applicable to this application.	N/A
Qualified designer statement for residential apartment development (CI 102)	The proposed modification does not directly involve the approval of residential apartment development and a qualified designer statement is not required.	N/A
Notification and exhibition requirements (CI 105-112)	Refer to Section 4.3 of this report.	Y
Notification of concurrence authorities and approval bodies (CI 109) (to be undertaken by Council)	No relevant concurrence and approval bodies are applicable to this application.	N/A

5. REFERRALS AND SUBMISSIONS

5.1 Agency Referrals and Concurrence

The modification application is does not trigger any of the following categories:

- Integrated Development (s4.46)
- Designated Development (s4.10)
- Requiring concurrence/referral (s4.13)
- Crown DA (s4.33) - written agreement from the Crown to the proposed conditions of consent must be provided.

Accordingly, no referrals of this modification application to other agencies is required by the EP&A Act and cl.109 of the EP&A Regs.

5.2 Council Referrals

The proposed modification was referred to various Council officers for technical review as outlined **Table 11**. The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

Table 11 Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's Senior Development Officer (Engineering) reviewed the proposed modifications and considered them acceptable subject to conditions of consent included at Attachment A .	Y
Planning - Urban Design	Council's Senior Development Officer (Planning) reviewed the proposed modifications and considered them acceptable in terms of the SEPP65/ADG provisions subject to conditions of consent included at Attachment A .	Y

5.3 Notification and Community Consultation

The proposal was notified in accordance with the CN's Community Participation Plan from 13 June to 18 July 2023. A total of 17 submissions have been received objecting to the proposed modification. The issues raised in these submissions are considered in **Table 12** below.

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

Table 12: Community Submissions

Issue	Comments
Modification - The proposed modification is <i>"substantially different from the staged development originally granted (DA2017/00701) over 5 years ago."</i>	As discussed within the report above, the proposed modification has satisfied the provisions of s4.55(2) regarding demonstrating that it is <i>"substantially the same development."</i>
<p>Overdevelopment/Character/Streetscape - The proposal is an overdevelopment of the site resulting in high towers which detract from the existing building fabric and dominate the streetscape.</p> <p>The proposal does not retain the existing heritage and any preservation is tokenistic facadism. The proposed development is not compatible with the existing heritage nature of the area and its <i>"...size and scale cannot be mitigated by the trickery of fenestration or building materials"</i>.</p> <p>The proposal does not comply with the NDCP 2012 in terms of street wall heights proposing 30 metres with no setbacks (as opposed to the allowable 16 metres). <i>'Such excessive heights without setbacks will appear overwhelming and engulfing.'</i></p> <p>Concern that the proposal, as currently submitted, does not achieve design excellence, and needs further amendment.</p>	<p>The combination of the NLEP, NDCP and Concept DA (DA2017/00701) all envision a significant change within the East End Character Area of the Newcastle City Centre and the proposed modification is generally consistent with that strategic planning intent and the intended future character of the area.</p> <p>The proposed modification as detailed within this report, is a reasonable outcome in terms of its impacts balanced against the public interest.</p> <p>The proposed modification retains the two heritage items within the subject site, noting that the concurrent DA2023-00419 also retains the facades of 105-111 Hunter Street.</p> <p>As discussed within the UDRP assessment, that this part of the Newcastle City Centre has historically been typified by an eclectic combination of heights and building ages and the current proposal is not inconsistent with this.</p> <p>The proposed modification does not influence street wall heights.</p> <p>The proposed modification is consistent with the design excellence outcomes intended for the site.</p>
<p>Views - The proposal will have unreasonable impacts on views of surrounding properties (i.e. The Newcastle Club, 50 Wolfe Street (Segenhoe) 60 King St (Newcastle Herald Apartments) and 16-18 Newcomen St).</p> <p>The proposal will have unreasonable impacts on public views/'heritage views' to places such as Christ Church</p>	A comprehensive assessment of the view impacts has been undertaken within this report and the proposed modification is ultimately considered to be acceptable and the impacts reasonable having regard to the provisions of NDCP and planning principles established under <i>Tenacity</i> .

