

SUPPLEMENTARY REPORT
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	Lot 31-32 DP 864001 Lot A & B DP 388647 Lot 1 DP 77846 Lot 96, 98 & 100 DP 1098095 Lot 1 & 2 DP331535 Lot 1 DP 723967 Lot 1 DP 819134 105, 109, 111 & 121 Hunter St Newcastle 3 Morgan St Newcastle 22 Newcomen St Newcastle 66-74 King St Newcastle
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	<ul style="list-style-type: none"> 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 (NDCP) Newcastle Development Control Plan 2023 (Section D4 - Commercial only) (NDCP 2023)

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 (S7.24)	None apply
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	N/A
SCHEDULED MEETING DATE	13 May 2024
PREPARED BY	Damian Jaeger, Principal Development Officer (Planning)
DATE OF REPORT	6 May 2024

BACKGROUND

The subject application involving s4.55(2) modification to DA2017/00701 - Concept Development Application - Staged development comprising of retail, commercial, residential and shop top housing - change to design (building height) was reported to the Hunter Central Coast Regional Planning Panel (HCCRPP) for determination on 11 March 2024.

The HCCRPP issued a record of deferral on 19 March 2024 as included within **Attachment A**, and which raised several issues that required further assessment and/or clarification which relate to:

1. *The Applicant to provide further consideration of the visual impact assessment modelling which details, clarifies and compares the cumulative impact of the proposed changes to the building height and includes the following:*
 - a. *All impacted properties (Newcastle Business Club, Segenhoe and the Herald Apartments) which will retain views if the modification is approved,*
 - b. *All impacted properties (Newcastle Business Club, Segenhoe and the Herald Apartments) which lose views if the modification is approved,*
 - c. *Explanation of views impacts (positive and negative) resulting from the demolition of the council car park having regard to the maximum building height for this site in any future development,*

- d. Clarification of impacts on 'primary' views of impacted properties, as well as 'secondary' aspects/frontages,
- e. Confirmation of all view loss of impacted properties if the modification was to be approved, compared with the already approved concept plan
- f. The specific number of units on each floor of impacted properties that will have further view loss (total number of units on each floor), or areas of specific properties impacted (e.g. the Newcastle Club)
- g. The specific storey/level the view assessment relates to in each affected building, and
- h. Supplementary assessment in relation to loss of significant public views from Hunter Street, Morgan St, Laing St, Market St, waterfront, Hilltop Park to harbour, Nobby's and Cathedral as raised by submitters in the public hearing.

2 Council to provide a supplementary report which:

- a. Addresses the required car parking under Condition 19 having regard to the now demolished Council car park referenced in this condition, and
- b. Updates the visual impact assessment based on the additional information requested in point 1.

This supplementary report provides a further assessment of the proposal, as amended, in response to matters raised during the determination meeting and provides associated amended conditions of consent. The amended conditions for inclusion by the HCCRPP in the determination have been provided at **Attachment B**.

1. Updated Visual Impact Assessment

HCCRPP's deferral of the application recommended that further consideration of the visual impacts be undertaken by the applicant to address concerns raised.

The applicant has provided two additional documents in response to the HCCRPP's 'Record of Deferral' issued on 19 March 2024 of the proposal as included at **Attachment C & D** respectively (i.e. response letter and additional view impact analysis).

An updated assessment of visual impact is provided below in respect to the additional information provided.

- a. ***All impacted properties (Newcastle Business Club, Segenhoe and the Herald Apartments) which will retain views if the modification is approved and,***
- b. ***All impacted properties (Newcastle Business Club, Segenhoe and the Herald Apartments) which lose views if the modification is approved***

Newcastle Club

The applicant's further submission confirms the extent of view loss for the Club with a large proportion resulting from the heights approved original under the concept DA and/or the NLEP. The Club will retain partial views towards the northwest which were assessed as acceptable within CN's original report.

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

Segenhoe Apartments

The applicant's additional information provided concerning the Segenhoe apartments identifies that the impacts to the dwellings on the upper floors (e.g. Apartments 17, 20 and 21 as detailed within in the original report) have been assessed as reasonable. The view impacts to levels four and five (i.e. fifth and sixth storeys), have been assessed as acceptable (these being the levels with the best existing views). Whilst the view enjoyed from these apartments is changed it is largely retained.

The additional information appears to include an error identifying that there are seven storeys and 28 dwellings, however, Segenhoe comprises six storeys and 24 dwellings. Notwithstanding, CN's assessment remains that the view impacts are reasonable in terms of *Tenacity*.

The existing lower floors (e.g. ground, one and two) would currently enjoy limited views due to existing vegetation and would otherwise be obstructed by the approved Concept DA and/or NLEP heights.

Level three (i.e. fourth storey) would have less access to existing views considering the existing vegetation and relative height. The view impacts of the proposal on this level, considering the combination of vegetation, the approved Concept DA and/or allowable NLEP heights within the City Centre are reasonable.

The resulting view impacts from the modification application are considered acceptable having regard to *Tenacity*.

Herald Apartments

A review of the plans for Herald Apartments shows 23 dwellings have an elevation facing Newcomen Street (i.e. towards the west) and a potential view across the subject site. It is noted that many of these 23 dwellings also enjoy additional view opportunities to the north or southern elevation.

The views enjoyed by the 18 existing dwellings at level four are already impacted by a combination of factors including existing buildings, existing vegetation, the approved Concept DA and/or the allowable NLEP heights. The current modification does not alter these existing circumstances.

Further, the design excellence bonus height provisions which exist under the NLEP would provide a maximum allowable height of 46.2m AHD to the southeastern corner of the site, being directly west of the Herald Apartments. A development to the LEP bonus height would obstruct views to the west, across the subject site, for the two dwellings on level five that have a western elevation.

The modification application will result in view impacts to three western-facing dwellings located at levels six and seven. The view impacts for these dwellings are reasonable having regard to the principles set out in *Tenacity*.

With the exception of the 23 dwellings which have an elevation facing Newcomen Street (i.e. towards the west), the views of all other 43 dwellings within the Herald Apartment complex are not affected by the proposal.

c. Explanation of views impacts (positive and negative) resulting from the demolition of the council car park having regard to the maximum building height for this site in any future development,

The applicant's further VIA assessment has modelled the massing of a potential allowable development on the now demolished CN 'carpark' site (i.e. 92 King Street) to the 24 metre height limit (and including the 2.4 metre 10% bonus (26.4 metres) and inclusive of the required view corridor through the site).

The massing is useful to demonstrate how the view corridor from the harbour to the Cathedral would be retained and demonstrates that the resultant overall view loss, based on the scale given by *Tenacity*, is moderate and is considered acceptable.

d. Clarification of impacts on 'primary' views of impacted properties, as well as 'secondary' aspects/frontages,

The applicant's additional view impact analysis response does not alter CNs position under the previous report regarding the designating front versus side boundaries under *Tenacity*. Where sites have two street frontages, both are treated as 'front' boundaries under *Tenacity*. Nominating one street over another as the front boundary is not an accepted approach in context of *Tenacity*.

Further, it is not agreed that the Segenhoe views affected by the proposed development are through a side boundary. Notwithstanding, the view assessment has still determined that the view impacts arising from the modification are acceptable and reasonable.

e. Confirmation of all view loss of impacted properties if the modification was to be approved, compared with the already approved concept plan

Newcastle Club

As detailed within the previous report, and in the above analysis at points a and b, the greatest view impacts result from the heights allowed under the approved concept DA and/or the NLEP. The proposed modification does impact view to the north west which were assessed and considered to be acceptable in CN's original report.

Segenhoe

The proposed modification would have partial view impacts on levels four and five (i.e. fifth and sixth storeys), which as detailed with in the previous report, and in the above analysis at points a and b, have been assessed as acceptable.

Herald Apartments

The current proposal changes the view impacts to the three western-facing dwellings at levels six and seven. The view impacts for these dwellings has been assessed as reasonable as detailed within the previous report and at points a and b above.

Other public locations

Following the HCCRPP's deferral of the proposal, the applicants have also submitted additional public view assessments which have been addressed below within CN's assessment. These additional public view assessments do not alter CN's original

assessment that the view impacts were reasonable and provide additional details supporting this assessment.

Overall, the view impacts are acceptable having regard to the existing circumstances and Tenacity.

- f. The specific number of units on each floor of impacted properties that will have further view loss (total number of units on each floor), or areas of specific properties impacted (e.g. the Newcastle Club), and***
- g. The specific storey/level the view assessment relates to in each affected building, and***

Newcastle Club

The view loss to the north, though the proposed building 4S, is not altered by the proposal due to the current impacts resulting from the heights allowed under the approved concept DA and/or the NLEP.