<p>cathedral, the Newcastle Club, Segenhoe, The Hill, Stockon/Stockton Bight, Fort Scratchley and Nobby's headland.</p> <p>The VIA report does not include assessment of all individual dwellings impacted by the proposal and the ones that are assessed, are inaccurate.</p> <p>Rooftop communal gardens should only be allowed where they do not intrude on surrounding views and are within the allowable height limits.</p>	
<p>Heritage Impacts - The proposal will have unreasonable impacts on heritage of the Newcastle Central Business District. The Municipal Building should be used as an office building as opposed to residential apartments.</p> <p>Objection to the demolition of the historic building at 74 King Street.</p>	<p>The proposed modification retains the two heritage items within the subject site, noting that the concurrent DA2023-00419 also retains the facades of 105-111 Hunter Street.</p> <p>Adaptive reuse of heritage items is a common and acceptable approach under environmental planning instruments. The detailed assessment of the residential apartments within 121 Hunter Street is applicable to the concurrent DA2023/00419.</p> <p>74 King Street, and other associated structures, were separately approved for demolition under DA 2023/00336 and this is not a relevant matter for consideration in the assessment of the proposed modification.</p>
<p>Overshadowing - The submitted shadow diagrams are not accurate as they do not include rooftop plant, lift over-runs, roof top gardens and communal areas.</p>	<p>The shadowing impacts of the proposed modifications are reasonable.</p>
<p>Privacy - The proposal will result in privacy impacts to neighbouring properties. Dwellings within 16-18 Newcomen Street will be significantly affected, notably along their southern and western boundaries.</p>	<p>The approved building separations/envelopes are not proposed to be amended.</p> <p>The development application for Stages 3 & 4 physical works (DA2023/00419) will need to address suitable design measures to resolve any privacy interface issues.</p>
<p>Ventilation/Breezes - The proposal will impact the ventilation of neighbouring dwellings (notably 16-18 Newcomen Street).</p>	<p>Consideration of ventilation/breezes is addressed within the building separation assessment which demonstrates that acceptable outcomes are achievable.</p>
<p>Traffic Impacts - The proposal will increase traffic congestion in the city which is already a significant issue.</p>	<p>The traffic impacts of the overall proposal were considered as part of the original Concept DA and are acceptable and an expected strategic planning outcome for the area.</p>

	The proposed modification will result in 35 less dwellings than originally approved under the Concept DA.
Tree Removal - Concern that the proposal will remove existing mature trees in the area with the loss of "green space" and natural habitat for birds.	The removal of the existing trees and other associated structures, were separately approved under DA 2023/00336 for demolition/removal. This is not a matter for consideration in the assessment of the proposed modification.
Underground Spring - Concern is raised that an underground spring exists on the subject site potentially in the vicinity of the proposed Building 4S and could result in stormwater/drainage issues.	This is not a matter for consideration under the Concept DA and this associated modification.
Dilapidation Reports - Pre and Post construction dilapidation reports need to be undertaken to repair any construction impacts on neighbouring buildings.	This is not a matter for consideration under the Concept DA and this associated modification.

6. KEY ISSUES

There are no further issues which have not otherwise been addressed within the assessment report above.

7. CONCLUSION

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

It is considered that the issues associated with the proposal have been resolved satisfactorily and the proposed modification is acceptable subject to the recommended conditions of consent at **Attachment A**.

8. RECOMMENDATION

Having regard to the detailed assessment undertaken by this report, the following recommendations are made:

- A That the Modification Application MA2023/00175 involving changes to height, FSR, building envelopes/layout, parking and associated conditions at 121 Hunter Street, Newcastle be APPROVED pursuant to s.4.55(2) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent included at **Attachment A**
- B That those persons who made submissions be advised of Hunter Central Coast Regional Planning Panel's determination.
- C Pursuant to cl.118 of the *Environmental Planning and Assessment Regulation 2021*, a notice of determination is to be prepared by Council following the Panel's determination of this modification application.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Architectural Plans & associated reports
- Attachment C: Urban Design Review Panel Report
- Attachment D: Applicants S4.55 submission
- Attachment E: Approved Plans (DA2023/00336)
- Attachment F: Applicant's VIA and Amended VIA