The upper ground level terrace, mid-level and level 1 bar (top floor) of the club will have an increase in view loss towards the northwest (i.e. through proposed buildings 3S and 3W). The impact is greatest via the proposed building 3S. The overall view impacts are acceptable as previously detailed within CN's original assessment report.

Segenhoe Apartments

Segenhoe Apartments comprise 24 dwellings, however, as outlined in the previous report and elsewhere in this report, only the top two floors, being levels 4 and 5 (i.e. fifth and sixth storeys), have the potential to be affected by the proposed modification.

The layout of each floor of Segenhoe has four dwellings, the western most dwellings are not impacted due to orientation. The remaining six dwellings have partial view loss towards the site and Nobby's beyond which have been subject to a detailed view assessment and the view impacts are considered reasonable.

Herald Apartments

The three dwellings with western facing elevations on levels six and seven are impacted by the modification application. The view impacts have been assessed in detail and determined to be acceptable.

- h. Supplementary assessment in relation to loss of significant public views from Hunter Street, Morgan St, Laing St, Market St, waterfront, Hilltop Park to harbour, Nobby's and Cathedral as raised by submitters in the public hearing.***

Following the HCCRPP's deferral of the proposal, the applicants have also submitted additional public view assessments. These additional public view assessments confirm CNs previous assessment, demonstrating that the view impacts are reasonable, and provide additional details supporting this assessment. Additionally, included within this supplementary report, are further details regarding the harbour to Cathedral view corridor.

Harbour to Cathedral View Corridor

Under Section 6.01 of the NDCP, there are multiple criteria aimed at protecting and enhancing public domain and heritage view corridors (e.g. A6 Heritage Buildings, B1 Access Network, B2 Views and Vistas & Hunter Mall Precinct).

Hunter Mall Precinct controls, which directly affect the subject site and adjoining 'carpark site', include a specific view corridor between Market Street to Christ Church Cathedral to facilitate the Harbour to Cathedral view corridor (See **Figure 1** below).



Figure 1 - Hunter Street Mall Precinct Controls - NDCP 2012

The progression of the Harbour to Cathedral view corridor can be seen over time by **Images 1, 2 and 3**. **Images 1 and 2** illustrate the extent to which the Queens Wharf walkway and carpark limited this view. **Image 3**, by the applicants, shows the view corridor with potential massing allowed for a future redevelopment while protecting the view corridor. It is noted that the existing building in the mid-ground is proposed to be demolished under the separate application for redevelopment of the site (DA2023-00419).



Image 1 - View looking south from Market/Scott Street toward Cathedral (Queens Wharf walkway and carpark in foreground). Source Streetview Jan 2008



Image 2 - View looking south from Market & Scott Streets toward Cathedral (Carpark in foreground). Source Streetview Sept 2020



Image 3 - View looking south from Wharf Rd toward Cathedral. Source Urbis 17 April 2024

Additional Public View Corridor Analysis

View 01 - Stockton to Cathedral

This view details the impacts of the proposal when viewed from Stockton. The details show that there are minimal impacts and the outcome is reasonable.

View 02 - Nobbys Break wall walk to Cathedral

This view details the impacts of the proposal when viewed from Nobbys Break Wall. The details show that there are minimal impacts and these are reasonable. It is notable that the lower levels of the Cathedral are already partially obstructed by other development within the Newcastle city centre.

View 03 Fort Scratchley to Cathedral

This view details the impacts of the proposal when viewed from Fort Scratchley. The details show that there are minimal impacts and these are reasonable.

View 04 - Cathedral Park (close to Cathedral) to the harbour

This view details the impacts of the proposal when viewed from the park. The details show that there are minimal impacts and these are reasonable. It is notable that the existing vegetation largely limits the majority of the views and the proposed development would be obscured.

View 05 - Cathedral Park (close to King St) to the harbour

This view details the existing location of the Concept DA heights and envelopes (proposed to be modified under this application. This view demonstrates how the existing Concept DA approval conflicts with the adopted Harbour to Cathedral view corridor adopted under the NDCP 2012 (as discussed above and previously assessed within the original report).

Additionally, the applicants have provided a massing outline of possible development on the 'carpark' site allowable under the 24-metre height standard (i.e. plus 10%) while maintaining the required view corridor. The proposal and its view impacts in this context are reasonable.

View 27 - Waterfront view to the proposal (i.e. Corner of Pasha Way & Horseshoe Beach Road)

This view details the impacts of the proposal when viewed from this location near Nobbys car park. The details show that there are minimal impacts and these are reasonable.

View 28 - Reserve Road (adjacent King Edward Park)

This view demonstrates that there is no impact on views to the Christ Church Cathedral from the south and this park precinct and is reasonable.

HCCRPP Deferral - Significant Public Views

Hunter Street

The applicants have provided view 08 east along Hunter Street which shows that the proposal has low impact on views. It has been demonstrated previously, in the original assessment and the report above, that the views south along various points of the harbour to Cathedral are acceptable.

Morgan Street

The applicants have reiterated that the impacts on the Morgan Street view corridor are low. CN's previous assessment found the impacts on this view corridor was acceptable.

Laing Street

The applicants have submitted additional views from Laing Street towards the Christ Church Cathedral.

Market Street

The Market Street view forms part of the harbour to cathedral view corridor and has been assessed within this report and the previous report as acceptable.

Waterfront

The Applicant has provided multiple views assessment from various waterfront positions and this approach is satisfactory. The view impacts from all of these positions have been assessed by CN as acceptable.

Hilltop Park to Harbour

Whilst it is not clear, it is understood that 'Hilltop Park' refers to 'Cathedral Park' which forms part of the grounds of the Cathedral. The view impacts to and from this park area have been assessed further and it is confirmed these are acceptable. It is noted that the applicants have also assessed views from adjacent King Edward Park (i.e. Reserve Road), further south of the site, and this impact is also acceptable.

Nobbys

The additional and original details provided by the applicant demonstrate that the view impacts are acceptable.

Cathedral

The current and original assessment considered the proposal's impacts on views from and to the Cathedral are acceptable.

Conclusion- Public Views

Whilst the modification alters views from the public domain, on balance the views within have been enhanced, in particular the view corridor from the harbour to the Christ Church Cathedral.

Based on the further assessment of the additional information provided by the applicants, the proposal is acceptable in terms of impacts on views and meets the provisions of the NDCP 2012 and the planning principles of *Tenacity*.

2. Car parking - Condition 19

HCCRPP's deferral of the application recommended that further details be provided within a supplementary report having regard to condition 19 and the now demolished car park referenced within this condition.

The proposed modification involves amendments to the approved parking and its allocation across the various stages and the proposed uses of the overall development. The changes proposed to the parking conditions under this modification application are consistent with the approved Concept DA (as modified) and the requirements of the NDCP.

The concept application for Stages 1 to 4 (DA2017/00701.03), approved a parking deficit of 159 spaces (85 residential visitor and 74 commercial /retail). At the time of the approval, it was accepted that the additional parking demand associated with this development could be met by available parking located within the King Street multi-level car park. Condition No. 19 (b) & (c) currently reflects this requirement.

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 concurrent DA 2023/00419 (Stages 3 & 4) seeks to further amend the approved parking and results in a reduced parking deficit across the total development (Stages 1-4) of 113 spaces, being 76 residential visitor and 37 commercial/retail spaces. The parking deficiency associated with DA 2023/00419 (Stages 3 & 4) is confined to 26 residential visitor parking spaces as the application provides for the full quota of commercial /retail spaces required at 1 space per 60m² GFA. A detailed breakdown of the parking deficiencies across Stages 1 to 4 is provided at **Appendix A**.

As the King Street car park has since been demolished, the applicant's traffic consultant has undertaken a parking survey to establish short and long-term parking vacancies for both on-street and within existing off-street public car parks to cater for the 113-space parking deficit. The survey was undertaken on Thursday 27 July 2023 between 8.00 am to 8.00 pm and Saturday 29 July 2023 8.00 am to 1.00 pm with 1-hour recording intervals and this demonstrated that 845 and 1782 parking spaces were available respectively.

CN's assessment has concluded that there is adequate parking available as a combination of on-street and public parking spaces to cater for the 113 space parking deficit of the proposal. Furthermore, condition 19 relied upon the provision of private parking within a third party owned site

Following a detailed assessment of the current parking generation, including the applicant's parking study, the proposed modification, including amendments to condition No.19, is acceptable with respect to parking. Amended draft conditions of consent are included at **Attachment B**.

Section 3.10 – Commercial Uses (NDCP) & Section D4 - Commercial (NDCP 2023)

Under the saving provisions of the NDCP 2023 the majority of the controls under NDCP 2012 remain applicable to the assessment of this modification due to the saving provisions under NDCP 2023, except for D4 Commercial. This section was omitted from the previous assessment report, and for completeness, is included at **Appendix B**.

CONCLUSION

The above supplementary report, in combination with the revisions to the draft conditions, have addressed the concerns and issues arising from the determination meeting.

Having regard to the assessment of the proposal from a merit perspective, Council Officers are satisfied that the development provides for acceptable levels of amenity for future residents and the existing residents in the area

The development is consistent with the intentions of the relevant planning controls and represents a form of development contemplated by the relevant statutory and non-statutory controls applying to the land.

The application is recommended for approval subject to the imposition of appropriate conditions.

It is recommended that the application be supported on the combined basis of the 'Council Assessment Report' and this Supplementary Report subject to the revised draft conditions of consent.

The following attachments are provided:

- **Attachment A:** HCCRPP Record of Deferral
- **Attachment B:** Draft Conditions of Consent
- **Attachment C:** Response to Record of Deferral - Letter
- **Attachment D:** Response to Record of Deferral - Views

APPENDIX A - PARKING CALCULATIONS

Parking Deficit

Commercial & Retail Use			
Stage	DCP requirement (excluding Hotel)	Provision	Deficit
1	52	26	26
2	22	11	11
3	17	38 (surplus 21)	-
4	9	9* (5 spaces within Stage 4 and 4 spaces located in Stage 3)	-
Total			37
Visitor Parking			
Stage	DCP requirement	Provision	Deficit
1	43	11 (provided in Stage 3)	32
2	25	7	18
3	18	6	12
4	21	7	14
Total			76
Total across all uses			113

Parking requirements for Stages 1 to 4

* Inclusive of 21 space commercial / retail re-allocation

Stage	Parking
1	42 hotel (38 guest + 8 staff) 178 resident (inclusive 18 accessible) 26 commercial/retail Total - 273 spaces
2	138 residential (inclusive 14 accessible) 10 commercial / retail 3 spaces for 176 Hunter Street 7 residential visitor Total - 158 spaces
3	1 car wash bay 2 residential common property EV parking spaces 101 residential (inclusive 14 accessible and 10 EV charging spaces) 6 residential visitor 17 commercial / retail (inclusive 3 common EV parking spaces) 10 commercial/retail from Stage 1 11 commercial/ retail from stage 2 11 residential visitor from Stage 1 5 hotel from Stage 1 4 commercial /retail from Stage 4 Total - 168 spaces
4	1 car wash bay 2 residential common property EV parking spaces 121 residential (inclusive 11 accessible and 10 EV charging spaces) 7 residential visitor 5 commercial /retail Total - 136 spaces
Overall	The total parking provision across all four stages equates to 735 spaces .

APPENDIX B - SECTION D4 - COMMERCIAL (NDCP 2023)

Section 3.10 – Commercial Uses (NDCP) & Section D4 - Commercial (NDCP 2023)

The proposed modification is acceptable having regard to the relevant Section 3.10 under NDCP 2012 and Section D4 - Commercial under NDCP 2023 (which replaces Section 3.10). Each of these sections address similar aspects as discussed below. As the current application is for the modification of the approved Concept DA, there are areas of these sections which are not relevant to this application (i.e. they would be applicable to the detailed Development Application - DA2023/00419).

Height

The current proposal is to modify the allowable height under the approved Concept DA and is acceptable as detailed within the original assessment report.

Density

The current proposal is to modify the allowable floor space ratio under the approved Concept DA and is acceptable as detailed within the original assessment report.

Streetscape & Front Setbacks, Side & Rear Setbacks

The proposed design and layout of the development, as modified under this application, is consistent with the requirements of the two DCP's. The proposal was the subject of an architectural design competition under cl7.5(4) of the NLEP and the resulting proposed layout has had significant design review by both the Design Integrity Panel and CN's Urban Design Review Panel (UDRP).

Street Activation

The proposed modification is capable of meeting the street activation provisions of the DCPs. The design maintains significant publicly accessible areas between the proposed buildings and concurrently addresses the existing street frontages (e.g. Hunter Street Mall). The design of the concurrent DA2023-00419 confirms these outcomes are acceptable with its detailed design. This DA will be separately reported to the HCCRPP.

Views & Privacy

The aspects of views and privacy are assessed in detail under Section 6.01 of the original assessment report and are acceptable.

Amenity - internal & neighbour

The proposed design and layout of the development, as modified under this application, is consistent with the requirements of the two DCP's. The design of the concurrent DA2023-00419 confirms these outcomes are acceptable with its detailed design